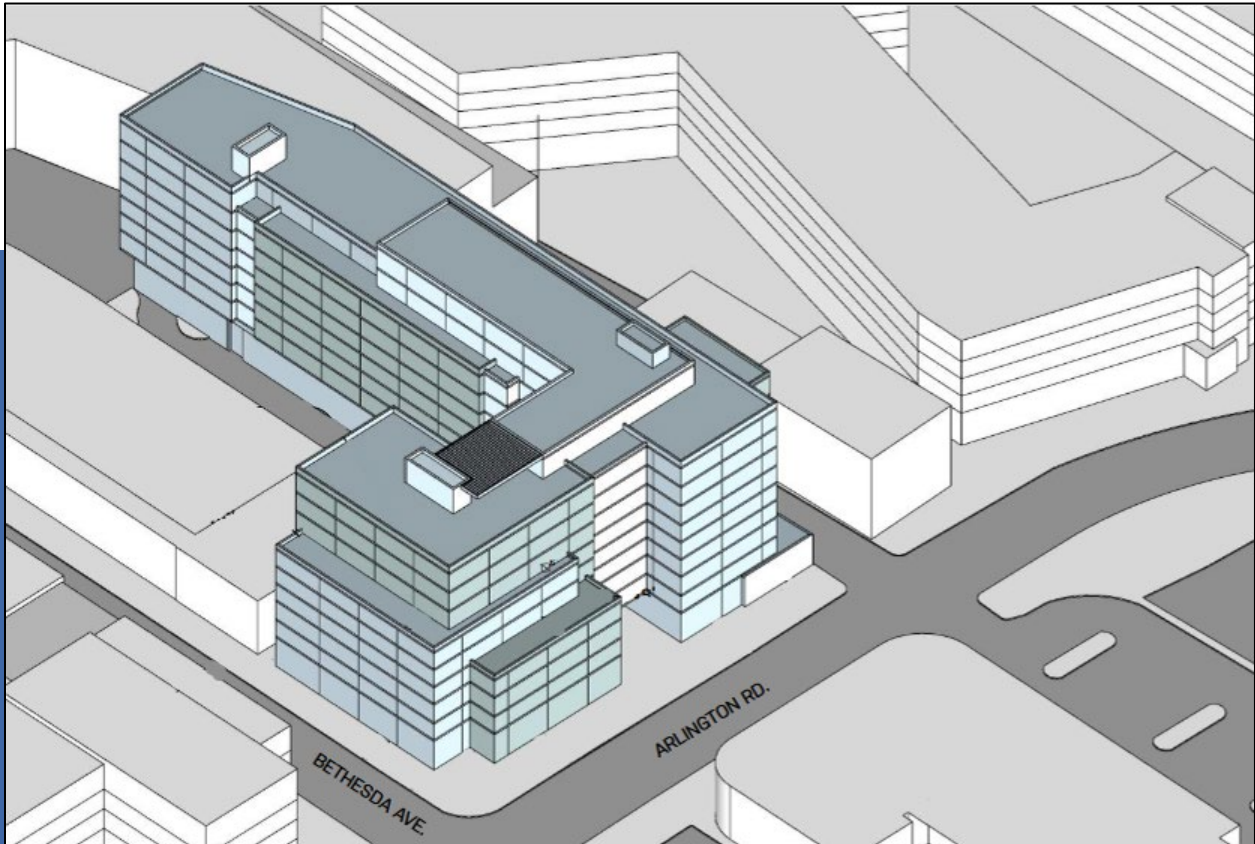


7070 ARLINGTON ROAD

**SKETCH PLAN AMENDMENT NO. 32021010A & PRELIMINARY
PLAN AMENDMENT NO. 11998051B**



Description

Request to extend by three years the period of time within which to file a Site Plan Application to implement the Approved Sketch Plan under Section 59.7.3.3.G of the Zoning Ordinance; extend by four years the Plan Validity Period pursuant to Subdivision Ordinance Section 50-4.2.H; and request a Subdivision Waiver, pursuant to Section 50-4.9.3.A, from the prerequisites of Subdivision Ordinance Section 50-4.3.J.7. to extend the Adequate Public Facilities ("APF") validity period from five years to ten years.

