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December 12, 2024
Updated: May 21, 2025

The Honorable Artie Harris
Chair
Maryland-National Capital Park and Planning Commission
2425 Reedie Drive
Wheaton, MD 20902

Re: 7070 Arlington Road – Amendment to Sketch Plan No. 320210100 and
Preliminary Plan No. 11998051A

Dear Chair Harris:

We represent FR Bethesda Row, LLC an affiliate of Federal Realty Investment Trust (“Federal Realty”), the applicant in this matter.

We are submitting this Amendment 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.
- Amend the adequate public facilities (“APF”) validity period (Preliminary Plan Condition No. 15) from five years to ten years. This request is made pursuant to a request for a Subdivision Waiver pursuant to Section 50-4.9.3.A from the prerequisites of Subdivision Ordinance Section 50-4.3.J.7. as detailed below.

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”). The Project exceeds the 15% Moderately Priced Dwelling Units (“MPDUs”) requirement by 2.6%, to provide a total of 17.6% MPDUs. The additional MPDUs allowed the Project to add one additional story. The Planning Board approved the Sketch Plan and Preliminary Plan in November 2021 and the Planning Board Resolution was issued on December 16, 2021.

Unfortunately, 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. It is truly unfortunate, especially given the County’s need for housing, but the simple reality is that proceeding with high rise construction at this time for most property owners is fiscally infeasible.

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.

At the same time, 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 preservation of the Sketch Plan, the extension of the Plan validity period and the revision to the APF validity period will allow the Project to move forward at such time that the market supports the development, instead of having to spend additional time and resources undergoing a review process that would presumably be identical to the prior Sketch Plan and Preliminary Plan review process, only to obtain approval for an identical Sketch Plan and Preliminary Plan.

In order to obtain approval of the extension of the APF validity period, Federal Realty requests that the Planning Board waive, pursuant to the Subdivision Waiver provisions of Section 50-4.9.3.A the prerequisites pertaining to APF extensions for mixed use developments as provided for in 50-4.3.J.7.d.i. and iii., based on the following:

- 1. 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 Subdivision Waiver is being requested in order to preserve Federal Realty’s ability to construct a needed residential building that provides 17.5 percent MPDUs in downtown Bethesda

prior to the end of 2029, in furtherance of the public health, safety and general welfare of the area. The other prerequisites of Section 50-4.3.J.7.d are not relevant and therefore are not needed to ensure the public health, safety and general welfare. As discussed below, the Project does not require any transportation improvements and there is adequate school capacity to accommodate the Project. Therefore, the requirement of subsection d.i.(b) that all infrastructure required by approvals must be constructed is moot; there is no such requirement. With respect to subsections (a) and (c) requiring the issuance of building permits or use and occupancy permits, the Property is currently improved with active retail, so this is not a situation where the delay in development is adversely impacting the area.

2. the intent of the requirement is still met; and

The intent of the underlying requirements of the Subdivision Ordinance will still be met. Had Federal Realty pursued the Preliminary Plan at the time of Site Plan approval, there would be no need for the Plan validity extension or the change in the APF period. It is the simultaneous processing of the Sketch Plan and Preliminary Plan that now necessitates the need for the Plan validity extension and the change in the APF period. This dynamic further suggests that the Plan validity extension and the change in the APF period may be approved without causing any adverse impact. 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 and therefore the requested APF extension will not have any 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. And thus again, the extension of the APF validity period will not have any adverse affects and the intent of the requirements will not be impacted.

The APF validity periods are intended to ensure that an approved project does not essentially stockpile capacity that could be utilized elsewhere. The fact that the Project generates a de-minimus amount of new transportation trips eliminates this concern. Similarly, there is not an issue with school capacity. But perhaps more importantly, the waiver is not resulting in an elimination of a APF validity period, but merely an extension to address the current challenging development market.

*3. the waiver is: a. the minimum necessary to provide relief from the requirements; and
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 turnaround 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 wholly 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.

For the foregoing reasons, Federal Realty is 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 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, 2029). These revisions 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. It is Federal Realty's hope that this request will enable coordinated implementation of the various approvals and documentation required to make this exciting project a reality and bring additional needed housing, including additional MPDUs, to downtown Bethesda.

Thank you for your consideration.

Cordially yours,



Patricia Harris

cc: Geoff Sharpe
Pat LaVay