

VIVA White Oak, Subdivision Regulation Waiver, SRW201801

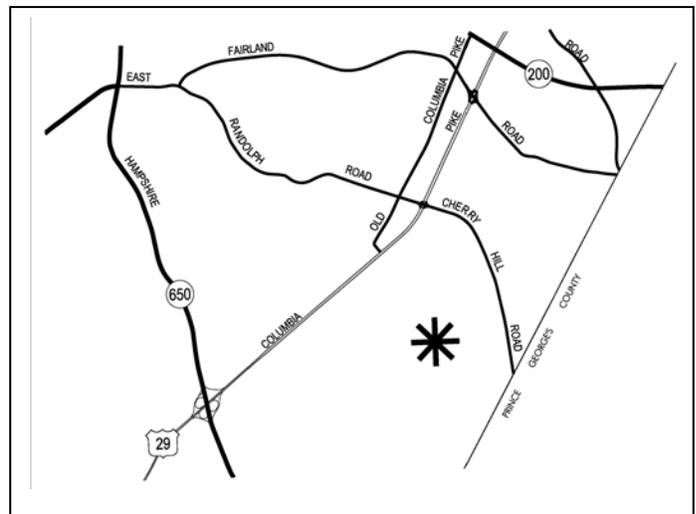
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Completed: 7/2/2018

Description

Section 50.9 Subdivision Regulation Waiver request of Section 50.4.1.B.7., from the requirement to submit detailed graphic information for review of this first Preliminary Plan of the larger Property which is intended to establish the master-planned road rights-of-way location and cross-sections and the layout of the larger Land Bays, comprised of large Outlots, Lots and Parcels; and of Section 50.10.5., to establish an alternate fee for the first Preliminary Plan and Preliminary Forest Conservation Plan, since each subsequent Preliminary Plan Amendment will be calculated based on the actual Lot, Block, right-of-way configuration, density and uses for each Outlot, Lot and Parcel.



Location: Between Cherry Hill Road and Industrial Parkway, along FDA Boulevard.

Master Plan: 2014 *White Oak Science Gateway Master Plan* area.

Zone: CR 1.0: C 1.0, R 0.5, H 220.

Property Size: Approximately 279.62 acres.

Application Accepted: June 28, 2018.

Applicant: Global Lifesci Development Corporation (GLDC).

Review Basis: Chapter 50.

Summary

- Staff recommends approval of the Subdivision Regulation Waiver (SRW) with conditions.
- Approval of this SRW will allow the Applicant to proceed with the initial Preliminary Plan, to layout the Land Bays, comprised of large Outlots, Lots and Parcels, as envisioned during review and approval of the associated Sketch Plan.
- The initial Preliminary Plan will be conditioned to prohibit building permits to be issued on any portion of the Property (except for construction of the master-planned roads) until subsequent Preliminary Plan Amendments and Site Plans have been filed for each large Outlot, Lot or Parcel where development is sought.
- Approval of an alternative application fee which differs from the Planning Board approved standard preliminary plan of subdivision and forest conservation plan application fees for the first preliminary plan submission only.

SUBDIVISION REGULATION WAIVER RECOMMENDATION AND CONDITIONS

Staff recommends approval of Subdivision Regulation Waiver SRW201801, subject to the following conditions:

Section 50.4.1.B.7.

1. The Applicant must submit only what is deemed necessary by applicable agencies to adequately complete the review of Preliminary Plan 120180240.
2. Each subsequent Preliminary Plan Amendment must satisfy all submittal requirements of Section 50.4.1.

Section 50.10.5.

1. The Applicant must pay \$240,000.00 for review of the first Preliminary Plan and the Preliminary Forest Conservation Plan.
2. The Applicant must pay the review fee by August 1, 2018, or the Application shall be deemed automatically withdrawn.
3. The Applicant must pay the standard fees, according to the standard fee-schedule and worksheet, for each subsequent Preliminary Plan Amendment and Forest Conservation Plan.

