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June 2, 2025

Mr. Elza Hisel-McCoy, Division Chief
Ms. Stephanie M. Dickel, Regulatory Supervisor
DownCounty Planning Division
Montgomery County Planning Department
2425 Reedy Drive 14th Floor
Wheaton, MD 20902

Re: 4901 Battery Lane – Preliminary Plan 12022010A
Validity Extension Request – Amend PP Condition Deadline to Record Plat
Statement of Justification
Our File No. 136375.003

Dear Mr. Hisel-McCoy and Ms. Dickel:

On behalf of the Applicant, WC Smith Development, we are submitting this request and Statement of Justification pursuant to Section 50-4.2H of the Montgomery County Subdivision Ordinance for extension of the Preliminary Plan and amendment of associated Condition No. 3 of the Preliminary Plan Resolution requiring validation by recordation of a record plat within three (3) years of the Initiation Date, to extend the deadline for recordation of a record plat under Condition No. 3 for two (2) additional years, for a total of five (5) years from the Initiation Date to align with the expiration of the APFO five (5) year validity period. 4901 Battery Lane is an approved (per Sketch Plan, Preliminary Plan and Site Plan) 372 unit multi-family development on the north side of Battery Lane near the intersection with Woodmont Avenue located in the Bethesda CBD Policy Area and within the 2025 Bethesda Minor Master Plan Amendment of the 2017 Bethesda Downtown Sector Plan.

After a concurrent public hearing on December 15, 2022, the Montgomery County Planning Board issued a Resolution on January 5, 2023 approving the Preliminary Plan for one lot and up to 372 dwelling units to implement Sketch Plan 320220040 (February 8, 2022) and Site Plan 820220160 (January 11, 2023). The Applicant has continued to take action to pursue the development. The Preliminary Plan was certified on September 23, 2024 and Site Plan on November 20, 2024.

The Preliminary Plan Initiation Date is February 4, 2023. Therefore, the Plan must be validated by the recording of a record plat before February 4, 2026. This extension request is timely filed before expiration of the Preliminary Plan. This request is for an extension of the

Plan's validity period for recording a plat by an additional two (2) years so that it coincides with the APFO validity period, currently 60 months expiring on February 4, 2028.

Applicant is the property and development manager for the property owner who has owned and operated the Cambridge Square apartments for four decades. The development approvals were pursued to re-develop and replace aging apartments built in 1957 with modern housing for the future. Since the Preliminary Plan approval issued in January 2023, Applicant and the property owner have continued to pursue implementation in good faith. They have caused their professional consultants to complete and obtain certification of the plans, advanced the engineering for the record plat, commenced final engineering in anticipation of permit applications, and produced and analyzed multiple construction budgets in the face of changing construction costs and uncertainty in the finance markets, with an eye on the deadline for timely submission of a building permit application per the requirements of the Bethesda Overlay zone.

Since the Applicant and the property owner are re-developing for their own long-term interests as owners and operators, they have supported the approval of the Bethesda Minor Master Plan Amendment and are actively monitoring Montgomery County's process and actions on the pending companion text amendments to the zoning and subdivision ordinances as well, in anticipation of the opportunity to implement their development approvals in a reasonably foreseeable future.

The findings necessary for Planning Board approval of an extension of a preliminary plan are set out in Section 5-4.2H of the Subdivision Ordinance:

3. 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.*

The Preliminary Plan and Site Plan was approved by the Planning Board in December 2022 at a time when the COVID emergency was in effect. Although a few months later the Federal Government did declare an end to the emergency in March 2023, the real estate market remains two years later in a state of uncertainty. The CBRE Construction Cost Index reported that there had been a 14% year-over-year increase in construction costs by the end of 2022. In early 2023, CBRE optimistically projected construction costs inflation to return to typical levels

by mid-2023, supply chain related disruptions to ease component shortages, and wage pressures to lessen, stabilizing construction costs. This projection was too optimistic. While construction cost inflation moderated somewhat in 2023 and 2024 for some construction components, overall construction and labor cost continued to increase. Inflation began to reduce in Q1 2025, but construction cost once again became extremely volatile with global tariff uncertainty and application. These are significant, unusual, and unanticipated events that continue to affect both construction costs and the real estate finance markets, and are outside of Applicant's control.

They have and are expected to substantially impair Applicant's ability to timely validate the Preliminary Plan by recording a plat in early 2026 that requires bonding for an unknown term length of the significant costs of public improvements for road, sidewalk and streetscape improvements, including the undergrounding of utilities, which is estimated at just under One Million Dollars. In addition, the record plat requires the platting and recording of certain dedications and easements, including public access easements for future mid-block pedestrian paths that align with the footprint of the proposed project, but conflict with existing operating buildings on the property. These newly recorded easements will negatively affect the ability to finance and insure the existing improvements, at reasonable cost, if at all, where the lender and insurer's interest is the ability to re-construct existing improvements after casualty, which the new conflicting easements put in question. In fiscally responsible redevelopment, the plat is recorded at the time financing, demolition of existing improvements, and building permits are in place for prompt start of construction and required bonds are anticipated to be outstanding only for a limited time and released promptly post-construction.

Given the uncertainty at this time of the construction costs of both the public improvements and the project or even when the real estate finance markets will settle, layered on the anticipated adoption later this year of amendments to the Bethesda Overlay Zone zoning ordinance requirements to eliminate the artificial deadline of a building permit application, it would be an undue hardship for Applicant to be required to validate its preliminary plan by recording a plat with new conflicting easements and posting the required bonds within the time frame of the original Condition No. 3 in early 2026, especially when it would be difficult to secure such bonding for an indeterminate period on commercially reasonable terms and potentially jeopardize financing and insurability of existing improvements.

Therefore, Applicant respectfully requests that Condition No. 3 be amended to extend the time for validation of the Preliminary Plan by the recording of a record plat for an additional two (2) years from the stated three (3) years to a date to align with the approved APFO five (5) year validity period under Condition #2.

The following documentation is submitted in support of this Application:

1. Application to Amend Preliminary Plan to Extend Validity Period Condition #3
2. Statement of Justification/Extension Request
3. Certificate of Compliance
4. Notice List Spreadsheet
5. Application Notice Letter Draft
6. Redline of Condition No. 3
7. Updated Preliminary Plan Resolution Sheet with updated title block
8. Certified Preliminary Plan and Resolution
9. Checklist

Thank you for your consideration of this Application. Please do not hesitate to contact me if you have any questions or require additional information.

Very truly yours,

SHULMAN ROGERS

By: *Nancy Regelin*

cc: Brian Strott, WC Smith Development
Chanda Beaufort, VIKa
Adam Bossi, MNCPPC