



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

MCPB No. 20-068
Preliminary Plan No. 12015001A
Gables White Flint
Date of Hearing: July 23, 2020

AUG 13 2020

RESOLUTION

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

WHEREAS, on July 23, 2020, the Planning Board, by Resolution MCPB No. 20-068, approved Preliminary Plan No. 12015001A, creating one lot on 5.14 acres of land in the CR-3.0, C-1.5, R-2.5, H-70 and CR-4.0 C-2.0 R-3.5 H-250 zones, located at the intersection of Old Georgetown Road and Executive Boulevard ("Subject Property"), in the White Flint Policy Area and 2010 *White Flint Sector Plan* ("Master Plan") area; and

WHEREAS, on May 4, 2020, LG Georgetown, LLC ("Applicant") filed an application for approval of an amendment to the previously approved Preliminary Plan(s) to extend the Plan Validity period by two years and Adequate Public Facilities Validity period by three years for the Subject Property; and

WHEREAS, Applicant's application to amend the Preliminary Plan was designated Preliminary Plan No. 12015001A, Gables White Flint ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 9th, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 23, 2020 the Planning Board held a public hearing on the Application at which it 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 the Planning Board APPROVES Preliminary Plan No. 12015001A to extend the Plan Validity period by two years and Adequate Public Facilities Validity period by three years by *adding and modifying* the

following conditions:¹

Revised Condition:

17. The non-transportation portion of the Adequate Public Facilities (APF) for the Preliminary Plan will remain valid until June 7, 2025.

New Condition:

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

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

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

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 the Plan Validity period on April 29, 2020. The Plan Validity period would have otherwise expired on June 7, 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.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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 June 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

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 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, 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 3 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.

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 7 years³ is 6 years.

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.

The requested extension is for 3 years, well below the 6 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.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is [Enter Date] (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal 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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 23, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board