

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-081
Preliminary Plan Amendment No. 12016005A
8008 Wisconsin Avenue
Date of Hearing: July 20, 2023

JUL 28 2023

RESOLUTION

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

WHEREAS, on September 16, 2016, the Planning Board, by Resolution MCPB No.16-083, approved Preliminary Plan No. 120160050 creating one lot on 13,962 net square feet of land in the CBD-1 zone, located in the southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue ("Subject Property"), in the Bethesda CBD Policy Area and Woodmont Triangle Amendment to the Bethesda CBD Sector Plan ("Sector Plan") area; and

WHEREAS, on May 25, 2023, Toll MD X Limited Partnership ("Applicant") filed an application for approval of an amendment to the previously approved Preliminary Plan to extend the validity period of the Plan by two years; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12016005A, 8008 Wisconsin Avenue ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 10, 2023 providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 20, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions, by the vote certified below.

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12016005A to extend the validity period of the Preliminary Plan by two years, by adding the following conditions:¹

19. The Preliminary Plan as amended will remain valid until October 16, 2025, 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 request for an extension filed.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged, and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

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

3. Grounds for extension.

- a. The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:*
 - i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or*
 - ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in*

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.

order to validate the plan) would result to the applicant if the plan were not extended.

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

The Planning Board finds the Applicant has presented grounds to support the requested extension in accordance with the criteria of 3.a.ii, due to the occurrence of significant, unusual, and unanticipated events, beyond the Applicant's control, and not caused by the Applicant, which have substantially impaired their ability to validate the Preliminary Plan. The Board finds these events included the adoption of the *2017 Bethesda Downtown Sector Plan* and associated rezoning of the Property, the COVID pandemic, and market volatility. Further, such events hampered the Applicant's ability to validate the Preliminary Plan, and exceptional or undue hardship would result if the Preliminary Plan's validity period were not extended because it would cause significant challenges for the impending sale of the property and realization of the Project. Additionally, it would result in the loss of the Applicant's investment in the Project, inclusive of density purchased from sending properties in the Bethesda CBD made prior to the County's 2017 adoption of the *Bethesda Downtown Sector Plan*, and associated zoning updates, which changed how additional development density can be purchased and transferred in downtown Bethesda.

The Preliminary Plan was approved approximately seven months prior to the adoption of the current *2017 Bethesda Downtown Sector Plan*. As such, the Applicant took time to evaluate the implications of the new Sector Plan's recommendations and associated zoning change for the Property prior to validation of the development approvals.

The COVID Pandemic public health emergency and associated challenges began to emerge as the Applicant was completing their assessment of the impacts of the Sector Plan on the approved plan. Impacts of the pandemic have grown and evolved through most of the Preliminary Plan's validity period. Working through these challenges slowed finalization of entitlements. In addition, market volatility, inflation and rising interest rates have impacted the Applicant's ability to finalize the entitlement process.

These unusual circumstances unfolded in sequence over the lifetime of the validity period for the Preliminary Plan. The Applicant now reports entering into a contract to sell the Property to a purchaser who is willing and able to proceed to platting and construction of the approved project. An extension of the validity period of the Preliminary Plan will allow the contract purchaser

sufficient time to satisfy conditions of approval and other prerequisites for platting.

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 Regulations (Chapter 50) are pertinent to the scope of this Application. No revisions to the previously approved Preliminary Plan are needed for the Preliminary Plan to conform to the Regulations.

- 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 Board finds the Applicant indicated they are in the process of selling the Property to another developer who is able to proceed to platting and permitting of the approved Project prior to the termination of its existing adequate public facilities (APF) validity period, October 16, 2025. The Board finds that approval of the requested extension of the Preliminary Plan validity period is critical to the viability of the impending transfer of ownership of the Property.

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.*

This Application was submitted in conformance with the noticing requirements of Chapter 50 and the Administrative Procedures for Development Review. This included sending mailed notices to required parties and property owners and posting the Site with signage. The Planning Board reviewed and acted on the Application at a duly noticed public hearing.

- 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 Planning Board finds a two-year extension is the minimum time needed for completion of prerequisites for platting, including coordinating with multiple public agencies to fulfill various permit and bonding requirements.

- c) The Board may only grant an extension to a preliminary plan within the plan's APF validity period unless a further extension is allowed by law.*

The Preliminary Plan's APF validity period ends on October 16, 2025. The approved extension aligns the validity periods for APF and the preliminary plan. The Preliminary Plan amendment does not extend the validity of the Preliminary Plan beyond that of the APF validity period.

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

This Application is the first request for an extension of the Preliminary Plan validity period.

- 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.*

The approved Preliminary Plan did not include a phasing schedule, nor does this Amendment, as the Project is to be constructed in a single phase.

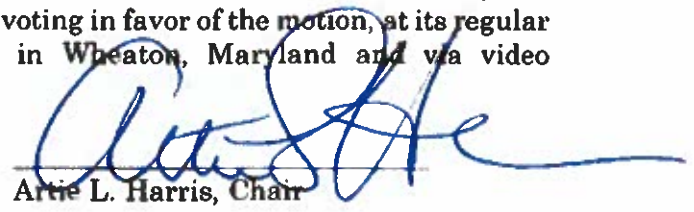
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 28 2023 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal 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 approved and adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by, Commissioner Linden with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners, Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, July 20, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board