

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

July 7, 2025

MCPB No. 25-066

Preliminary Plan Amendment No. 12017021D

Liberty Mill Road

Date of Hearing: May 29, 2025

RESOLUTION

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

WHEREAS, on July 24, 2017, the Planning Board, by Resolution MCPB No. 17-069, approved Preliminary Plan No. 120170210, to create two (2) lots, for one (1) existing dwelling unit and one (1) 64-bed residential care facility, on 3.63 acres of land in the R-200 zone, located at 19115 Liberty Mill Road, in the southern quadrant of the intersection of Liberty Mill Road and Dawson Farm Road (“Subject Property”), in the Germantown West Policy Area and 1989 *Germantown Master Plan* (“Master Plan”) area; and

WHEREAS, on October 28, 2021, the Planning Board approved an amendment to Preliminary Plan No. 12017021C¹ (MCPB No. 21-123) to create one 3.59-acre lot (3.63 acres prior to right-of-way dedication along Liberty Mill Road) for a Residential Care Facility, Over 16 Persons, as approved by Conditional Use No. 20-09 on the Subject Property; and

WHEREAS, on January 13, 2025, Flournoy Development Group, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the Preliminary Plan Validity period by three (3) years and extend the Adequate Public Facilities period by two (2) years, including a waiver of Montgomery County Code Section 50.4.3.J.7.d.i, on the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12017021D, Liberty Mill Road (“Preliminary Plan,” “Amendment,” or “Application”); and

¹ Preliminary Plan No. 12017021A (amendment 12017021A) was submitted for forest conservation purposes to modify the limits of disturbance. However, the Applicant ultimately did not progress with this application. Preliminary Plan No. 12017021B (amendment 12017021B) was assigned an application number but was never accepted by the Intake and Regulatory Coordination Division. As a result, this application was withdrawn.

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 May 19, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 29, 2025, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden voting in favor and Commissioner Bartley being necessarily absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12017021D to extend the Preliminary Plan and APF validity periods by modifying and restating the following conditions:²

13. The Adequate Public Facilities (“APF”) review for the Preliminary Plan Amendment will remain valid for two (2) years from the current expiration date until January 15, 2029.
14. The Preliminary Plan Amendment will remain valid for three (3) years until January 15, 2028 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:

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.

Preliminary Plan Validity Extension

According to Section 50.4 of the County Code, the validity period associated with a preliminary plan requires that all approved lots and parcels be recorded by Record Plat within the preliminary plan validity period established in the Planning Board Resolution. Resolution

² 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.

No. 21-123 established a 36-month validity period for the Preliminary Plan with an initial expiration date of January 15, 2025.

Section 50.4.2.H.1 of the Montgomery County Code authorizes the Board to approve a preliminary plan validity period extension, subject to the following criteria:

1. Extension request

- 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 November 22, 2024, before the Preliminary Plan validity expired on January 15, 2025. The Application was accepted on January 13, 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.***

Not Applicable

- 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 Statement of Justification (SOJ) dated for the requested extension to the plan validity. Without a timely request extending the Preliminary Plan's validity expired, the Preliminary Plan would have otherwise expired on January 15, 2025.

As discussed in the Applicant's SOJ, additional time is requested because of unanticipated market conditions and a lack of financing.

The request for 3-year extension of the validity period will allow the Applicant additional time to find an equity partner and secure bank financing, finalize the purchase of the Property, and subsequently file a record plat, validating the Preliminary Plan.

An additional reason to support the extension is that, per the conditions of approval for Preliminary Plan amendment 12017021C, the Applicant must construct an off-site side path and intersection improvements that will greatly benefit the public and improve pedestrian and bicycle connectivity to the adjacent elementary school.

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

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

3. *Grounds for Preliminary Plan 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 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.*

As explained in the Applicant's Statement of Justification and generally summarized below, the Applicant's ability to validate the Preliminary Plan has been impaired due to significant, unanticipated events, beyond the Applicant's control. Despite the impediments, the Applicant has continuously worked to move this Project forward.

In 2020, the Applicant contracted to purchase the Subject Property from the O'Dell family, filed a Conditional Use Application CU20-09 to operate the residential care facility on the Property, and filed a preliminary plan amendment. Shortly thereafter, pandemic-related supply chain and building cost issues set in, along with inflationary pressures. To keep the Project viable and on track, the

Applicant was forced to value engineer some development elements, which were incorporated through amending the Conditional Use and submitting Preliminary Plan Amendment 12017021C.

Following the approval of Preliminary Plan Amendment 12017021C, in March 2022, uncertainty in the national and local senior housing market began, evident by rising interest rates and performance of unrelated local senior housing projects, resulting in the loss of the necessary equity partner. The Applicant was unable to execute the previously secured bank financing, and ultimately, the operating commitment could not be retained. Without an equity partner and bank financing, the Applicant could not validate the Preliminary Plan. Prematurely recording a record plat before obtaining financial backing would also likely cause an undue hardship on the current owners because real estate taxes would prematurely increase.

The Applicant has shown their continued commitment to the Project by seeking a new equity partner and bank financing. Flournoy has requested and received approvals to extend the Conditional Use each year and renegotiated the purchase agreement with the current owners to maintain a good relationship and retain the purchase contract. As stated above, the increase in interest rates did play a major role in the delays that have occurred and necessitated extending the Preliminary Plan's validity.

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.*

No significant changes have been made to the Subdivision Regulations since the last amendment was approved.