CONTEXT AND PROPOSAL

Subject Property

The approximately 279-acre Global Lifesci Development Corporation property (outlined in red below – Property or Subject Property) is located on the west side of Cherry Hill Road, between Cherry Hill Road on the east, Industrial Parkway to the northwest, and the United States Food and Drug Administration (FDA) property to the south. The Property consists of the Percontee property (currently a sand and gravel operation, and concrete recycling facility), and the County-owned Site II property (a former WSSC facility). The Property is within the area encompassed by the 2014 *White Oak Master Plan*.

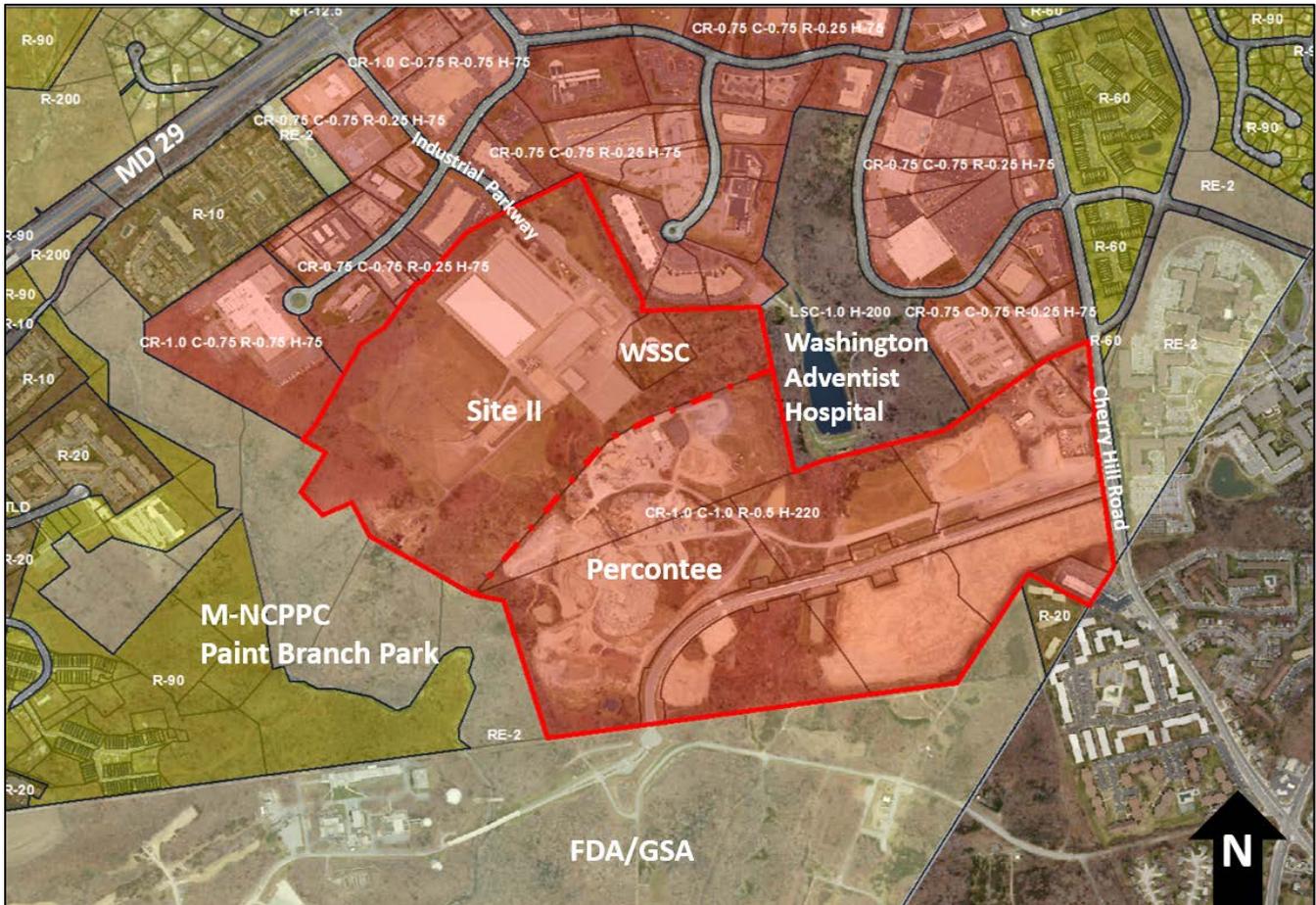


Figure 1: Subject Property (Site II to the northwest, Global Lifesci (Percontee) to the southeast)

Site Analysis

The Subject Property includes the approximately 168-acre Global Lifesci (Percontee) property and the approximately 110-acre Site II property. Both properties have been altered quite extensively through industrial use.

