



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Preliminary Plan of Subdivision 4-93078 Marlton, Sections 18-22 (East Marlton)

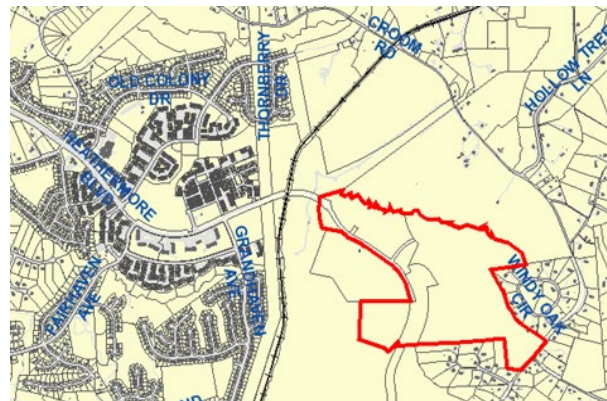
REQUEST	STAFF RECOMMENDATION
Extension of preliminary plan of subdivision validity period	DISAPPROVAL of six-year extension

Location: One-half mile east of the planned intersection of Heathermore Boulevard and Grandhaven Avenue, on the east and west sides of planned East Marlton Avenue.

Gross Acreage:	181.69
Zone:	R-R/R-80/R-T/R-P-C
Gross Floor Area:	N/A
Dwelling Units:	572
Lots:	572
Parcels:	16
Planning Area:	82A
Council District:	09
Election District:	15
Municipality:	N/A
200-Scale Base Map:	212SE12, 211SE12

Applicant:
Brookfield Washington, LLC
3201 Jermantown Road, Suite 150
Fairfax, VA 22030

Staff Reviewer: Eddie Diaz-Campbell
Phone Number: 301-952-3665
Email: Eddie.Diaz-Campbell@ppd.mncppc.org



Planning Board Date:	02/03/2022
Planning Board Action Limit:	N/A
Mandatory Action Timeframe:	N/A
Memorandum Date:	01/11/2022
Date Accepted:	10/27/2021
Informational Mailing:	N/A
Acceptance Mailing:	N/A
Sign Posting Deadline:	N/A

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

January 11, 2022

MEMORANDUM

TO: The Prince George's County Planning Board

FROM: Eddie Diaz-Campbell, Senior Planner, Subdivision Section
Development Review Division

VIA: Sherri Conner, Supervisor, Subdivision Section
Development Review Division

SUBJECT: **Preliminary Plan of Subdivision 4-93078
Marlton Sections 18-22 (East Marlton)
Extension Request**

This preliminary plan of subdivision (PPS) was approved by the Planning Board on March 31, 1994, and the resolution of approval was adopted on May 5, 1994 (PGCPB Resolution No. 94-112). The PPS was approved for 572 lots and 16 parcels and is valid through December 31, 2021. The extended validity period is due to prior extensions granted by the Planning Board, which provided a cumulative extension of 10 years toward the validity, followed by later legislative extensions providing another 12 years toward the validity. By letter dated October 29, 2021, and supplemented by an email dated December 31, 2021, Robert J. Antonetti, Jr. of the Law Offices of Shipley & Horne, P.A., requests a six-year extension until December 31, 2027. A supplemental letter from the applicant dated January 6, 2022, and a letter from the property owner dated January 7, 2022, were also submitted providing additional information pertinent to this request. This is the seventh extension request for the subject PPS.

Sections 24-119(d)(5) and (6) of the Prince George's County Subdivision Regulations authorize the Planning Board to grant an extension to the normal expiration of a PPS. Subsection (d)(5) requires filing prior to the expiration of the PPS, which has occurred in this case. For larger subdivisions like the subject PPS, Subsection (d)(6), as recently amended by Prince George's County Council Bill CB-93-2021, provides the required findings for the Planning Board to grant an extension of a PPS's validity period.

The criteria which must be considered are shown in **BOLD** text and staff's analysis of conformance to each criterion is provided in plain text.

Section 24-119(d)(6):

(A) An approved preliminary plan shall remain valid for (6) years from the date of its approval, unless extensions of the validity period are granted, of subdivision consisting of:

- (i) more than four hundred (400) residentially zoned lots or dwelling units; or**
- (ii) more than one hundred and fifty (150) gross acres of commercially or industrially zoned land or land designated for nonresidential uses in any CDZ or M-X-T Zone; or**
- (iii) at least three hundred thousand (300,000) square feet or more of commercial or industrial development in any CDZ or M-X-T zoned project.**

The subject PPS includes more than 400 lots in the Rural Residential, One-Family Detached Residential, and Townhouse Zones, and therefore is eligible for a six-year validity period and is eligible for an extension subject to the criteria below. Nonetheless, this project has remained valid for more than 27 years due to prior extensions granted by the Planning Board and prior legislative extensions.