COMPLETED: 7/21/2025

PLANNING BOARD HEARING DATE: 7/31/2025

MCPB ITEM NO. 8

Planning Staff



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LOCATION/ADDRESS

Located in the southeast quadrant of the intersection of Bethesda Avenue and Arlington Road; within the Bethesda Parking Lot District (PLD)

MASTER PLAN

2017 *Bethesda Downtown Sector Plan*

ZONE

CRT-2.25, C-2.25, R-2.25, H-90', H-70' and Bethesda Overlay Zone

PROPERTY SIZE

2.39 acres

APPLICANT

FR Bethesda Row, LLC

ACCEPTANCE DATE

December 27, 2024

REVIEW BASIS

Chapter 50, Subdivision Regulations and Chapter 59, Zoning Ordinance



Summary:

- The Applicant requests an extension of the Sketch Plan validity period by three (3) years, an extension of the Preliminary Plan validity period by four (4) years, , and an extension of the Adequate Public Facilities validity period from five (5) years to ten (10) years.
- The Applicant cites market conditions, interest rates, and construction costs following the pandemic as the basis for delay in the development timeline. The Applicant has indicated that the Project is still viable for financing and construction and this proposal will allow the necessary time to validate the Plan.
- The required findings to grant an extension of the APF validity period from Section 50-4.3.J.7.d. are not satisfied. Therefore, the Applicant requests a Subdivision Regulation Waiver for extension of the Preliminary Plan APF validity from the construction progress timeframes identified in Section 50-4.3.J.7.d.i of the Subdivision Regulations.
- No community correspondence has been received for this Application.
- Staff recommends approval of the Sketch Plan amendment and Preliminary Plan amendment.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

SKETCH PLAN AMENDMENT 32021010A

Staff recommends approval of 7070 Arlington Road, Sketch Plan No. 32021010A, to extend by three (3) years the period of time within which to file a Site Plan Application to implement the Approved Sketch Plan under Section 59-7.3.3.G of the Zoning Ordinance.

This approval is subject to the following condition¹; the following Condition 8 is in addition to all other conditions from the original Sketch Plan approval, which remain in full force and effect:

8. **Validity**

In accordance with Section 59-7.3.3.G. of the Zoning Ordinance, a site plan under Section 7.3.4 must be submitted by December 16, 2027.

PRELIMINARY PLAN AMENDMENT 11998051B

Staff recommends approval with conditions of the 7070 Arlington Road Preliminary Plan Amendment, 11998051B, to extend the Preliminary Plan validity period by four (4) years and amend the Adequate Public Facilities (APF) validity period from five (5) years to ten (10) years via a waiver from the Subdivision Ordinance (Section 50-4.3.J.7) pursuant to the guidelines found in Section 50-4.9.3.A. All site development elements shown on the latest electronic version of the Preliminary Plan No. 11998051B as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions.² The following Condition 15 modifies the previous Condition 15 for the previous preliminary plan amendment, and Condition 16 is in addition to all other conditions, which remain in full force and effect:

Modified Conditions

15. The Adequate Public Facilities (APF) review for the Preliminary Plan will remain valid for ~~five (5)~~ ten (10) years from ~~the date of mailing of the Planning Board Resolution, original~~ initiation date of Preliminary Plan Amendment 11998051A, ~~as defined in Montgomery County Code Section 50.4.3.J.5), and approved by Planning Board Resolution MCPB No. 21-125 dated December 16, 2021.~~

¹ For the purposes 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.

² For the purposes 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.

New Condition

PLAN VALIDITY PERIOD

16. The Preliminary Plan will remain valid for seven (7) years from its original initiation date as defined in Montgomery County Code Section 50-4.2.G and approved by Planning Board Resolution MCPB No. 21-125 dated December 16, 2021. 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.