The Global Lifesci (Percontee) Property has been a sand and gravel mine since the 1930’s. Currently it is being used as a rubble land fill, a sand, gravel, stone, topsoil processor and wholesaler, and concrete recycler. All previously mined areas are in various stages of reclamation, but the entire site will be subject to MDE requirements for land reclamation and cleanup. The Westfarm Tributary of the Paint Branch bisects the Global Lifesci property, from north to south. There are areas of wetlands associated with this stream, as well as forest within the stream valley. Other forested areas are located at the perimeter of the Property.

Site II was operated as a gravel quarry from the mid-1930’s through approximately 1980, when it was acquired by WSSC. WSSC filled the quarry with unknown materials and developed the site as Montgomery County Regional Composting Facility to compost the County’s sludge. The facility was completed in 1983, and closed and decommissioned in 1999. It has gone through extensive environmental remediation through the Maryland Department of Environment (MDE)’s Voluntary Cleanup Program (VCP). Site contamination was due to leakage from underground storage tanks (USTs) and off-site groundwater contamination that had migrated. MDE has determined that Site II has no further requirements for mitigation and was released for residential fee-simple development. Site II contains nine main buildings and approximately 11 support buildings, as well as a large stormwater retention basin, which will be demolished and removed. Site II has several streams running in the NE

to SW direction, draining into the Paint Branch Stream. There are areas of forest on-site and steep slopes leading into the streams.

Background

Sketch Plan 320180040 was recently approved for the Property by Resolution No. 17-101 dated January 30, 2018, for a mixed-use and multi-phase project with up to 12,180,270 square feet of total development, which may include up to a maximum of 6,090,135 square feet of residential uses, with the maximum number and distribution of residential dwelling units and non-residential uses to be determined at subsequent Preliminary Plan and Site Plans. Due to the unusually large scale of the project, the project is expected to be constructed in multiple phases over many years.

Project Description

A 50.9. waiver of Sections 50.4.1.B.7. and 50.10.5. is necessary in order to process the first Preliminary Plan as submitted. The Applicant proposes to file one Preliminary Plan to cover the entire Property with an associated Preliminary Forest Conservation Plan. The first Preliminary Plan would establish Land Bays, which would be comprised of large Outlots, Lots or Parcels. These large Outlots, Lots or Parcels would be further subdivided and refined as portions of the Property move forward for development with subsequent Preliminary Plan Amendments and Site Plans, when the respective development is ready to proceed.

SUBDIVISION REGULATION WAIVER ANALYSIS AND FINDINGS

50.4.1.B.7. Graphic Representation of the Proposed Subdivision

Section 50.4.1.B.7. generally requires detailed graphic representation of the lot and block layout; all proposed roads (both public and private); location and width of all proposed pedestrian and bicycle facilities; all sites for public uses and open spaces; location, type, and width of all existing and proposed rights-of-way; and the proposed use of all lots on the preliminary plan and the scaled dimensions and approximate area of each use. Graphic representation of this level of detail is not necessary for the initial Preliminary Plan, since the initial Preliminary Plan will only establish the large Outlots, Lots and Parcels that comprise the larger Land Bays and the master-planned road locations and cross-sections. Approving the requested waiver of this section will allow the Applicant to proceed with constructing the master-planned roadways immediately, as required by the General Development Agreement (GDA) entered into between the Applicant and the County, as approved by the County Executive and the County Council. Furthermore, as agreed to by the Applicant, the initial Preliminary Plan will be conditioned to prohibit building permits to be issued on any portion of the Property (except for construction of the master-planned roads) until subsequent Preliminary Plan Amendments and Site Plans have been filed for each large Outlot, Lot or Parcel where development is sought.

