

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-003

Preliminary Plan Amendment No. 12007056B

Falkland North

Date of Hearing: January 19, 2023

JAN 30 2023

RESOLUTION

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

WHEREAS, on November 18, 2010, the Planning Board, by Resolution MCPB No. 10-163, approved Preliminary Plan No. 120070560, to create one lot on 9.77 acres of land in the CBD-R1 zone (current zone is CR-3.0 C-0.75 R-3.0 H-45T), located at the northeast corner, intersection of 16th Street and East-West Highway, Silver Spring CBD ("Subject Property"), in the Silver Spring CBD Policy Area and Silver Spring Downtown and Adjacent Communities Sector Plan ("Sector Plan") area; and

WHEREAS, on September 10, 2015, the Planning Board approved an amendment to Preliminary Plan No. 12007056A (MCPB No. 15-39) to create one lot and one outlot (Outlot A) on the Subject Property; and

WHEREAS, on September 22, 2022, JBG Smith ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to obtain a two-year extension of the preliminary plan validity period for the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12007056B, 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 9, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 19, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Branson, seconded by Commissioner Hill, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill and Piñero voting in favor.

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12007056B to extend the preliminary plan validity period for the Falkland North development by adding the following conditions:¹

30. The Preliminary Plan as amended will remain valid for two (2) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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.

31. Before recording the plat, the Applicant must amend the previously approved Forest Conservation Plan (FCP) to account for the current Property conditions, including any tree removals.

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 amended, 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*

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.

- 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.*

The Applicant has worked diligently with the Maryland Department of Transportation Maryland Transit Authority (MTA) in connection with MTA's acquisition of a portion of the Falkland North property to accommodate construction of the Purple Line. These negotiations culminated in 2018 with the recordation of a deed reflecting the Applicant's conveyance of 25,115 square feet of land area, in fee simple, to MTA and the granting of a Temporary Construction Easement involving 22,394 square feet of land area to facilitate the construction of the Purple Line on the Property.

Subsequent to reaching an agreement between the two parties, MTA issued the Property Owner a letter dated July 30, 2022, explaining that they would need to continue the temporary construction easements. Given that the Purple Line construction within and adjacent to the temporary construction easement has not yet been completed, it is anticipated that the construction easements will need to remain in place for at least the next two years.

MTA is an agency of the Maryland State Government, and the Purple Line light rail transit line is a State infrastructure project expanding across two counties. In this case, the status of the State infrastructure project is preventing the Applicant from recording a plat for the Site and moving forward with pulling building permits. The Applicant has and continues to comply with the requests of MTA. The status of the Purple Line construction is outside of the control of the Applicant. Therefore, findings 50-4.2.H.3.a.(i) and 50-4.2.H.3.a.(ii) have been met. The MTA has not indicated how much additional time is needed for the construction of the Purple Line on and within the vicinity of the Subject Site; however, because the plan validity cannot be extended beyond the Adequate Public Facilities (APF) validity, two years is both the minimum and the maximum time period allowed for this extension.

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 Ordinance (Chapter 50) are pertinent to the scope of the Subject Application. Therefore, no revisions to the previously approved Preliminary Plan Amendment are needed for compliance with the Subdivision Ordinance. However, the approved Condition 31 requires the Applicant to update the Forest Conservation Plan to reflect the current Property conditions.

- 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 has indicated that the Preliminary Plan project is still viable, and the approved development will be marketable once the Purple Line construction is complete, and even more so once the light rail transit line is operational.

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 Applicant has complied with all noticing requirements as set forth in Chapter 50 and the Administrative Procedures for Development Review.

- 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 latest publicly accessible information on the Purple Line indicates that the rail line is projected to open for service by 2026, but construction within the vicinity of the Site may be completed before then. Section 50-4.2.H.5.c limits extensions to a preliminary plan to within the plan's APF validity period, therefore, the request for a two-year extension is the minimum time permitted for the Applicant to validate the preliminary plan.

- 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.*

Accounting for all Council-approved legislative extensions, the Adequate Public Facilities (APF) validity period is set to expire October 28, 2024. The request of the Subject Application is to align the preliminary plan validity period to the same expiration date. Therefore, as approved the Subject Application meets the requirements of this finding.

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

The Subject Application is the first request for an extension of the plan validity period. Another extension request may be required in the future if construction of the Purple Line within the vicinity of the Site is not completed prior to October 28, 2024. According to 4.2.H.5.c, the Board may only grant an extension to a preliminary plan within the plan's APF validity period. Granting an extension through October 28, 2024 meets that requirement.

- 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.*

Not applicable.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 30 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 within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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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 the motion of Commissioner Presley, seconded by Commissioner Branson, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, January 26, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board