SECTION 2: SITE DESCRIPTION

VICINITY

The Subject Property consists of two recorded lots located at 7070 Arlington Road (Lot 15 and Lot 16, Plat No. 20949) in the southeast quadrant of the intersection of Arlington Road and Bethesda Avenue. The Property is located within the 2017 *Bethesda Downtown Sector Plan* (Sector Plan) and is generally within a commercial core of downtown Bethesda with CRT zoned properties nearby. The neighborhood surrounding the Property has predominately commercial uses and includes retail shopping, dining, auto-related uses, and parking to support these uses. Single-family neighborhoods exist to the north and west of Elm Street as well as to the south and west of Woodmont Avenue.

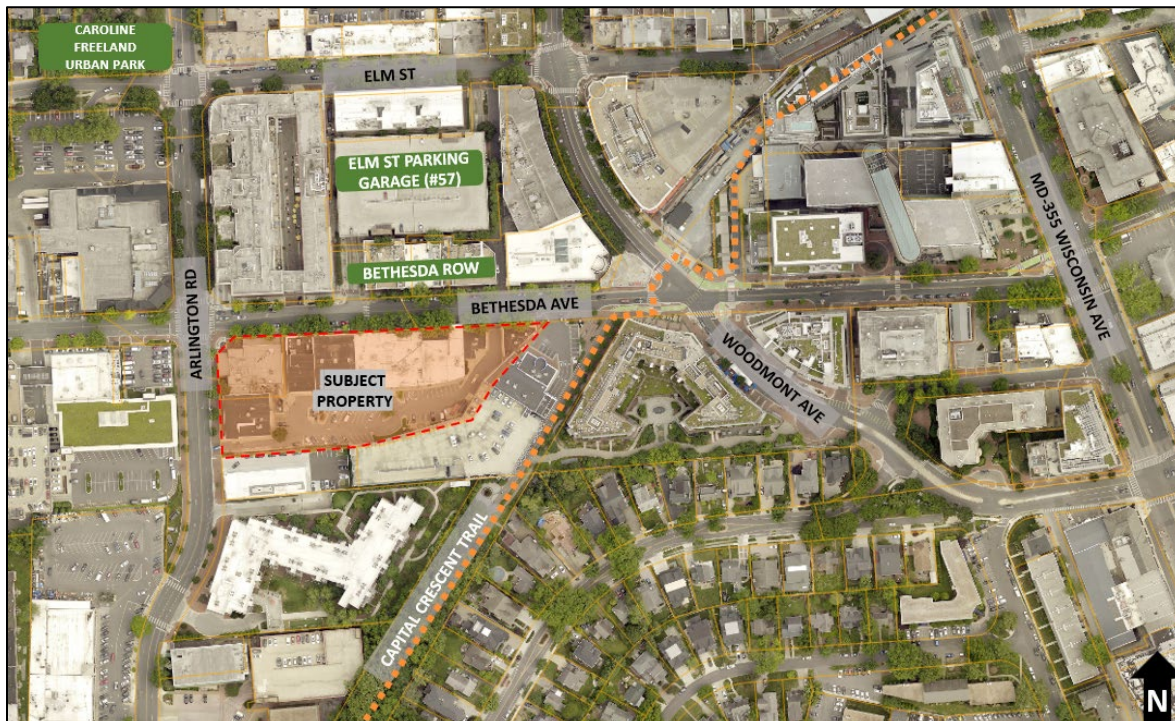


Figure 1 – Vicinity Map

PROPERTY DESCRIPTION

The Property is comprised of 2.39 acres and is zoned CRT-2.25, C-2.25, R-2.25, H-90', CRT-2.25, C-2.25, R-2.25, H-70' and Bethesda Overlay Zone. The Property is currently improved with approximately 52,521 square feet of commercial uses and surface parking. The Subject Property is located within the Little Falls Branch watershed which is a Use I-P³ watershed. The Site is not associated with any environmentally sensitive features such as forest areas, stream buffers, wetlands, 100-year floodplains, or steep slopes. Although numerous street trees border the Site, all are less than 24" diameter-at-breast-height (DBH). As the Site lies in an urban area, the topography is generally flat with a gentle grade rising to the east along Bethesda Avenue. The soils associated with the Property are classified generally as urban land, which is not highly erodible or otherwise sensitive. There are no known rare, threatened, or endangered species on site. There are no known historic properties on Site



Figure 2 – Subject Property

³ Use I-P:

WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY

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, industrial water supply, and use as a public water supply.