50.10.5 Establishment of Fees

Section 50.10.5. requires the Planning Board to establish, by resolution, fees necessary to cover the cost of administering Chapter 50. While establishing the large Outlots, Lots and Parcels and master-planned roads with the initial Preliminary Plan, the Applicant will also be seeking Adequate Public Facilities (APF) approval for the maximum 12,180,270 square feet of development permitted on the Property. Based on the standard fee calculation of the Preliminary Plan and Preliminary Forest Conservation Plan, which is calculated on number of lots and square footage proposed, this equates to approximately \$1,458,790.05 for the initial filing fee. Additionally, since subsequent Preliminary Plan Amendments of the larger Outlots, Lots and Parcels will be considered major amendments, the same calculation (which established the initial filing fee of \$1,458,790.05) will be performed again for each subsequent Preliminary Plan Amendment. Not modifying the filing fee of the initial Preliminary Plan and Preliminary Forest Conservation Plan, would essentially result in double-charging the Applicant for review of the proposed development after all of the subsequent Preliminary Plan Amendments have been filed.

Instead, the Applicant proposes to pay a fee of \$240,000.00 for the initial Preliminary Plan and Preliminary Forest Conservation Plan, if approved by the Planning Board. As previously stated in the Sketch Plan report, the GDA permits 2,000,000 square feet of development in the first phase. Thus, the proposed fee is roughly proportional to the first phase of development permitted by the GDA.

Given the limited scope of the initial Preliminary Plan, knowing the Applicant is accepting the condition to prohibit issuance of any building permits (except for master-planned roads) on the Property, and knowing that this is an unusually large project expected to be constructed in many phases over many years, Staff finds the initial Preliminary Plan and Preliminary Forest Conservation fee to be excessive, and recommends the Planning Board, instead, accept the proposed fee of \$240,000 for the initial Preliminary Plan and Preliminary Forest Conservation Plan.

Section 9.3 Findings

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 stated above, due to the unusual size of the project, the limited scope of the initial Preliminary Plan, the condition prohibiting issuance of any building permits (except for master-planned roads) on the Property until subsequent Preliminary Plan Amendments and associated Site Plans are filed for the Outlots, Lots or Parcels where development is sought, and that any subsequent Preliminary Plan Amendments will likely be considered major amendments and fees will be calculated based on the standard fees adopted by the Planning Board, Staff finds that the requirements of Sections 50.4.1.B.7. and 50.10.5. are not needed to ensure the public health, safety, and general welfare in this case.

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

Compliance with the graphic representation criteria of Section 50.4.1.B.7. will be satisfied at subsequent Preliminary Plan Amendments, when the large Outlots, Lots and Parcels are further subdivided and are under concurrent Site Plan reviews. Regarding Section 50.10.5, since the Preliminary Plan Amendments will likely be considered major amendments, fees will be established according to the standard calculations adopted by the Planning Board, and will be based on the actual square footage and uses proposed by the subsequent Preliminary Plan Amendments and associated Site Plans. Thus, Staff finds the intent of the requirements of Sections 50.4.1.B.7. and 50.10.5. will still be met.

3. *the waiver is:*

- a. *the minimum necessary to provide relief from the requirements; and*

Staff finds the requested waiver to be acceptable and the minimum necessary to provide relief from the requirements, while implementing the Preliminary Plan as agreed to during review of the Sketch Plan for this unusually large, multi-phased project, which is expected to take several years to fully buildout.

- b. *consistent with the purposes and objectives of the General Plan.*

Based on the conditions of approval listed in this report, and the Binding Elements, Conditions of Approval, and Findings of the previously approved Sketch Plan, Staff finds the requested

waiver permits the Applicant to proceed with Preliminary Plan approval consistent with the purposes and objectives of the General Plan.

CONCLUSION

The Subdivision Regulation Waiver application, SRW201801, satisfies the findings under Section 50.9. of the Subdivision Regulations; therefore, Staff recommends approval of SRW201801, with the conditions specified at the beginning of this report.

