






Gables White Flint Preliminary Plan Amendment, No. 12015001A

-  Parker Smith, Senior Planner, Area 2 Division, Parker.Smith@montgomeryplanning.org, 301-495-1327
-  Patrick Butler, Supervisor, Area 2 Division, Patrick.Butler@montgomeryplanning.org, 301-495-4561
-  Carrie Sanders, Chief, Area 2 Division, Carrie.Sanders@montgomeryplanning.org, 301-495-4653

Completed: 7/9/20

Description

Request to extend the Plan Validity period by two (2) years and Adequate Public Facilities (APF) Validity period by three (3) years, for 490,000 square feet of unbuilt residential development and 31,000 square feet of unbuilt commercial development.

Location: On Executive Boulevard, east of Old Georgetown Road (MD-187).

Master Plan: 2010 *White Flint Sector Plan* area.

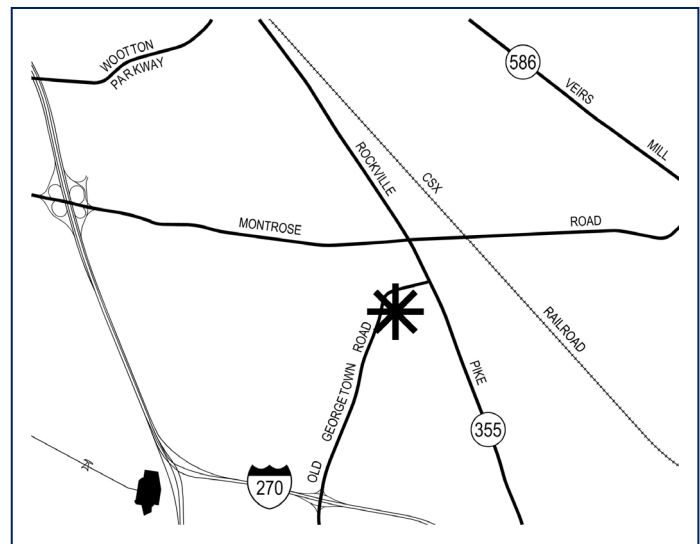
Zone: CR-3.0, C-1.5, R-2.5, H-70 and CR-4.0 C-2.0 R-3.5 H-250.

Property Size: 5.14 acres.

Applicant: LG Georgetown, LLC.

Application Accepted: May 4, 2020.

Review Basis: Chapter 50, Subdivision Regulations.



Summary

- Staff recommends approval of extending the Plan Validity period for two (2) years and the Adequate Public Facilities (APF) Validity period for three (3) years.
- The Applicant is requesting extension of the Plan Validity pursuant to Chapter 50.4.H.
- The Applicant is seeking a Section 50.9.3.A waiver from Section 50.4.3.J.7 to extend the APF validity period. The waiver is necessary, because the Applicant was not able to move forward with record plats and/or construction while the road network was being realigned, abandoned, and replatted and constructed as part of the Montgomery County Department of Transportation (MCDOT) White Flint West Workaround CIP No. 501506, including the construction of realigned Executive Boulevard (future Grand Park Avenue) and the implementation of Market Street.
- The Applicant made a timely request to extend both the Plan Validity and APF Validity periods for the development.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN NO. 12015001A

Staff Recommendation: Approval of the request to extend the Plan Validity and APF Validity Periods, subject to the revised and new conditions below. All other conditions and findings of Preliminary Plan No. 120150010 as contained in the Planning Board’s Corrected Resolution dated July 28, 2015, that are not modified herein, remain in full force and effect.

Revised Condition:

17. The non-transportation portion of the Adequate Public Facility (APF) for the Preliminary Plan will remain valid ~~for eight five (85) months from the date of the mailing of the Planning Board Resolution until June 7, 2025.~~

New Condition:

21. The Plan Validity Period remains valid until June 7, 2022.

SECTION 2 – SITE LOCATION AND DESCRIPTION

Site Location and Vicinity

The Gables White Flint Property (“Property” or “Subject Property” shown in red in Figure 1 below) covers approximately 5.14 acres in the western section of the White Flint Sector Plan area. At the time of the initial Preliminary Plan and Site Plan, the Property consisted of 3.18 acres of land owned by LG Georgetown, LLC (Gables Residential); approximately 34,403 square feet of existing Executive Boulevard right-of-way, owned by Montgomery County; approximately 22,179 square feet of a portion of the Bethesda North Marriott Hotel and Conference Center surface parking lot, which was also owned by Montgomery County; and approximately 29,489 square feet from prior dedications for Old Georgetown Road (MD 187). The Applicant was authorized by Montgomery County to file development applications, including for the aforementioned County-owned properties.

Immediately south of the Property is the Maryland-National Capital Park and Planning Commission - owned Wall Local Park and the Department of Recreation-operated Eunice Kennedy Shriver Aquatic Center and an M&T Bank. Office buildings and the Luxmanor residential community area are west of Old Georgetown Road and the Bethesda North Marriott Conference Center is to the east. Commercial uses, including a Capital One Bank, are to the north. The Property is within a ½ mile from the existing White Flint Metro Station entrance.



Figure 1 – Vicinity

Site Analysis

The Property is within two zones: CR-3.0, C-1.5, R-2.5, H-70 and CR-4.0, C-2.0, R-3.5, H-250. The CR-3.0 Zone is on the west side of the Property, while the CR-4 Zone is on the east. While portions of Market Street and Grand Park Avenue have been constructed, the Property is still currently developed with a surface parking lot and Executive Boulevard still passes through the Property. Current vehicular access to the Property is from Executive Boulevard. Topographically, the property is lower along Old Georgetown Road and higher at the future intersection of Market Street and realigned Executive Boulevard. There are specimen size trees on the adjacent Wall Park property.