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

Sketch Plan No. 320210100

The Planning Board approved Sketch Plan No. 320210100 by MCPB Resolution No. 21-124 dated December 16, 2021, for construction of a 10-story mixed use development of up to 313,070 total square feet of density which includes: 38,070 square feet of existing retail uses, 261,000 square feet of residential (250 multifamily dwelling units to include 17.6% Moderately Priced Dwelling units), and up to 14,000 square feet of new commercial uses on 2.39 acres in the CRT-2.25, C-2.25, R-2.25, H-70', CRT-2.25, C-2.25, R-2.25, H-90' and Bethesda Overlay Zone, located in the southeast quadrant of the intersection of Bethesda Avenue and Arlington Road and within the Bethesda Parking Lot District (PLD).

Preliminary Plan No. 11998051A

In conjunction with the previous Sketch Plan, the Applicant received Preliminary Plan approval, as memorialized in Planning Board Resolution MCPB No. 21-125 issued on December 16, 2021, to creating one lot on 2.39 acres of land in the CRT-2.25, C-2.25, R-2.25, H-70', CRT-2.25, C-2.25, R-2.25, H-90' and Bethesda Overlay Zone, located in the southeast quadrant of the intersection of Bethesda Avenue and Arlington Road and within the Bethesda Parking Lot District (PLD). The Plan approved the Site for up to 313,070 square feet of total development (included 38,070 square feet of existing retail use to remain) and 275,000 square feet of mixed-used development (including 261,000 square feet of residential uses and up to 14,000 square feet of commercial use). The Preliminary Plan amendment also served to bring the Property into compliance with the current zoning ordinance and was accompanied by a Forest Conservation Plan under the same plan number.

Approved Validity Periods

The 2021 Planning Board approval of the previous Sketch Plan and Preliminary Plan amendment Applications resulted in a standard 60-month plan validity period and five-year adequate public facilities (APF) validity period; these standard period result in a requirement for a Site Plan to be filed by December 16, 2024, a Preliminary Plan Validity Period expiration date of December 16, 2024, as well as an APF expiration date of December 16, 2026. The current application for an extension of these periods was submitted in a timely manner on December 12, 2024, well before the expiry dates as noted above.

PROPOSAL

The Applicant is currently requesting a three-year extension for the submittal of the detailed Site Plan application (i.e. December 16, 2027), a four-year extension of the Preliminary Plan validity period (i.e. December 16, 2028), and a change to the APF period from five years to ten years (i.e. December 16, 2031). As further detailed below, the Applicant has been encumbered by the onset of the global pandemic following the previous Planning Board approvals; this period was followed by a rapid increase in interest rates and construction costs which have necessitated the current request for an extended period of time to bring the previously approved development to fruition.

The proposed amendments will allow submission of the Site Plan on or before December 16, 2027, followed by the recordation of the plat after Site Plan approval and issuance of the building permit. This request will enable coordinated implementation of the various approvals and documentation required to complete the project and bring additional housing, including additional MPDUs, to downtown Bethesda.

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements, and a pre-submittal public meeting was not required for this Application as it qualifies as a Minor Amendment per Section 50-4.2.F.2. As of the date of this Staff Report, no correspondence has been received related to this Application.

SECTION 5: SKETCH PLAN AMENDMENT NO. 32021010A ANALYSIS

The Planning Board approved Sketch Plan No. 320210100, MCPB No. 21-124, for a 10-story mixed use project of up to 313,070 total square feet of development which included 38,070 square feet of existing retail uses, 261,000 square feet of residential (250 multifamily dwelling units to include 17.6% Moderately Priced Dwelling units (MPDUs)), and up to 14,000 square feet of new commercial uses.

Sketch Plan Amendment No. 32021010A requests to extend by three years the period of time within which a Site Plan Application is required to be filed. As such, the proposed amendment does not alter the intent of the previous findings, which remain applicable in full.

