

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED: September 12, 2025

MCPB No. 25-098
Preliminary Plan Amendment No. 11998051B
7070 Arlington Road
Date of Hearing: July 31, 2025

RESOLUTION

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

WHEREAS, on April 21, 1998, the Planning Board approved Preliminary Plan No. 119980510, creating one (1) lot on 3.04 acres of land in the C-2 zone, located in the southeast quadrant of the intersection of Bethesda Avenue and Arlington Road (“Subject Property”), in the Bethesda CBD Policy Area; and

WHEREAS, on December 16, 2021, the Planning Board approved Preliminary Plan Amendment No. 11998051A (MCPB No. 21-125) to create one lot on 2.39 acres of land for up to 313,070 square feet of total development (including 38,070 square feet of existing retail uses to remain) and 275,000 square feet of mixed-used development (including up to 261,000 square feet of residential uses for up to 250 multi-family dwelling units and up to 14,000 square feet of commercial uses), and to apply the updated zoning of CRT-2.25, C-2.25, R-2.25, H-70’, CRT-2.25, C-2.25, R-2.25, H-90’ and the Bethesda Overlay Zone; and

WHEREAS, on December 27, 2024, FR Bethesda Row, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan to extend the Preliminary Plan validity period by four (4) years and extend 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. on the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan Amendment No. 11998051B, 7070 Arlington Road (“Preliminary Plan,” “Amendment,” or “Application”); and

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

WHEREAS, the Application was submitted for concurrent review and approval with Sketch Plan Amendment No. 32021010A; 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 21, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 31, 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 Vice Chair Pedoeem, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick and Linden voting in favor. Commissioner Bartley being necessarily absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 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. by adding/modifying the following conditions:¹

Modified Condition

15. The Adequate Public Facilities (APF) review for the Preliminary Plan will remain valid for ten (10) years from 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.

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.

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

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.

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.

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

c) Schools

The Amendment is 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 ²	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.

² 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.

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

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 Applicant made a timely request for extension prior to the expiration date of December 16, 2024.

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 APF, 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 the validate the plan) would result to the Applicant if the plan were not extended.

The delay in execution of the Preliminary Plan, following the original approval, was primarily caused by 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. The Applicant determined that it would be economically imprudent to incur additional costs (approximately \$500,000) associated with the preparation and processing of a Site Plan, which would have triggered a requirement associated with the Bethesda Overlay Zone to obtain a building permit within two years.

Consequently, the delay in the preparation and filing of the Site Plan results in a delay in the recordation of the plat (the Preliminary Plan validity period) and the issuance of the building permit (the APF validity period). The proposed extension of the Site Plan filing, approved as part of the accompanying Sketch Plan Amendment No. 32021010A, 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 Preliminary Plan validity period by four years until December 16, 2028 is the minimal additional time needed to record the plat for the Property.

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 finds that the project is capable of being financed, constructed, and marketed within a reasonable time frame if the Preliminary Plan validity period is extended by four (4) years.

Adequate Public Facilities (APF) Validity Amendment

The Board also grants the Applicant's 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 Amendment 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.

The Board did not require that 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.

This provision is 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.***

This provision is not applicable, as 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, as discussed below.

- 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 was 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.

This provision is not applicable, as the project does not consist of more than one preliminary plan.

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. Therefore, an extension of 2.5 years meets the relevant requirement.

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. The Planning Board finds that the relevant findings are satisfied to justify granting the waiver, as follows:

A. To grant a waiver, the 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;***

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, the Board finds that 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 five-year extension, for a total of ten 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.

- 2. 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 aim 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 ensure 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 Board finds 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, 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.

3. *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.

The Applicant 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 the Applicant a sufficient amount of time to pursue and obtain Site Plan approval, prepare building permit plans and commence construction.

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.

For these reasons, the Board finds that a waiver of the requirements of Section 50.4.3.J.7.d.i is appropriate in this case. With the granting of the waiver, the Board finds that the relevant findings in 50.4.3.J.7.d are met and the requested APF extension is granted.

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

September 12, 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.

* * * * *

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 Linden, seconded by Commissioner Hedrick, with a vote of 3-0-1; Chair Harris, and Commissioners Hedrick and Linden voting in favor, Commissioner Bartley abstaining and Vice Chair Pedoeem being necessarily absent, at its regular meeting held on Thursday, September 4, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board