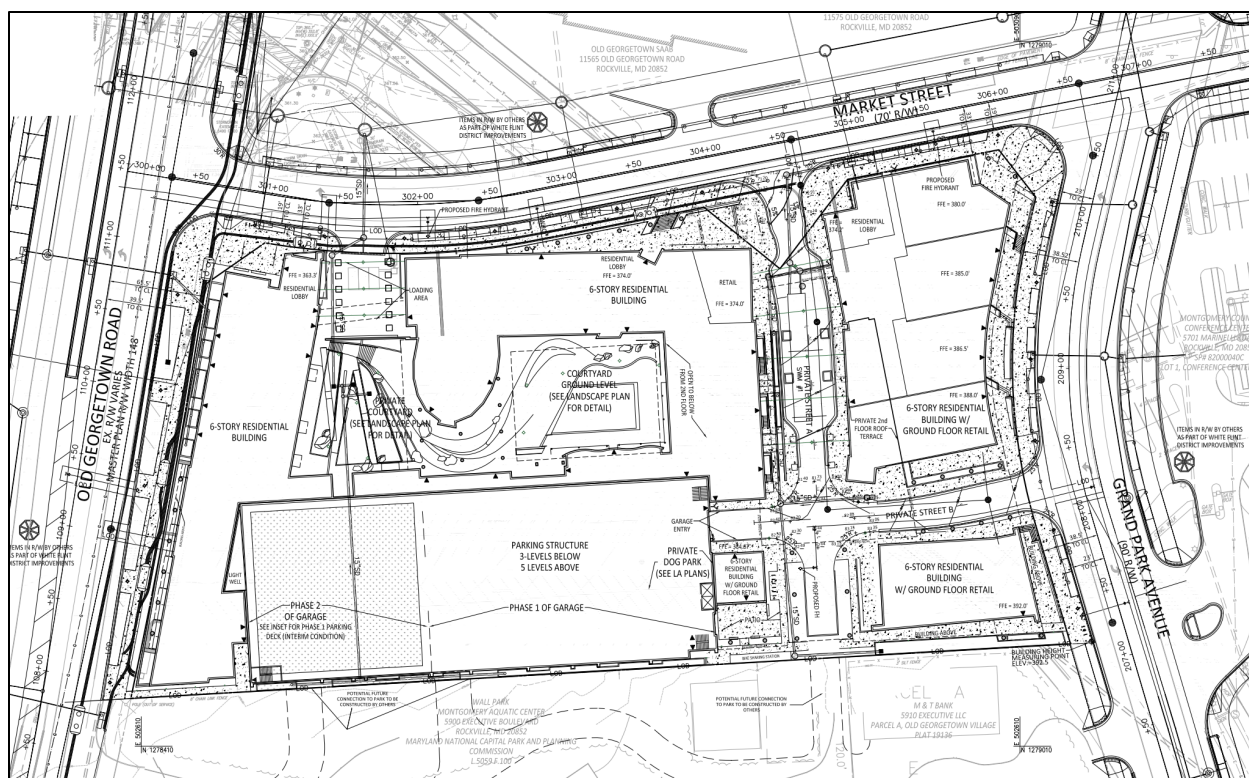


Figure 2 – Site Plan

SECTION 3 – APPLICATIONS AND PROPOSAL

Previous Approvals

320130010

On December 11, 2013, Sketch Plan 320130010, Gables White Flint, was approved by the Planning Board via Corrected Resolution No. 13-150. The Sketch Plan established a maximum density of 521,000 square feet of development, including up to 490,000 square feet of residential uses and up to 67,000 square feet of commercial uses. Maximum height for the project was set at 70 feet. The approval also established the location of lots, public dedications, public use spaces, and vehicular access points.

120150010 and 820150010

Preliminary Plan No. 120150010 and Site Plan No. 820150010 were concurrently approved on April 30, 2015. Approval was given to redevelop two surface parking lots and a segment of Executive Boulevard's right-of-way into a mixed-use development with approximately 490,000 square feet of residential development, or up to 476 residential units, and approximately 31,000 square feet of commercial development. The overall density of the development is limited to 2.32 FAR.

The approved development consists of three different interconnected buildings, as well as a six-level above-ground structured parking garage with a three-level below grade parking garage. Also included is an internal private street and various public use spaces and public art pieces.

The approved development is dependent on the implementation of the Montgomery County Department of Transportation (MCDOT) White Flint West Workaround CIP No. 501506, including the construction of realigned Executive Boulevard (future Grand Park Avenue) and the implementation of Market Street.

Current Application and Proposal

On May 4, 2020, the Applicant, LG Georgetown, LLC, submitted an application requesting an extension of the Plan Validity Period by two years, and of the Adequate Public Facilities Validity Period by three years. The validity periods granted by resolution MCPB No. 15-41 were 60 months for the Plan Validity and 85 months for the APF Validity, which were the minimum allowable at the time. The proposed amendment seeks to extend the validity periods while not exceeding the timeframes that otherwise would have been allowed when the Preliminary Plan was initially granted in 2015.

The 2010 *White Flint Sector Plan* ("Sector Plan") makes multiple recommendations affecting the property, including the realignment of adjacent roadways and the development of a partnership to relocate surface parking from adjacent Wall Park into a parking structure on site. The development of the Gables White Flint project is contingent on these two recommendations coming to fruition and required significant coordination between the owner and the County. The Preliminary Plan Resolution provides a 60-month Plan validity period from the initiation date, which was June 7, 2015 (30 days from the mailing date of the Resolution). The Plan Validity period would have expired on June 7, 2020, except for the filing of this request to extend the Plan Validity. The Resolution also provides an 85-month APF validity period from May 7, 2015, which means the APF validity expires June 7, 2022.

The lot to be created from the Preliminary Plan is comprised of the property owned by Gables, 34,807 square feet of the old Executive Boulevard right-of-way owned by Montgomery County, and approximately 22,026 square feet owned by Montgomery County that was previously on the east side of Executive Boulevard prior to the Western Workaround realignment. At the time of Preliminary Plan approval, it was anticipated that the first phase of the Western Workaround would be constructed quickly and the necessary land conveyed from Montgomery County to Gables in time to validate the Preliminary Plan through the recordation of a plat within the 60 month validity period. In the time after the adoption of the Preliminary Plan, progress towards implementing the Western Workaround stagnated, as negotiations to acquire the necessary properties slowed and coordination with utilities was difficult. Despite the Applicant's attempts to resolve these issues, progress on the Western Workaround, and the development contingent on its construction, were delayed several years beyond when the applicant was otherwise prepared to commence construction.

Based on the unanticipated delays to the project's progress, it has become necessary to extend the validity periods of the original approval. Therefore, the applicant is seeking to extend the validity period of the plan by two years and the validity period of the APF finding by three years. This will provide the applicant with the time necessary to finalize its acquisition of the necessary property from the County and record the plat, leading to the realization of this important Project that furthers the goals and objectives of the Sector Plan.

SECTION 4 – ANALYSIS AND FINDINGS

This Application is being reviewed under Section 50.4.2.H which allows the Planning Board to extend a preliminary plan validity period, pursuant to a series of findings. The Application also formally requests a waiver through Section 50.9.3.A from the provisions of Section 50.4.3.J.7.d.i of the Montgomery County Code with regard to the standard criteria for extensions of Adequate Public Facility periods.

Preliminary Plan Validity Extension

50.4.2.H.1.

a. Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.

The applicant submitted this request to extend Plan Validity period on April 29, 2020. The Plan Validity period expired on May 5, 2020.

b. The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.

Not applicable.

c. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.

This application serves as the written request. The preliminary plan validity period will be extended to May 7, 2022.

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
- 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.