(B) An extension of up to two (2) years from the expiration of an approved preliminary plan or any extension thereof may be granted by the Planning Board provided:

- (i) Public infrastructure which was determined to be the developer's responsibility in accordance with the requirements of Section 24-122.01 and Section 24-124 has been constructed by the developer in order to accommodate all stages of the development; or**

According to the applicant's October 29 letter, the applicant is in the process of applying for and/or revising entitlements, which will lead to construction of public infrastructure as part of the East Marlton development. However, in order to meet this criterion, the applicant (or their predecessor) must have actually constructed public infrastructure determined to be their responsibility, in order to accommodate all stages of the development. The applicant did not cite any examples of infrastructure, which has been constructed. Aerials of the site show that nothing has been built upon the subject site in the years between the project's approval (1994) and the present. Therefore, staff does not find this criterion has been met.

- (ii) The developer has been proceeding in a diligent manner to complete the development and has been unable, through no fault of the developer, to complete development within the time frame specified; or**

In their January 6 letter, the applicant gives a timeline of detailed site plan approvals, which occurred between 2004 and 2014. They also give a

timeline of additional approvals which occurred between 2012 and 2016, including stormwater management concept plans, sediment control plans, a Maryland Department of the Environment wetland permit, and road dedication plats. However, based on these timelines, work to complete the development ceased after 2016. The prior developer of the project, Lake Marlon Limited Partnership (LMLP), donated the property to the current owner, the Girl Scout Council of the Nation's Capital (GSCNC), in 2018. Based on the timeline given by the GSCNC in their January 7 letter, the GSCNC, not being a developer, did not do any work between 2018 and the present to continue pursuing the approvals necessary to complete the development. They instead worked between 2020 and the present to sell the property to a developer, eventually settling on the current applicant, Brookfield Washington, LLC. While it is probable that Brookfield Washington could restart the process of obtaining approvals, this does not change the fact that neither LMLP nor the GSCNC obtained any additional approvals between 2016 and the present.

The applicant offers some justification in their January 6 letter for the development's slow progress. Specifically, they provide that the Great Recession and the COVID-19 pandemic have significantly slowed development progress for the project. They further provide that these factors depressed housing demand, making it impossible for any developer to justify paying the project's multimillion-dollar infrastructure costs until demand rebounded. However, legislative extensions via CB-8-2009, CB-7-2010, CB-8-2011, CB-70-2013, CB-80-2015, CB-98-2017, and CB-60-2018, which specifically affect this project, were enacted to allow a PPS to remain valid for an extended period of time, due to a weakened market from the nationwide 2007–2009 recession, and to allow adjustment to current market conditions. The enactment of CB-74-2020 followed thereafter and further extended the validity of PPS in light of the COVID pandemic. Staff finds this PPS has benefitted from all of the prior legislative extensions, which were enacted to address the delays caused by market conditions and the COVID pandemic. Further, LMLP's decision to abandon the project and donate the land in 2018 is not easily explained by either the recession or the pandemic, as the recession had been nine years ago at that point, and the pandemic had yet to occur.

Based on the lack of activity on the project between 2016 and the present, and the passage of legislative extensions to address delays caused by the recession and the pandemic, staff does not find that the applicant has been proceeding in a diligent manner to complete the development. Staff finds it is the fault of the prior developer, LMLP, that the project has not been completed within the validity timeframe, as they donated the property to a landowner unable to and uninterested in continuing the process of development. Staff further finds that the GSCNC's efforts to sell the land do not constitute proceeding in a diligent manner to complete the development, as these efforts were focused on transferring responsibility for the property and project to another party rather than pursuing further entitlements. A new PPS would ensure that the almost 28-year project, should it eventually be developed, will not rely on antiquated adequacy findings, and instead be

certain to be both adequately served by and adequately contributing to County infrastructure.

- (iii) A staging plan applied to the approval cannot be met as a result of government failure to extend necessary services or infrastructure.**

The applicant has not alleged that a government failure has caused any delay.

- (C) Notwithstanding any provisions of this subsection to the contrary, from and after January 1, 2022, an extension of up to six (6) years from the expiration of an approved preliminary plan or any extension thereof may only be granted by the Planning Board subject to the provisions of Section (d)(6)(B)(i) through (iii) herein.**

Staff does not recommend the Planning Board grant a six-year extension, as staff does not find that any of the required criteria of Section 24-119(d)(6)(B)(i) through (iii) of the Subdivision Regulations have been met.

Pursuant to the findings presented above, staff recommends that the Planning Board disapprove the requested six-year extension, as none of the three criteria for extension have been met.