SECTION 5: PRELIMINARY PLAN AMENDMENT NO. 11998051B FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 11998051A, MCPB No. 21-125, to create one lot on 2.39 acres of land in the CRT-2.23, C-2.25, R-2.25, H-70', CRT-2.25, C-2.25, R-2.25, H-90' and Bethesda Overlay Zone on the Subject Property with conditions.

Preliminary Plan Amendment No. 11998051B requests to extend the Preliminary Plan validity period by four (4) years and amend the Adequate Public Facilities (APF) validity period from five (5) years to ten (10) years. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable, except as modified below.

3. Public facilities will be adequate to support and service the area of the subdivision.

c) Schools

Based on the date this Preliminary Plan Amendment was submitted, the project is now subject to the 2024-2028 *Growth and Infrastructure Policy*. The Subject Property is located within the Bethesda CBD Policy Area, which is categorized as an Infill Impact Area in the current Growth and Infrastructure Policy.

Annual School Test Results

This Application is scheduled to be reviewed on July 31, 2025. Therefore, the results of the FY2026 Annual School Test, approved by the Planning Board on June 26, 2025 and effective since July 1, 2025, are applicable.

The Property is served by Somerset Elementary School, Westland Middle School, and Bethesda-Chevy Chase High School. The enrollment and capacity projections of these schools reflected in the FY2026 Annual School Test, which evaluates for the 2029-2030 school year, and the resultant Utilization Premium Payment (UPP) tier placements are shown in Table 1.

Table 1. FY2026 Annual School Test Projections (2029-2030 School Year) & UPP Tier Placements

	Program Capacity	Enrollment	Utilization Rate	Seat Surplus or Deficit	UPP Tier Placement
Somerset ES	550	336	61.1%	+214	No UPP
Westland MS	1,064	855	80.4%	+209	No UPP
Bethesda-Chevy Chase HS ⁴	2,475	2,345	94.7%	+130	No UPP

Based on the FY2026 Annual School Test results above, the Property is not subject to any UPP by default. However, if the project's enrollment impact estimate exceeds an adequacy ceiling shown in Table 2, a payment will be required.

Table 2. FY2026 Annual School Test Adequacy Ceilings

	Tier 1 Adequacy Ceiling	Tier 2 Adequacy Ceiling	Tier 3 Adequacy Ceiling
Somerset ES	288	324	407
Westland MS	329	422	582
Bethesda-Chevy Chase HS	290	625	997

Enrollment Impact Estimate

Table 3. Student Enrollment Impact Estimate (reflects FY2026-2027 Student Generation Rates)

Type of Unit	Net Number of Units	Turnover ES Student Generation Rate	ES Student Estimate	Turnover MS Student Generation Rate	MS Student Estimate	Turnover HS Student Generation Rate	HS Student Estimate
MF High-rise	250	x 0.039	= 9.750	x 0.016	= 4.000	x 0.020	= 5.000
TOTAL (rounded down)			9		4		5

⁴ Projected enrollment is modified to estimate the impact of the Charles W. Woodward High School Reopening (CIP P651908) and the Northwood HS Addition/Facility Upgrades (CIP P651907), reflecting the scope of the boundary study approved by the Board of Education on March 28, 2023.

As shown in Table 3, the enrollment impact estimate of this project based on its School Impact Area classification and net residential units proposed does not exceed the adequacy ceilings identified in Table 2. Therefore, a Utilization Premium Payment is not triggered.

Preliminary Plan Validity Period Extension

The current Preliminary Plan validity period was set to expire on December 16, 2024, whereas the Applicant made a timely request for extension prior to this date.

Section 50-4.2.H of the Subdivision Regulations allows the Planning Board to consider the extension of Preliminary Plan validity. As part of an extension the Planning Board may only grant an extension to a Preliminary Plan the minimum amount of time it deems necessary to validate the plan (i.e., record plats), and it must only grant an extension to a Preliminary Plan that has a valid APFO, unless further extensions of the APF validity are allowed or pending. Additionally, per Section 50-4.2.H.3.a. the Planning Board must find that:

- i. Delays by the government or some other party after the plan approval have prevented the Applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the Applicant; or
- ii. The occurrence of significant, unusual and unanticipated events, beyond the Applicant's control and not caused by the Applicant, have substantially impaired the Applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the Applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the Applicant if the plan were not extended.