Significant delays occurred regarding the design and implementation of the Western Workaround, the Executive Boulevard abandonment, and the negotiation of necessary agreements with the County that were attributable to the County and its consultants. These delays effectively prevented Gables from securing the necessary County property and former right-of-way needed to record the plat and validate the Preliminary Plan, and the delays also impacted its financing for the project. Additionally, whereas at the time of the Preliminary Plan approval it was anticipated that the design and construction of the Western Workaround would move forward fairly quickly, design and right-of-way negotiations took longer than expected, representing unanticipated events beyond Gables' control that directly prevented Gables from validating the Preliminary Plan. Exceptional hardship would occur if the Preliminary Plan were not extended, as the years of effort and substantial costs expended by Gables to pursue the Preliminary Plan, negotiate in good faith with the County, and assist with the implementation of the Western Workaround, would essentially be wasted. The extension of the Preliminary Plan, on the other hand, will provide Gables with the time necessary to finalize its acquisition of the necessary property from the County and record the plat, ultimately leading to the realization of this important project that furthers the goals and objectives of the White Flint Sector Plan ("Sector Plan").

APF Validity Extension

When the original Preliminary Plan was approved, Condition No. 17 granted the minimum validity period available at the time of 85 months, when a maximum of 12 years could have been granted. For the reasons noted above, Gables has not been able to validate the Preliminary Plan and proceed to building permits since the Planning Board's approval of the project, and anticipates needing additional time to validate its Adequate Public Facilities approval.

Pursuant to Section 4.3.J.7.d.i of the Code, the Planning Board may grant an extension of the validity period for a mixed-use project upon a showing that the following criteria are met:

- (a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;
- (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
- (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.

As noted above, delays in the design and implementation of the Western Workaround, the Executive Boulevard abandonment, and the negotiation of agreements with the County have prevented the platting of the property, which, in turn, have delayed the pursuit and approval of any building permits for the project. As a result, none of the standard criteria regarding the issuance of building or occupancy permits, or construction of infrastructure, can be met in this case. A waiver from these requirements is therefore necessary.

Pursuant to Section 50.9.3.A of the Code, the Planning Board may grant a waiver from Section 50.4.3.J.7 of the Code upon the making of certain findings, compliance with which is detailed below:

50.9.3.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;

As noted above, assumptions made regarding timing when the Preliminary Plan was approved have proven to be incorrect, and unanticipated delays have occurred that have impacted Gables' ability to validate its Preliminary Plan and Adequate Public Facilities approvals. These events have been well beyond Gables' control. Strict application of the extension criteria of Section 50.4.3.J.7.d.i of the Code requiring the issuance of certain percentages of building and occupancy permits, and the construction of infrastructure, is not needed in this case in order to protect public health, safety and welfare. On the contrary, the eventual implementation of the Sector Plan's visions and recommendations are more squarely within the public interest in this case¹, and, therefore, waiver of the provisions of Section 50.4.3.J.7.d.i of the Code in order to grant Gables additional time in which to implement the project, in accordance with the recommendations of the Sector Plan, and is appropriate.

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

Because the Preliminary Plan was approved prior to April 1, 2017, it was eligible for a maximum initial validity period of 12 years, according to Section 50.4.3.J.5.a.iii of the Code. As a multi-phase project with numerous complicating factors, including the need for actions beyond its control to occur for construction to commence, it is highly likely that a longer validity period, if requested, would have been granted as part of the initial approval, which period would have squarely met the intent of the validity period requirements. As such, an extension for three years which would still be well within the maximum 12 years allowed, will be in complete accord with the intent of the validity period requirements.

¹ Montgomery County's desire to ensure the implementation of recommendations and projects envisioned by the Sector Plan is evidenced by such efforts as the Planning Board's new *Advancing the Pike District* initiative.

3. *the waiver is:*
- a. *the minimum necessary to provide relief from the requirements; and*

As noted above, even with the requested extension, the extended validity period will be less than the maximum of 12 years that could have been approved initially. Additionally, pursuant to Section 50.4.3.J.7.d.iii of the Code, the maximum extension for a plan with an original validity period longer than seven years² is six years. The requested extension is for three years, well below the six-year maximum. As such, the extension is for the minimum amount of time reasonably necessary to allow the project to validate the Adequate Public Facilities approval.

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

The project achieves a number of key objectives of the Sector Plan, such as the construction of Market Street along the north side of the property, for which Gables is dedicating land, the realignment of Executive Boulevard and squaring off of the property, coordination regarding construction of the Wall Park garage, and construction of residential uses. See Sector Plan pp. 28-29. As such, allowing the project additional time in which to go forward would promote the purposes and objectives of the Sector Plan.

SECTION 5: CONCLUSION

Based on the analysis above and conditions at the beginning of this report, Staff recommends approval of a 35-month extension of the APF validity period, as well as a two-year extension of the preliminary plan validity period. The minimum timeframe requested should be sufficient considering the scope of the project.

Unless specially 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.

ATTACHMENTS

1. 120150010 Corrected Planning Board Resolution
2. Applicant's Statement of Justification
3. Applicant's Supplemental Justification
4. Sector Plan pages 28-29

² The original grant of 85 months is just over seven years.

ATTACHMENT 1



MONTGOMERY COUNTY PLANNING BOARD THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 28 2015

MCPB No. 15-41
Preliminary Plan No. 120150010
Gables White Flint
Date of Hearing: April 30, 2015

CORRECTED RESOLUTION

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

WHEREAS, on July 30, 2014, LG Georgetown LLC, filed an application for approval of a preliminary plan of subdivision to create one lot ~~and a private roadway parcel~~, for up to 490,000 square feet of residential uses and 31,000 square feet of non-residential development on approximately 5.14 acres in the CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones (the Property), located along Old Georgetown Road (MD 187), south of the future Market Street and west of realigned Executive Boulevard (future Grand Park Avenue) in the 2010 White Flint Sector Plan ("Master Plan" or "Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150010, Gables White Flint ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, April 17, 2015, setting forth its analysis and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on April 30, 2015 the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the Hearing, the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120150010, subject to the following conditions:

1. This approval is limited to one lot for a maximum density of 521,000 square feet of total development, including a maximum of 490,000 square feet of residential

APPROVED AS TO LEGAL SUFFICIENCY

Christina S. [Signature] 7/15/15
MONTGOMERY COUNTY PLANNING BOARD
LEGAL DEPARTMENT

uses and a maximum of 31,000 square feet of non-residential uses. A minimum of 12.5% of residential units must be moderately priced dwelling units (MPDUs).

2. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 70-foot right-of-way for business district street (Market Street) as shown on Montgomery County Department of Transportation (MCDOT) Capital Improvements Program (CIP) White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
3. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 150-foot right-of-way for Old Georgetown Road (MD 187) as shown on MCDOT's CIP White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
4. The Applicant must dedicate, and the record plat must reflect, the Sector Plan recommended 89 foot right-of-way for a realigned Executive Boulevard (future Grand Park Avenue) as shown on MCDOT's CIP White Flint West Workaround No.501506 and the approved Preliminary Plan No. 120150010.
5. The Planning Board accepts the recommendations of MCDOT in its letter dated December 4, 2014 and March 6, 2015 and April 28, 2015 electronic mails, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to the release of any residential building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with MCDOT and the Montgomery County Planning Board to participate in the North Bethesda Transportation Management District (TMD) and assist in achieving and maintaining the non-auto mode share goals recommended in the White Flint Sector Plan.
7. Private Street A and Private Street B must be implemented with a common access easement to Montgomery County in a form approved by the M-NCPPC Office of General Counsel and the Montgomery County Attorney's office. The easement must be shown on the record plat for the private streets and adjacent parallel sidewalks. The common access easement must, at a minimum, include the following:
 - a. The design of the roads must follow or improve on the corresponding Montgomery County Road Code standard for a similar public road, unless approved by MCDOT and the Planning Board.
 - b. Installation of any public utilities must be permitted within such easements.
 - c. The streets may not be closed for any reason unless approved by MCDOT.