- 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 requests a reasonable extension to complete the documents necessary to record the plat. The viability of the Project is largely reliant on favorable market conditions, which the Applicant cannot predict. However, given the Applicant's experience with this type of development, the Applicant's efforts to maintain the existing entitlements and requested extensions are evidence that the Applicant believes the development remains viable.

Adequate Public Facilities (APF) Validity Extension

Section 50.4.3.J.7 of the Montgomery County Code authorizes the Board to extend the validity period for a determination of APF, subject to the following findings:

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 phase expires.

The Applicant filed the request to extend the current APF validity period on November 22, 2024, before January 15, 2027, the current expiration date.

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

The development of the residential care facility is a single-phase project, subject to the proposed APF validity period.

*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;*

No additional development is proposed.

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

No additional conditions are proposed.

(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;

A transportation impact study was not required as a part of the Preliminary Plan 12017021C because the residential care facility was shown to generate less than 50 net new peak-hour person trips, according to the Applicant's LATR Exemption Statement dated May 4, 2020. Since the Preliminary Plan 12017021C was approved, a new Growth and Infrastructure Policy (GIP) was

adopted (2024-2028), which changed the threshold for a transportation impact study to projects that will generate 30 or more net new vehicle trips. The approved residential care facility with up to 125 beds and 35 employees is estimated to generate a net increase of 21 vehicle trips in the morning peak hour and a net increase of 27 vehicle trips in the evening peak hour. A summary of the trip generation analysis is provided in Table 1 below. Since the Project is still under the new GIP threshold for providing a transportation impact study (30 net new vehicle trips) the Project would still be exempt from completing a transportation impact study.

Table 1: Trip Generation Analysis

		ITE Trip Generation Vehicle Rates		Adjusted Vehicle Rates Germantown West Policy Area		Total Vehicle Trips	
		AM	PM	AM	PM	AM	PM
Existing	Single-family house (1 unit)	1	1	1	1	1	1
Proposed	Assisted Living Facility (125 beds) (ITE Code 254)	23	30	22	28	22	28
Net Change						21	27

(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; and

Not Applicable because the lot is not part of a subdivision covered by a previous APF determination.

(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.

Not Applicable because the approved use does not generate school aged children.

Section 50.4.3.J.7.d of the Subdivision Regulations sets forth the specific criteria below that must be satisfied for approval of the extension of the Preliminary Plan APF determination for a nonresidential³ or mixed-use subdivision development, as follows:

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential 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 for the project;

(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

(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

The Preliminary Plan has not been validated; therefore, the Applicant has not obtained a building permit or commenced construction. The Applicant, as expressed in the Statement of Justification, is requesting a waiver from the findings delineated under 50.4.3.J.7.d.i.

Subdivision Waiver – Section 50.9.1

Section 50.9.1 of the Subdivision Regulations authorizes the Board to modify or waive any portion of the Subdivision Regulations. In granting a waiver, the Planning Board must make certain findings, set forth in Section 50.9.3.A.

³ Residential Care Facility is considered nonresidential per Section 8-30(b)(2) of the Montgomery County Code: “Non-residential development means any development that does not contain only any type of dwelling or dwelling unit (including a multiple-family building, mobile home or townhouse) as defined in Section 59-A-2, and any extension, addition, or accessory building”.

Per Section 50.9.3., to grant a waiver, the Planning Board must find that:

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;*

As noted above, since Preliminary Plan 12017021C was approved, practical difficulties from the unanticipated economic shift and loss of financial backing have prevented the Applicant from validating the Preliminary Plan. The Applicant has been unable to satisfy the requirements of 50.4.3.J.7.d.i because the Preliminary Plan must be validated before pulling building or occupancy permits and constructing infrastructure, the primary criteria in 50.4.3.J.7.d.i. In this case, the strict application of this section is not needed to ensure public health, safety and general welfare. However, if this Application is approved and implemented, the required improvements associated with this Project will improve elements of public safety by upgrading existing pedestrian and bicycle connections, and the project will add to a more complete community with much needed housing to allow for aging in place within Germantown.

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

The intent of the APF review findings is to determine if the public facilities and services, including roads, other transportation facilities, water and sewer service, schools, police stations, firehouses and health clinics are adequate to support the development, according to the latest Growth and Infrastructure Policy. Similarly, the findings for extending APF are intended to determine if a new APF review is required and if the Applicant is progressing forward on a development or artificially inflating the development pipeline, which has impacts on other proposed development. The Applicant is requesting a two-year extension of the APF, which is reasonable, considering the Preliminary Plan validity extension and the efforts made to bring this project to fruition. Furthermore, the existing APF approval is valid until January 15, 2027, and no significant changes have occurred in the vicinity of the Subject Property that would necessitate a new APF review.

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.*

As discussed, the Applicant cannot meet the criteria to extend a non-residential development because the Preliminary Plan must be validated before meeting any of the thresholds identified in the criteria. As such, a waiver of Section 50.4.3.J.7.d is the minimum necessary to provide relief from the requirements. As approved, this Application, including the waiver, provides a reasonable amount of time for the Applicant to secure new

financial backing. Once realized, this development will provide additional housing within Montgomery County and housing options for the aging population who require assisted living, memory care or both. The waiver is not inconsistent with the objectives of the General Plan (*Thrive 2050*) because the development will ultimately provide a wider variety of housing types and support aging community members, potentially allowing them to age in place. Bicycle, pedestrian, and vehicular (car and bus) infrastructure will also be improved, which is important given the proximity to the Germantown MARC Rail Station.

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

July 7, 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..

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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 Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 3-0-1; Chair Harris, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining and Vice Chair Pedoeem being necessarily absent at its regular meeting held on Thursday, June 26, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board