Further, per Section 50-4.2.H.4.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's statement of justification (Attachment B) explains the delay is due to events after the Preliminary Plan was approved, beyond the Applicant's control and not caused by the Applicant. In support of the above, Applicant stated the following:

"Prior to the onset of the Covid pandemic, Federal Realty commenced work on the preparation of a Sketch Plan and Preliminary Plan to develop a 10-story mixed use development at the southeast corner of Arlington Road and Bethesda Avenue. The Sketch Plan proposed a total of 52,070 square feet of retail (of which 38,070 square feet was existing and 14,000 square feet was proposed) and 261,000 square feet of residential (250 multi-family units) (the "Project").

Due to the uncertainties in the real estate market brought on by the pandemic, coupled with high interest rates and exceedingly high construction costs, especially with respect to high-rise development, Federal Realty determined that it would be economically imprudent to incur additional costs (approximately \$500,000) associated with the preparation and processing of a Site Plan. This concern was punctuated by the fact that the Bethesda Overlay Zone includes a “use it or lose it” provision requiring an applicant once Site Plan approval is obtained to file a building permit within two years (although we understand this provision will be deleted as part of the Bethesda Minor Master Plan Zoning Text Amendment). These reservations in proceeding with the high-rise construction have only exacerbated since the original submission of this request in December 2024, as a result of continuing rising construction costs due to the Federal government’s imposition of tariffs.

The delay in the preparation and filing of the Site Plan results in a delay in the recordation of the plat (the Plan validity period) and the issuance of the building permit (the APF validity period). The proposed extension of the Site Plan filing that will require the filing of the Site Plan by December 16, 2027 results in the delays of the other processes such that the request to extend the Plan validity period by four years until December 16, 2028 is the minimal additional time needed to record the plat for the Property.

Federal Realty recognizes the County’s need for additional housing and the benefits that the proposed redevelopment would bring to this area of Bethesda, especially with the additional MPDUs, and therefore wants to preserve the rights obtained under the Sketch Plan and Preliminary Plan approval in hopes that the future economics will justify moving forward with the Project. Moreover, the requested extension has no negative impacts on the overall development environment of Bethesda, the Property itself or the general development process. Instead, the extension provides a benefit in that it preserves the administrative resources that have been spent to date on the approval of the Sketch Plan and Preliminary Plan.”

The Applicant has indicated certainty that the Project remains viable and is capable of being financed, constructed, and marketed if the Preliminary Plan validity period is extended by four (4) years.

Staff’s Recommendation

Due to the explanation provided in the statement of justification and responses to review comments, Staff recommends that the Planning Board support the 4-year Preliminary Plan validity extension as requested by the Applicant, which results in a Preliminary Plan Validity Period through December 16, 2028.

Adequate Public Facilities (APF) Validity Amendment

The Applicant has additionally submitted a request to extend the original APF validity period from up to five (5) years to up to ten (10) years, resulting in an expiration date of December 16, 2031. The current APF validity period will expire on December 16, 2026.

To extend the APF validity period, the Planning Board must consider the following findings of Sections 50.4.3.J.7.a. (all application types) and 50.4.3.J.7.d. (nonresidential or mixed-use subdivisions):

Section 50.4.3.J.7., Extensions.

a. Application. 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 expires.

The Applicant has filed a timely request as the current APF validity period will expire on December 16, 2026.

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

Under the approval of Preliminary Plan No. 11998051A, the Applicant proposed to complete the project in one phase. This aspect of the proposal remains the same, however the extended validity period is needed to support this timeline.

iii. For each extension of an adequate public facilities determination:

(a) The Applicant must not propose any additional development above the amount approved in the original determination;

The Applicant does not propose any development beyond what was approved in the original determination.

(b) The Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

No additional public improvements are required to be provided by the Applicant.

- (c) The Board may require the Applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest.**

Staff has not requested the Applicant submit a traffic study given that the Project generates only five net new morning peak hour trips and six new evening peak hour trips beyond the existing condition. Given the minimal impact and the currently in-use retail stores at the Subject Property, the requested APF extension is not expected to have any adverse impact on the public interest

- (d) An application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the Applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.**

Not Applicable.