- d. The public access easements must be volumetric to accommodate uses above or below the designated easement areas.
 - e. Montgomery County may require the Applicant to install appropriate traffic control devices within the public easement and the easement must grant the right to the County to construct and install such devices.
 - f. Maintenance and Liability Agreements will be required for each Easement Area. These agreements must identify the respective Applicant's responsibility to maintain all of the improvements within their easement areas in good fashion and in accordance with applicable laws and regulations.
 - g. The Applicant is obligated to remove snow and provide repairs to keep the roads in working order and open and if, for any reason, the Applicant does not, the County must have the right, but not the obligation, to remove snow and/or provide repairs.
 - h. The boundary of the easements must be shown on the record plat.
-
8. The Planning Board accepts the recommendations of the Maryland State Highway Administration (SHA) in its letter dated February 4, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by SHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 9. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its letter dated December 22, 2014, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 10. The Planning Board accepts the recommendations of Montgomery County Fire and Rescue (MCFRS) Service in its letter dated December 16, 2014 and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCFRS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 11. The Subject Property is within the Walter Johnson High School Cluster. The Applicant must make a School Facilities Payment to MCDPS at the multi-family residential, 5 or more floors, for all residential units for which a building permit is issued and a school facilities payment is applicable. The timing and amount of

the payment will be in accordance with Chapter 52 of the Montgomery County Code.

12. Prior to the recordation of Lot 1, the Applicant must provide to M-NCPPC Staff proof that the portions of the subject property owned by Montgomery County have been conveyed to the Applicant.
13. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at Site Plan.
14. The Applicant must comply with the White Flint Urban District requirements when it is established by Montgomery County Council.
15. No clearing, grading or recording of plats prior to Certified Site Plan approval.
16. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
17. The non-transportation portion of the Adequate Public Facility (APF) for the Preliminary Plan will remain valid for eight-five (85) months from the date of the mailing of the Planning Board Resolution.
- ~~18. This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended).~~
18. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan, with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan Amendment prior to certification of the Site Plan.
19. The Certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
20. All necessary easements must be shown on the Record Plat.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the Hearing and 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:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Property is within the Metro West District-Block 2: Wall Local Park of the Approved and Adopted (2010) White Flint Sector Plan. The Sector Plan rezoned the Property to CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones. The CR-3 zone segment is west of existing Executive Boulevard and the CR-4 zone segment is to the east, including a portion of the Bethesda North Conference Center. The Sector Plan recommends the maximum height of 70 feet for the Property.

The Sector Plan recognizes the Gables Residential property as an important site and states that the area "should be primarily residential in character and use". The Sector Plan also states that the "land area remaining after the intersection realignment of Old Georgetown Road and Executive Boulevard will be reconfigured into rectangular blocks in sizes more conducive to redevelopment. Wall Local Park should be redesigned with more active outdoor facilities through developer contributions". In addition, the Sector Plan "envision[s] a public/private partnership with adjacent properties to relocate the surface parking within a parking structure built in conjunction with new residential development. This would help direct public funds from building structured parking on-site to improving Wall Local Park".

The Preliminary Plan substantially conforms to the Sector Plan recommendations since the development is principally residential and the Applicant has provided land for a future parking garage that will support Wall Park's redevelopment.

Street Network

The public and private streets shown on the Preliminary Plan are consistent with the Sector Plan recommendations. The Sector Plan recommends the creation of Market Street (B-10) as a new 70-foot commercial business street and the realignment of Executive Boulevard (B-15) with a minimum ~~80~~89 foot right-of-way. The Sector Plan referenced Montgomery County Road Code standards 2005.02 and 2004.01, respectively, for these streets. Old Georgetown Road (MD 187) is west of the development and is classified as a major highway (M-4) with a minimum right-of-way of 150 feet. Private Streets A and B are not Master Plan streets, but they provide additional internal circulation for the development.

Montgomery County Department of Transportation (MCDOT), via Capital Improvements Program (CIP) White Flint West Workaround (No. 501506), is responsible for constructing Market Street (B-10), realigned Executive Boulevard (B-15)-future Grand Park Avenue-and Old Georgetown Road improvements. The Applicant's Preliminary Plan has dedicated rights-of-way for roadways that surround the development and incorporates MCDOT's CIP proposal.

Old Georgetown Road

Old Georgetown Road (MD 187), between Nicholson Lane and Executive Boulevard, is classified as a major highway (M-4) with a minimum right-of-way of 150 feet. The Approved and Adopted *Countywide Functional Transit Corridors Master Plan* (December, 2013) recommends Old Georgetown Road as a segment of the North Bethesda Transitway (Corridor 6). A dedicated BRT lane is recommended along Old Georgetown Road between Executive Boulevard and Nicholson Lane. The Functional Plan recommends a BRT station north of the Property at Old Georgetown Road, Executive Boulevard and Towne Road.

Bikeway Network

The Preliminary Plan will begin to implement the bikeway recommendations for adjacent roadways. The Sector Plan recommends a Shared Use Path (LB-1) along Old Georgetown Road (MD 187) and another Shared Use Path (LB-3) along Market Street. The White Flint West Workaround CIP project will implement Share Use Paths that surround the Property.

Environmental

Minimization of carbon emissions and creating a livable urban environment by improving air and water quality are the Sector Plan's two main environmental recommendations. The Preliminary Plan will utilize environmental site design techniques, including green roofs, vegetated walls, and energy standards for the buildings that will exceed the Department of Energy standard by 10 percent. These measures, along with minimization of parking and a network of bikeways and sidewalks will substantially implement the Sector Plan's environmental recommendations.

Based on the analysis above and with the conditions of approval, the Planning Board finds that the Preliminary Plan substantially conforms to the Approved and Adopted 2010 White Flint Sector Plan.

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

Design Exceptions

The Planning Board and MCDOT reviewed and approved the following design exceptions that will contribute to enhancing a mixed-use and pedestrian environment:

- a) Non-standard elements in the right-of-way.
- b) Retaining walls and steps in the right-of-way.
- c) Tree planters in the right-of-way.
- d) Reduction in entrance spacing requirement.
- e) Reduction to the number of required loading spaces.

Site Location and Vehicular Site Access Points

Market Street, a new east-west public street, will serve as the northern boundary to the approved development, the realigned Executive Boulevard will run along the eastern frontage of the development, and Old Georgetown Road (MD 187) will continue to be on the west side of the Property. Two internal, Private Streets A and B, will provide access to Market Street, realigned Executive Boulevard and the parking garage.