ATTACHMENT

1. Applicant's Statement of Justification

ATTACHMENT 1

LINOWES AND BLOCHER LLP ATTORNEYS AT LAW

June 27, 2018

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BY ELECTRONIC MAIL AND HAND DELIVERY

Ms. Gwen Wright
Director, Planning Department
Montgomery County Planning Dept.
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: VIVA White Oak™ – Preliminary Plan 120180240 for Approximately 280 Acres (the
“Preliminary Plan”)

Dear Ms. Wright:

On behalf of Global LifeSci Development Corporation (“Applicant”), the purpose of this letter is to request that, pursuant to Chapter 50, Division 50-9 of the Montgomery County Code (the “Subdivision Regulations”), the Planning Board approve a waiver of Section 4.1.B as necessary to review and approve the Preliminary Plan (see Attachment “A”) with 12 large lots (identified as Lots 1-12), three outlots (identified as Outlots A, B, and C), and one parcel (identified as Parcel A). The Preliminary Plan also includes the master planned roadways known as FDA Boulevard, FDA Parkway, and Business District Road B-5. Additionally, approval of a modified fee schedule pursuant to Section 10.5 of the Subdivision Regulations is requested to establish the filing fees for the Preliminary Plan, limited major amendments to the Preliminary Plan, and the forest conservation plan.¹

The proposed development is located on approximately 280 acres. The Preliminary Plan proposes a maximum of 12,180,270 square feet of development, of which no more than 6,090,135 square feet may be residential (the “Project”). The Project will be constructed in multiple phases over many years. The Project is a public/private venture between Montgomery County and the Applicant and, as such, is subject to a General Development Agreement dated

¹ Section 50-10.5 requires the Planning Board to establish the filing fees necessary to cover the cost of administering the Subdivision Regulations. After thorough analyses and numerous discussions, the Planning Director, MNCPPC Counsel, MNCPPC Staff, and the Applicant agreed that this requested modification to the applicable filing fees would be appropriate and reasonable to cover the costs of Staff administering the Subdivision Regulations, conditioned upon the Planning Board’s approval.

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June 7, 2016. On January 30, 2018, the Planning Board approved Sketch Plan No. 320180040 for the Project, which essentially divided the Project into two (2) large, flexible, and adaptable "Land Bays." Consistent with that approved Sketch Plan, on May 30, 2018, Applicant submitted its initial Preliminary Plan, which would further subdivide the Project into the proposed 12 large, flexible, and adaptable lots, 3 outlots, and 1 parcel.

In order to continue to process the Preliminary Plan as submitted, Staff has advised the Applicant that the waiver to the Subdivision Regulations would be required and a modified filing fee structure would need to be established by the Planning Board. Applicant has worked closely with Staff to prepare this waiver request (including the modification to the filing fee structure). Because this one Preliminary Plan encompasses such a uniquely large amount of square footage (over 12 million square feet), which will be developed over such a long period of time (all dependent on unforeseeable future market conditions), trying to identify the precise uses within precise locations of the Project at the time of this initial Preliminary Plan filing is impractical and unfeasible. Moreover, this initial Preliminary Plan would not entitle the Applicant to obtain any building permits for any of the approved building square footage until after the Planning Board approves future specific site plans. In addition, the Applicant's proposed development is further subject to the terms, conditions, and restrictions set forth in the General Development Agreement ("GDA") entered into between the Applicant and the County, as approved by the County Executive and the County Council. These are among the reasons that the Planning Director, MNCPPC Counsel, MNCPPC Staff, and Applicant agreed this waiver is appropriate and reasonable, conditioned upon the Planning Board's approval.

This initial Preliminary Plan and subsequent site plans will permit the master planned roadways to proceed immediately, as well as future buildings at such times as identified users proceed with site plans for detailed uses. This initial Preliminary Plan will cover the entire property to include 12 lots, 3 outlots and one parcel containing a maximum of 12,180,270 square feet of development. But, a condition of the initial Preliminary Plan will be the requirement that these large lots must be further subdivided by a mandatory limited preliminary plan amendment filed along with a detailed site plan prior to issuance of any building permit. The future identified users will thus determine how the large lots approved by the initial Preliminary Plan will be further divided by way of their future site plan and accompanying limited preliminary plan amendment.