- (e) If the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review**

Based on the date the previous Application was submitted, it was subject to the 2020-2024 *Growth and Infrastructure Policy* (GIP) in effect. The unbuilt units will generate more than 10 students. Therefore, as described in the Preliminary Plan findings above, this Application has been retested for school adequacy under the 2024-2028 *Growth and Infrastructure Policy*.

- 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.**

Not Applicable; the proposal consists of one phase.

Section 50.4.3.J.7.d., Nonresidential or mixed-use subdivisions.

To grant an extension of the APF validity period, the Planning Board must consider the following findings of 50.4.3.J.7.d. However, the Applicant requests a waiver of the construction threshold timeframes identified in Section 50.4.3.J.7.d.i of the Subdivision Regulations. Details of the waiver are provided in the subsequent report subsection.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for non-residential or mixed-use development beyond the otherwise applicable validity period if:

(a) The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area (GFA) for the project;

Due to the status of the record plat filing and other preconstruction requirements, the Applicant has not pursued building permits for any of the approved gross floor area of the development. The proposed development consists of a single building, therefore building permits would not feasibly be issued for only 40% of the approved gross floor area.

(b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and

Infrastructure required by the Preliminary Plan conditions of approval has not been constructed by the Applicant, which includes transportation improvements, storm water management, and utilities.

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

- (1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or***
- (2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.***

To date, none of the Project has been built. Summarized from the Applicant's statement of justification, the global pandemic greatly interrupted the anticipated schedule for the project following the concurrent approval of the Preliminary Plan and Sketch Plan. In the years following, unfavorable market conditions overlapped heightened construction costs in interest rates. The Applicant did not submit a Site Plan prior to the existing expiration date and therefore unable to accomplish the construction of any units.

- ii. For any development that consists of more than one preliminary plan, the requirements for 7.d.i. apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.**

Not applicable.

- iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:**

**(a) 2.5 years for a subdivision with an original validity period of 7 years or less;
or**

(b) 6 years for a subdivision with an original validity period longer than 7 years.

Preliminary Plan No. 11998051A set a plan validity period of 48 months and an APF validity period of 60 months. This results in the qualification for an extension of 2.5 years.

- iv. The extension expires if the Applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Board or the Director has approved a revision to the schedule or phasing plan.**

The Applicant has requested an extension in a timely manner.

- v. In addition to the extension permitted under 7.d.iii, the Board may approve one or more additional extensions of a determination of adequate public facilities, not to exceed a total of 2.5 or 6 years, as applicable, if:**

**(a) Development that comprises 30% or less of the total approved gross floor area for the project remains to be built of either the entire approved development or the share of the development to be built by that applicant;
or**

(b) The applicant will commit to reduce the amount of unbuilt development by at least 10 percent, and the validity period for the amount to be reduced will expire as scheduled.

Since more than 30% of the total approved project remains to be built and the Applicant has not provided a formal statement indicating a commitment to reduce the amount of unbuilt development by at least 10%, the Applicant does not qualify for an additional 6-year extension of the APF validity period beyond the maximum of six (6) years that may be granted. However, to support the requested extension, the Applicant has requested a waiver of this section of the Subdivision Regulations which is detailed below.

Subdivision Waiver Request

As described above, the Applicant has not met the requirements of Section 50.4.3.J.7.d. of the Subdivision Regulations related to the minimum thresholds for infrastructure improvements and construction progress. Therefore, the Applicant requests a waiver from the findings of this section.

Per Section 50.9.3.A, a request for a waiver must be submitted to the Planning Board stating all facts supporting approval of a waiver. Further, the following findings must be satisfied:

A. To grant a waiver, the Board must find that:

- 4. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;***

The Applicant is seeking deviation from the requirements associated with minimum percentages for issuance of building permits, remaining gross floor area to be built, and delivery of public infrastructure improvements. Considering the unusual circumstances cited by the Applicant, these thresholds could not be reasonably met, and the lack thereof does not pose any adverse impacts to the Property or the surrounding area at this time. The Subject Property is currently improved with active retail and there were no requirements for transportation improvements, therefore there will be no impact to the public health, safety, and general welfare associated with this request. However, the implementation of the approved Project will deliver public infrastructure investments prioritized in the Bethesda Downtown Sector Plan that will serve to further enhance the area with a new mixed-use development which will provide much needed housing. Therefore, by granting the waiver to approve the 5-year extension, for a total of 10 years, to the APF validity period, the public health, safety, and general welfare will be substantially advanced beyond the present circumstances with the completion of these improvements.