Transportation Demand Management

This site is within the boundary of the North Bethesda Transportation Management District (TMD). Prior to the release of any residential building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with Montgomery County Department of Transportation (MCDOT) and the Planning Board. The Sector Plan requires a Non-Auto Driver Mode Share (NADMS) goal of 34 percent in Phase I of the Sector Plan's staging plan.

Public Transit Service

The Property is located within a ½ mile from the White Flint Metrorail Station entrance. Montgomery County Ride-On route 81 operates along Executive Boulevard's current alignment and Ride-On routes 5 and 26 operate along Old Georgetown Road (MD 187) with a bus stop at the intersection of existing Executive Boulevard and Old Georgetown Road. Metrobus operates routes J-5 and C-8 along nearby Rockville Pike (MD 355).

Sector-Planned Roadways and Bikeways

In accordance with the *Sector Plan* and the *Countywide Bikeways Functional Master Plan*, the classified roadways and bikeways are as follows:

1. Old Georgetown Road (MD 187) is designated as a major highway (M-4) with a recommended minimum right-of-way of 150 feet with a Shared Use Path (LB-1). A 10-foot wide Shared Use Path will be provided along the eastern frontage of Old Georgetown Road.
2. Executive Boulevard (B-15), called Mid-Pike Spine Street in the Sector Plan, is designated as a commercial business street with a minimum recommended right-of-way of ~~8089~~ feet. MCDOT's Capital Improvements Program (CIP) No. 501506, White Flint West Workaround, includes the construction of this street with a Shared Use Path.

3. Market Street (B-10) is designated as commercial business street with a minimum recommended right-of-way of 70 feet and a Shared Use Path (LB-3).

Transportation Adequate Public Facilities Review

The White Flint Special Taxing District, established by Council Bill No. 50-10 and Resolution No. 16-570, excludes the typical Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) requirements for development within the White Flint Sector Plan area.

Other Public Facilities and Services

The site is served by public water and public sewer. Gas, electric, and telecommunications services are also available to serve the Property. Public facilities and services, including fire stations and police stations, are available and will be adequate to serve the development. Rockville Station (23) on Rollins Avenue and Bethesda Station (20) at West Cedar Lane and Old Georgetown Road can provide emergency services to the Property. The development is located in the Walter Johnson High School Cluster. A School Facilities Payment is required at the high school level. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Based on the analysis above and the conditions of approval, the Planning Board finds that the public facilities are adequate to support and service the area for the Preliminary Plan. The Preliminary Plan satisfies the Adequate Public Facilities Ordinance.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The Preliminary Plan will create one lot, ~~and a private parcel for private streets~~. The Planning Board finds that the size, shape, width, and area of the lot and parcel are appropriate for their location within the subdivision. The Application also complies with the dimensional requirements of the CR-3 C1.5 R2.5 H70 and CR-4 C2.0 R3.5 H250 Zones as specified in the Zoning Ordinance. The Application has been reviewed and approved by other County agencies.

Subdivision Regulations Waivers

Under §50-38(a)(1) of the Montgomery County Code, the Board may grant a waiver from the Subdivision Regulations if it finds that: "practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."

The Applicant requested a waiver from Sections 50-1 and 50-30(c)(1) of the Montgomery County Code. Section 50-30(c)(1) requires that all roads are dedicated to public use to the full extent of any rights-of-way. Section 50-1 includes the definition for a right-of-way which states that "for land platting purposes, every right-of-way shown on a record plat must be separate and distinct from any adjoining lot or parcel, and not included in any other lot or parcel". However, the Planning Board finds that placing Streets A and B in their own parcel creates a practical difficulty because the streets have structures that will be developed below or above the street right-of-way that are critical to the layout and design of the development. This would conflict with the Department of Permitting Services (DPS) interpretation of the County Code, as amended, that precludes any development above or below a ~~public or private~~ right-of-way. The platting of these streets would prevent the East and Central buildings from obtaining a building permit for any development above a right-of-way. The Board finds that granting this waiver is not adverse to the objectives of the General Plan; provides minimum relief from the requirements; and is not adverse to the public interest. Further, the development is consistent with the Sector Plan recommendations for mixed-use development at this location and the configuration of the lot is created by the street network recommended in the Sector Plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Staff approved a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the site on July 2, 2013. The site contains no forest, streams or their buffers, wetlands or their buffers, 100-year floodplains, or rare, threatened or endangered species.

A Final Forest Conservation Plan (FFCP) is approved with Site Plan No. 820150010. Based on the Property's size and development, the Afforestation threshold for this site, plus required off-site disturbance, is 0.79 acres. The Applicant proposes to meet this requirement through payment of a fee-in-lieu, purchase of off-site forest bank credits, or a combination of the two. The FFCP satisfies the requirements of the forest conservation law.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "Storm Water Management," Sections 19-20 through 19-35.*

The Montgomery County Department of Permitting Services (MCDPS) approved a stormwater management concept plan on December 22, 2014. The approved project meets stormwater requirements through a variety of Environmental Site Design techniques, including green roofs and micro-bioretenment.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successors in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration 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 must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is May 7, 2015 (which is the date that ~~this the original~~ Resolution ~~is was~~ 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).

* * * * *

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 Fani-González, seconded by Commissioner Dreyfuss, with Chair Anderson and Commissioners Dreyfuss and Fani-González voting in favor of the motion, and Vice Chair Wells-Harley and Commissioner Presley absent, at its regular meeting held on Thursday, July 23, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY
MCDPS-ZONING
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON
MPDU MANAGER, DHCA
100 MAYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850

IAN P. DUKE
VIKA, INC.
20251 CENTURY BOULEVARD
SUITE 400
GERMANTOWN, MD 20874

DANIEL ASHTARY
TORTI GALLAS
1300 SPRING STREET
SUITE 400
SILVER SPRING, MD 20910

EDDIE MEDER
TORTI GALLAS
1300 SPRING STREET
SUITE 400
SILVER SPRING, MD 20910

MR. GREG LECK
MCDOT
100 EDISON PARK DRIVE
4TH FLOOR
GAITHERSBURG, MD 20878

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
355 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ALAN SOUKUP
MCDDEP-WATER RESOURCE
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

JASON EVANS
VIKA MARYLAND LLC
20251 CENTURY BOULEVARD
SUITE 400
GERMANTOWN, MD 20874

PENG GU
MAHAN RYKIEL ASSOCIATES, INC.
800 WYMAN PARK DRIVE
BALTIMORE, MD 21211

MR. RICHARD BRUSH, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

JORGEN PUNDA
LG GEORGETOWN, LLC
8280 GREENSBORO DRIVE
SUITE 605
MCLEAN, VA 22102

STEPHEN KAUFMAN
LINOES & BLOCHER, LLP
7200 WISCONSIN AVENUE
SUITE 800
BETHESDA, MD 20814

ERIN GIRARD
TORTI GALLAS
1300 SPRING STREET
SUITE 400
SILVER SPRING, MD 20910

ATTACHMENT 2



Erin E. Girard
301-517-4804
egirard@milesstockbridge.com

April 10, 2020

Mr. Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Gables White Flint; Amendment to Preliminary Plan No. 120150010 (“Preliminary Plan”)