The Planning Director, MNCPPC Counsel, and MNCPPC Staff has endorsed this proposed structure and determined that, in order to implement it, a waiver of the graphic representation of the proposed subdivision set forth in Section 4.1.B.7 must be granted, and the Preliminary Plan conditioned on the filing and approval of future limited preliminary plan amendments that will further divide the large lots into multiple development blocks and lots, as well as show the internal public and private road network within each block. In light of the uniquely large size of

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the development, the requirement for future limited preliminary plan amendments with each future site plan, the protections set forth in the GDA, among other reasons, Staff has also agreed that the initial Preliminary Plan and forest conservation plan filing fee should be a total of \$240,000, as a reasonable and appropriate fee to cover the costs of Staff's administering the Subdivision Regulation to this initial Preliminary Plan for the whole of the 12 large lots, 3 outlots and one parcel. These 12 large lots would be further subdivided at site plan and each accompanying limited preliminary plan amendment, and the filing fees for those future site plans and future limited preliminary plan amendments would be due and payable at that time based upon the fees then effective for site plans and for limited preliminary plan amendments

The Applicant acknowledges that this \$240,000 filing fee for this initial Preliminary Plan and the accompanying Preliminary Forest Conservation Plan may amount to a double payment of those fees, because the total of all the limited preliminary plan amendments that will accompany all of the site plan will exceed what would be the customary calculation of one Preliminary Plan filing for the entire project. Nevertheless, Applicant acknowledges the administrative effort and costs the Staff needs to make to review and analyze this initial Preliminary Plan and Preliminary Forest Conservation Plan; and thus, the Applicant agrees with the Planning Director, MNCPPC Counsel, and MNCPPC Staff that this proposed \$240,000 filing fee for the initial Preliminary Plan and Preliminary Forest Conversation Plan is reasonable and appropriate.

In summary, this waiver request fully complies with the findings the Board must make under Section 9.3.A. to grant a waiver as follows:

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 large Project size, complexity of development, achievement of numerous Master Plan goals, the protections set forth in the governing GDA previously approved by the County Executive and the County Council, and the desire to proceed with the up-front construction of the Master Plan Roadways through public/private funding warrant the approval of the Preliminary Plan with the condition that it will be further refined over time when specific users are known.

2. The intent of the requirement is still met;

Compliance with the graphic representation criteria of Section 4.1.B.7 will be further detailed at time of limited major preliminary plan amendment and is otherwise currently met for the 12 large lots.

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3. The waiver is:

a. the minimum necessary to provide relief from the requirements

The large lots with the master planned roadways conditioned as explained represent the minimum necessary to provide relief to the Applicant from the effect of the strict application of Section 4.1.B.7.

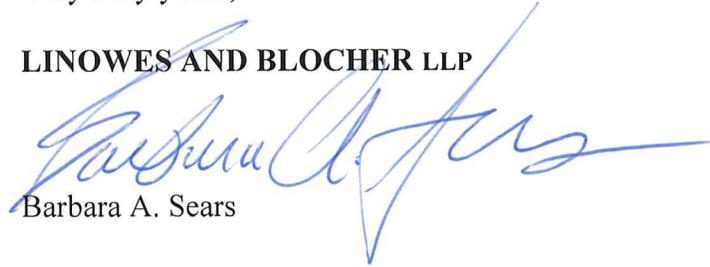
b. Is consistent with the purposes and objectives of the General Plan.

The waiver furthers the achievement of the purposes of objectives of the master plan, as more fully explained above.

We, therefore, respectfully request that the Planning Board approve the waiver request and establish the filing fee as requested. Thank you for your attention to this matter.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears

cc: Carol Rubin
Carrie Sanders
Patrick Butler
Rhoda Hersson-Ringskog
Jonathan Genn
Jim Soltesz
Amy Zou
Scott Wallace