5. *the intent of the requirement is still met; and*

The requirements associated with minimum percentages for issuance of building permits, remaining gross floor area to be built, and delivery of public infrastructure improvements aims to ensure projects do not linger for unreasonable amounts of time without measurable progress. Further, the thresholds outlined in Section 50.4.3.J.7.d.i aim to indicate the practicability of a project to reach full completion. Circumstances outside of the Applicant's control has led to a temporary delay such as unexpected events in the form of the pandemic, unfavorable market conditions, and unprecedented construction costs. Additionally, as the development will be completed in one phase as a single structure, the metric of minimum percentages for issuance of building permits is not a relevant metric for this Project. The Applicant has indicated that the Project remains capable of being financed, constructed, and marketed based on the timeframe of the requested extension. Therefore, by granting the waiver to approve the requested extensions to the APF validity period phasing schedule, the Project remains viable because the Applicant can proceed with filing record plats, filing additional Site Plan(s) as necessary, and satisfying other preconstruction requirements to finance and fully construct the Project.

Moreover, in terms of the extension of the APF period, it should be noted that given that the Project generates only five net new morning peak hour trips and six new evening peak hour trips, the requested APF extension will not have an adverse impact on transportation adequacy. Similarly, with respect to school capacity, at the time the Preliminary Plan was approved there was adequate school capacity (with no UPP) and this continues to be the case. In all, the requested waiver will not result in an elimination of a APF validity period, but merely an extension to address the current challenging development market.

6. *the waiver is:*

a. the minimum necessary to provide relief from the requirements; and up to 5 years would be the minimum necessary.

b. consistent with the purposes and objectives of the General Plan.

Federal Realty requests a five-year extension of the APF validity period. This is the minimum necessary given the existing market and the anticipated economic forecast. The five-year extension is the minimal amount of time needed to allow for a potential indication that the market will turn around and allow Federal Realty a sufficient amount of time to pursue and obtain Site Plan approval, prepare building permit plans and commence construction. It is for this reason that the Applicant requests a waiver of subsection iii. which would otherwise allow only a 2.5-year APF validity period extension.

The request is consistent with the purposes and objectives of the General Plan, as well as the Bethesda Downtown Plan, both of which uniformly call for the development of additional housing, and especially affordable housing to help Montgomery County meet the acute housing shortage.

Staff's Recommendation

Overall, the above noted waiver requirements have been met and the minimum necessary timeframe is being sought for APF validity period extension, and therefore the Planning Board's approval is recommended.

SECTION 6: CONCLUSION

Based on the analysis above and conditions at the beginning of this report, Staff recommends approval of:

- a three (3)-year extension for the Site Plan Submittal from the current date of December 16, 2024, to expire on December 16, 2027;
- a four (4)-year extension of the Preliminary Plan validity from the current date of December 16, 2024, to expire on December 16, 2028; and
- a five (5)-year extension of APF validity period to expire on December 16, 2031.

The minimum timeframe recommended by Staff is intended to be sufficient considering the scope of the Site Plan with the infrastructure that is necessary to support construction of one building. Unless specially 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. This Application meets all the applicable requirements established in the Montgomery County Code, Chapter 50, the Montgomery County Subdivision Regulations per Sections 50.4.3.J.7.a. and 50.4.3.J.7.d., and substantially conforms with the recommendations of the applicable Sector Plan. Staff recommends approval of Sketch Plan 32021010A and Preliminary Plan Amendment 11998051B with the revised conditions listed at the beginning of the Staff Report.

ATTACHMENTS

Attachment A: Sketch/Preliminary/Site/FCP Plan

Attachment B: Prior Approvals

Attachment C: Statement of Justification