Dear Chairman Anderson and Members of the Planning Board:

On behalf of our client, LG Georgetown, LLC (“Gables”), the owner of the property that is the subject of the above-referenced Preliminary Plan (“Property”), the purpose of this letter is to request certain amendments to the provisions of Planning Board Resolution MCPB No. 15-41 approving the Preliminary Plan (“Resolution”) in order to extend the Preliminary Plan validity period by two years and Adequate Public Facilities¹ (“APF”) validity period by three years. The validity periods granted in the Resolution were the minimum allowable at the time of the approval (five years for the Preliminary Plan and eight years for the APF)² and, for the reasons described more fully below, additional time is needed to validate the approvals. This amendment therefore seeks to extend the validity periods, while not exceeding the timeframes that otherwise would have been allowed when the Preliminary Plan was initially granted in 2015.

The 2010 White Flint Sector Plan (“Sector Plan”) makes a number of significant recommendations affecting the Property, including the realignment of roadways adjacent to the Property that substantially change its shape and composition, as well as the development of a partnership to relocate surface parking from the adjacent Wall Park into a parking structure on

¹ Because the Property lies within the White Flint District, only the non-transportation portions of the Adequate Public Facilities Ordinance apply to the project.

² Given the level of coordination required, and the degree to which actions outside of Gables’ control would impact its ability to validate the Preliminary Plan, it is unclear why only the minimum validity periods were approved. Pursuant to the provisions of Sections 50-20(c)(3)(A)(iii) and 50-35(h)(B) of the Code in effect at the time of the approval, the Planning Board could have approved a validity periods of as many as 12 years for this multi-phase project.

the site. An image depicting the roadway reconfiguration, with the existing right-of-way shown in blue, is below for your ease of reference:



These recommendations contemplated significant coordination between the owner (Gables) and the County in order to effectuate these changes. *See* Sector Plan, p. 29, 60. On July 28, 2015, Gables obtained approval of the Preliminary Plan and associated site plan for the Property, both of which were consistent with the recommendations of the Sector Plan, contemplating the necessary realignments and coordination. The Preliminary Plan allows for redevelopment of the property with up to 521,000 square feet of total development, including a maximum of 490,000 square feet of residential use and a maximum of 31,000 square feet of commercial use (“Project”). The Preliminary Plan Resolution, in the first “Be it further resolved” clause on page 10, provides a 60 month validity period, and sets the initiation date of the validity period as May 7, 2015.³ Condition No. 17 provides that the non-transportation portion of the APF for the Preliminary Plan will remain valid for 85 months.

As detailed more fully on pages 20-21 of the Staff Report for the Preliminary Plan, copies of which are attached hereto, the lot to be created from the Preliminary Plan is comprised of portions of the property owned by Gables, approximately 34,807 square feet of the old Executive Boulevard right-of-way owned by Montgomery County, and approximately 22,026 square feet owned by Montgomery County that was previously on the east side of Executive Boulevard prior to its realignment. The Preliminary Plan also incorporates the two-phase White Flint West Workaround (“Western Workaround”), a County Capital Improvement Project that realigns Executive Boulevard to the east and constructs Market Street to create a grid pattern connecting Old Georgetown Road and the realigned Executive Boulevard, as shown on the image above.

³ Although a corrected resolution was issued on July 28, 2015, that resolution made clear that the initiation date would be the date of mailing of the original resolution. *See* July 28, 2015 Resolution, p. 10.
114734\000001\4818-1412-9332.v1

At the time of Preliminary Plan approval, it was anticipated that the first phase of the Western Workaround would be constructed quickly and the necessary land conveyed from Montgomery County to Gables in time to validate the Preliminary Plan through recordation of a plat within the 60 month validity period. *See* Condition No. 12 (“Prior to the recordation of Lot 1, the Applicant must provide to M-NCPPC Staff proof that the portions of the subject property owned by Montgomery County have been conveyed to the Applicant.”) However, subsequent to the adoption of the Preliminary Plan, progress on the Western Workaround slowed. Among other things, the County had to engage in lengthy negotiations with Old Georgetown Saab and 5995 Executive Boulevard, whose properties were needed for the proposed Market Street right-of-way. There was also extensive coordination needed with Verizon regarding work within Executive Boulevard. Although Gables worked alongside the County to help try to expedite the coordination and construction, significant progress on the first phase of the Western Workaround was delayed several years beyond when Gables was otherwise prepared to commence construction.

Even after work on the first phase of the Western Workaround commenced, the design and construction of the second phase continued to lag. Design of the second phase was necessary to establish the routing of the Pepco lines along the Property’s Old Georgetown Road frontage, and the Phase 2 work created temporary conditions and uncertainty regarding streetscape elements on the western end of the Property’s frontage along Market Street, affecting part of the Central building, the loading dock area, and the West building. Gables was therefore unable to fully complete its own design work until the Western Workaround Phase 2 design was completed.

The Western Workaround design and construction delays, in turn, created delays in the negotiations between Gables and the County for the land purchases necessary for the validation of the Preliminary Plan. Specifically, both the Purchase and Sale Agreement and Wall Park Garage Development Agreement were delayed pending final design of the Western Workaround, and this delay directly impacted Gables’ ability to secure the necessary agreements for financing the Project. Finally, the abandonment process for Executive Boulevard and the portion of the Conference Center property included in the Preliminary Plan took significantly longer than expected, which further impacted the Project’s timeline. During the period which the Project was delayed, hard costs increased considerably, directly impacting Gables’ ability to get the Project financed.

Based on the above, unanticipated events beyond Gables’ control have effectively prevented Gables from securing the land needed to record the plat and validate the Preliminary Plan which, in turn, has delayed the start of construction necessary to validate the APF. While Gables continues to work towards implementation of the Project, additional time is needed to validate the Preliminary Plan and APF periods. Gables is therefore seeking the amendment to modify the provisions of the Resolution to extend the Preliminary Plan validity period to 85 months, to align with the previous APF period, and revise Condition 17 to allow for a 120 month APF validity

Page 4

period. These extensions will provide Gables with the time necessary to finalize its acquisition of the necessary property from the County and record the plat, ultimately leading to the realization of this important Project that furthers the goals and objectives of the Sector Plan.

Thank you for your consideration of this request. If you have any questions or would like any additional information, please feel free to contact me.

Sincerely,

Miles & Stockbridge, P.C.



Erin E. Girard

cc: Jorgen Punda
Eddie Meder
Patrick Butler

ATTACHMENT 3

Supplemental Statement in Support of Gables White Flint Preliminary Plan and Adequate Public Facilities Extension Requests

On behalf of LG Georgetown, LLC (“Gables”), this statement serves as a supplement to our April 10, 2020 letter requesting an amendment to Preliminary Plan No. 120150010 (“Preliminary Plan”) to extend the Preliminary Plan and Adequate Public Facilities¹ validity periods, and formally requests a waiver from the provisions of Section 50.4.3.J.7.d.i of the Montgomery County Code (“Code”) with regard to the standard criteria for extensions of Adequate Public Facility periods.

Extension of Preliminary Plan Validity Period

Pursuant to Section 50.4.2.H *et seq.* of the Code, extension of a preliminary plan validity period requires a demonstration that 1) delays by the government or some other party after the plan approval prevented the applicant from meeting the terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or 2) 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 applicant if the plan were not extended. *See* Section 50-35.4.2.H.3 of the Code.

As explained more fully in our April 10th letter, both of the extension criteria are met in this case. Significant delays occurred regarding the design and implementation of the Western Workaround, the Executive Boulevard abandonment, and the negotiation of necessary agreements with the County that were attributable to the County and its consultants. These delays effectively prevented Gables from securing the necessary County property and former right-of-way needed to record the plat and validate the Preliminary Plan, and the delays also impacted its financing for the project. Additionally, whereas at the time of the Preliminary Plan approval it was anticipated that the design and construction of the Western Workaround would move forward fairly quickly, design and right-of-way negotiations took longer than expected, representing unanticipated events beyond Gables’ control that directly prevented Gables from validating the Preliminary Plan. Exceptional hardship would occur if the Preliminary Plan were not extended, as the years of effort and substantial costs expended by Gables to pursue the Preliminary Plan, negotiate in good faith with the County, and assist with the implementation of the Western Workaround, would essentially be wasted. The extension of the Preliminary Plan, on the other hand, will provide Gables with the time necessary to finalize its acquisition of the necessary property from the County and record the plat, ultimately leading to the realization of this important project that furthers the goals and objectives of the White Flint Sector Plan (“Sector Plan”).

¹ Because the property is located in the White Flint District, only the non-transportation portion of the Adequate Public Facilities test is relevant to the project.

Extension of Adequate Public Facilities Validity Period

As noted in our April 10th letter, although the Preliminary Plan approved a multi-phase project with up to 521,000 square feet of mixed-use development, Condition No. 17 granted only the minimum validity period available at the time of 85 months, when a maximum of 12 years could have been granted. For the reasons noted above and in our April 10th letter, Gables has not been able to validate the Preliminary Plan and proceed to building permits since the Planning Board's approval of the project, and anticipates needing additional time to validate its Adequate Public Facilities approval.

Pursuant to Section 4.3.J.7.d.i of the Code, the Planning Board may grant an extension of the validity period for a mixed-use project upon a showing that the following criteria are met:

- (a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;
- (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
- (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.

As noted above, delays in the design and implementation of the Western Workaround, the Executive Boulevard abandonment, and the negotiation of agreements with the County have prevented the platting of the property which, in turn, have delayed the pursuit and approval of any building permits for the project. As a result, none of the standard criteria regarding the issuance of building or occupancy permits, or construction of infrastructure, can be met in this case. A waiver from these requirements is therefore necessary.

Pursuant to Section 50.9.3.A of the Code, the Planning Board may grant a waiver from Section 50.4.3.J.7 of the Code upon the making of certain findings, compliance with which is detailed below:

50.9.3.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;

As noted above and in our April 10th letter, assumptions made regarding timing when the Preliminary Plan was approved have proven to be incorrect, and unanticipated delays have occurred that have impacted Gables' ability to validate its Preliminary Plan and Adequate Public Facilities approvals. These events have been well beyond Gables' control. Strict application of the extension criteria of Section 50.4.3.J.7.d.i of the Code requiring the issuance of certain percentages of building and occupancy permits, and the construction of infrastructure, is not needed in this case in order to protect public health, safety and welfare. On the contrary, the eventual implementation of the Sector Plan's visions and recommendations are more squarely within the public interest in this case², and, therefore, waiver of the provisions of Section 50.4.3.J.7.d.i of the Code in order to grant Gables additional time in which to implement the project, in accordance with the recommendations of the Sector Plan, is appropriate.

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

Because the Preliminary Plan was approved prior to April 1, 2017, it was eligible for a maximum initial validity period of 12 years. *See* Section 50.4.3.J.5.a.iii of the Code. As a multi-phase project with numerous complicating factors, including the need for actions beyond its control to occur for construction to commence, it is highly likely that a longer validity period, if requested, would have been granted as part of the initial approval, which period would have squarely met the intent of the validity period requirements. As such, an extension for three years, which would still be well within the maximum 12 years allowed, will be in complete agreement with the intent of the validity period requirements.

3. *the waiver is:*

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

As noted above, even with the requested extension, the extended validity period will be less than the maximum of 12 years that could have been approved initially. Additionally, pursuant to Section 50.4.3.J.7.d.iii of the Code, the maximum extension for a plan with an original validity period longer than seven years³ is six years. The requested extension is for approximately three years (35 month), well below the six year maximum. As such, the extension is for the minimum amount of time reasonably necessary to allow the project to validate the Adequate Public Facilities approval.

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

The project achieves a number of key objectives of the Sector Plan, such as the construction of Market Street along the north side of the property, for which Gables is dedicating land, the realignment of Executive Boulevard and squaring off of the property, coordination regarding construction of the Wall Park garage, and construction of residential uses. *See* Sector Plan pp. 28-29. As such, allowing the project additional time in which to go forward would promote the purposes and objectives of the Sector Plan.

² Montgomery County's desire to ensure the implementation of recommendations and projects envisioned by the Sector Plan is evidenced by such efforts as the Planning Board's new *Advancing the Pike District* initiative.

³ The original grant of 85 months is just over seven years.



Metro West District

This 54-acre district, bounded by Old Georgetown Road, Nicholson Lane and Rockville Pike, forms the western part of the Sector Plan core. There is substantial public investment in the Aquatic Center, Wall Local Park, and the Bethesda North Conference Center and Hotel. The realignment of Executive Boulevard and Old Georgetown Road will create a street grid within the district and improve traffic circulation in the entire Sector

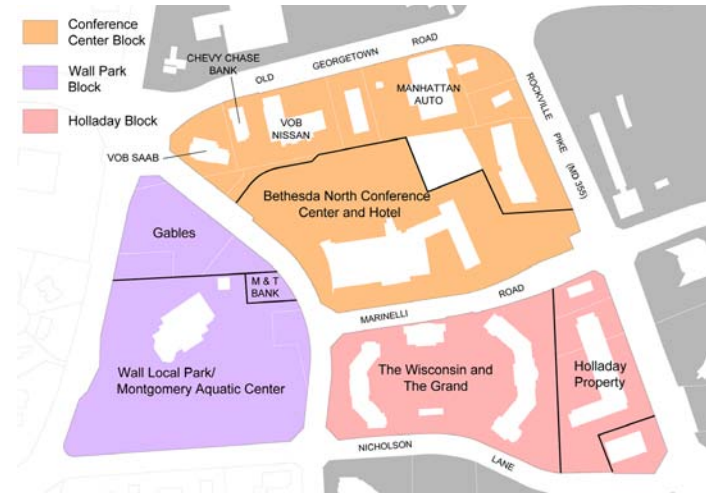
Plan area. The District is divided into three blocks: Conference Center, Wall Local Park and Holladay (Map 13).

The Plan recommends public investment in the Market Street Civic Green promenade, and outdoor recreational facilities at Wall Local Park. Assembly or combined development would best create the proposed street grid, especially in Blocks 1 and 2. When Executive Boulevard and Old Georgetown Road are reconfigured and Market Street is constructed, Blocks 1 and 2 will be divided into smaller blocks. Development in the smaller blocks should be organized with lower building heights at the northwest corner of the Old Georgetown Road and the realigned Executive Boulevard intersection.

Block 1: Conference Center

The Bethesda North Conference Center and Hotel (TS-R Zone), surrounded by automobile sales and other commercial uses, is the main feature in this block. These properties are in the C-2 and TS-R Zones. The new civic green, public use spaces, and Market Street will create the backdrop for future private redevelopment. The road alignments and location of public facilities indicated in Map 18 are not meant to represent specific or final locations and could shift. Development at the intersection of Rockville Pike and Marinelli Road at the Metro station entrance should have a significant public use space.

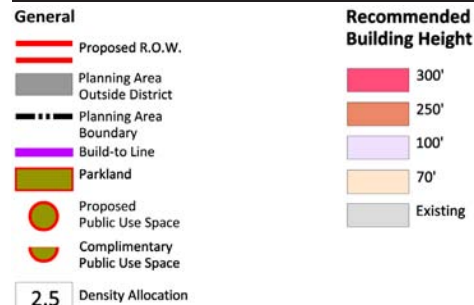
- Properties zoned C-2 and TS-R fronting Rockville Pike should be rezoned to CR 4: C 3.5, R 3.5, and H 300 with the remainder of the block CR 4: C 2.0, R 3.5, and H 250. The lower height in the block's interior will be consistent with residential development across Marinelli Road, which is 200 feet or greater. The Conference Center property is split zoned to accommodate taller buildings along Rockville Pike and lower buildings on the west.
- The Conference Center Block contains 11 different properties. The proposed street alignment will create smaller blocks. The civic green is to be located on the north side of Market Street. Redevelopment in this block will require careful coordination between property owners and the public sector to align, dedicate, acquire, and build the public

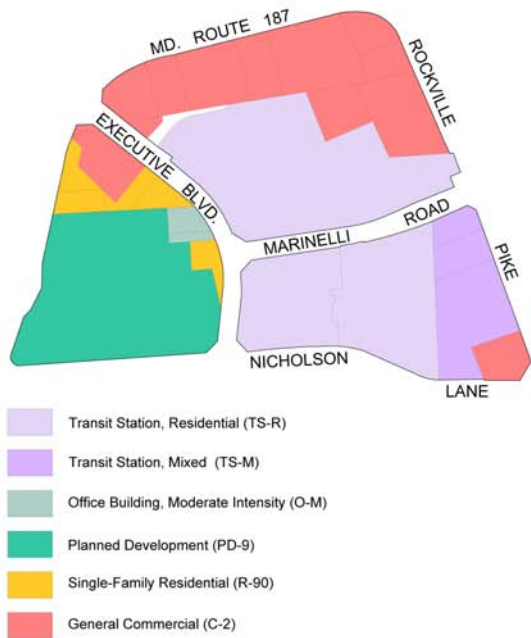


Map 13: Location

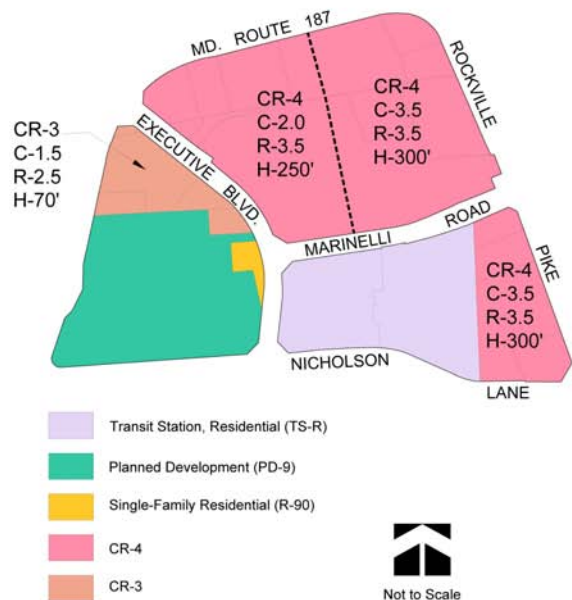


Map 14: Height and Density





Map 15: Existing Zoning



Map 16: Proposed Zoning

roads so that the new blocks formed by the new street network are of a size and configuration that is suitable for redevelopment and can accommodate the one-to-two-acre civic green. The Planning Board should attempt to maximize the size of the civic green, provided it does not compromise functionality. When the Conference Center site redevelops, there should be a complementary public use space on the south side of Market Street to anchor the civic green.

Block 2: Wall Local Park

This block contains the 11-acre Wall Local Park and Montgomery Aquatic Center. There are two other properties, the Gables (now used as a parking lot) and a bank. The land area remaining after the intersection realignment of Old Georgetown Road and Executive Boulevard will be reconfigured into rectangular blocks in sizes more conducive to redevelopment. Wall Local Park should be redesigned with more active outdoor facilities through developer contributions. It may also be an appropriate location for a new community recreation center. This area should be primarily residential in character and use. The Metro East District, because of its proximity to transit in the center of the Sector Plan area, is a suitable alternate location for the co-location of the recommended library and regional services center.

- Confirm the PD-9 and R-90 Zones on Wall Local Park.
- Rezone the rest of the block to CR 3: C 1.5, R 2.5, and H 70 to ensure a transition in height and density between Block 1 at the Metro station and the existing residential development across Old Georgetown Road.

Block 3: Holladay

This 15-acre block is bounded by Marinelli Road, Nicholson Lane, Executive Boulevard, and Rockville Pike. Properties are zoned TS-M, TS-R, and C-2. The Wisconsin and The Grand multifamily developments reflect earlier success with high-rise residential development, while the Holladay development along Rockville Pike represents the type of mixed-use envisioned in this Plan. There is already substantial residential development in this block and redevelopment should focus on employment and retail uses.

- Confirm existing residential development (Grand and Wisconsin) in the TS-R Zone since redevelopment with mixed uses is unlikely.
- Rezone the TS-M zoned Holladay property, located at Marinelli Road and Rockville Pike, and the C-2 property at the corner of Nicholson Lane and Rockville Pike to CR 4: C 3.5, R 3.5, and H 300. The Holladay property is currently subject to a development plan with a maximum 2.2 FAR. If the owners choose to take advantage of the greater potential FAR of the CR Zone, the new plan will be subject to the requirements of the CR Zone.