

ELLSWORTH PLACE PRELIMINARY PLAN AMENDMENT NO. 11987190C



Description

Request to extend the approved Adequate Public Facilities validity period by 30-months (2.5-years) per Section 50.4.3.J.7.d of the Subdivision Ordinance, with Waiver of 60% construction requirement of Section 50.4.3.J.7.d.i(c)(2).

No. 11987190C

Completed: 10-28-2022

MCPB

Item No. 7

11-10-2022

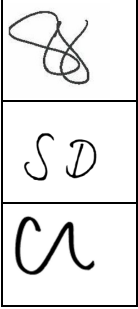
Montgomery County

Planning Board

2425 Reddie Drive, Floor 14

Wheaton, MD 20902

Planning Staff



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LOCATION/ADDRESS

Intersection of Colesville Road and Fenton Street

MASTER PLAN

Silver Spring CBD Master Plan

ZONE

CR-8.0, C-6.0, R-7.5, H-200T

PROPERTY SIZE

2.48 acres

APPLICANT

VIKA on behalf of Avante Ellsworth Ventures I, LLC

ACCEPTANCE DATE

June 20, 2022

REVIEW BASIS

Chapter 50



Summary:

- In 1988, the Planning Board approved Preliminary Plan 119871900 to allow the creation of one lot for up to 532,505 square feet of commercial uses, which was constructed in 1991, and known as Ellsworth Place Mall in Downtown Silver Spring.
- In 2007, the Planning Board approved Preliminary Plan Amendment No. 11987190A to increase the maximum square footage on the lot to 739,269 square feet consisting of 299,307 square feet of office and 439,962 square feet of retail space, including 91,772 square feet of cellar space which is not counted towards gross floor area (GFA).
- The 2007 Amendment included an Adequate Public Facility (APF) validity that will expire on November 16, 2022.
- The Applicant requests a 30-month (2.5-year) APF extension, with Waiver of Section 50.4.3.J.7.d.i(c)(2), to allow time to determine a more feasible development scenario for the Property given the ongoing changes in market demand.
- Staff supports the Subdivision Waiver request of Section 50.4.3.J.7.d.i(c)(2), as the Applicant continues to reinvest in the retail portion of the Property and has realized the retail portion of the mixed-use development, which is just shy of the 60% construction requirement, however the office portion has remained infeasible with current market demand.
- Staff recommends approval of the APF extension request and Waiver with conditions.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 11987190C

Staff recommends approval with conditions of the Preliminary Plan Amendment No. 11987190C, Ellsworth Place, to extend the approved Adequate Public Facilities validity period by 30-months (2.5-years) years per Section 50.4.3.J.7.d of the Subdivision Ordinance, with Waiver of 60 percent requirement of Section 50.4.3.J.7.d.i(c)(2). All site development elements shown on the latest electronic version of the Preliminary Plan No. 11987190C as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. All previous conditions of Preliminary Plan No. 119871900 as amended, remain in full force and effect except for Condition 9, which is modified below. In addition, there are two new conditions added:

Modified Condition

9. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for 30-months (2.5-years) ~~sixty one (61) months~~ from the date of mailing of the Planning Board Resolution for this Preliminary Plan Amendment No. 11987190C.

New Conditions

10. Prior to the certification of Preliminary Plan Amendment No. 119871910C, the Applicant must revise the phasing as identified in Preliminary Plan Amendment No. 119871910C.

11. Prior to the issuance of any permits for Phase III, the Applicant must submit and receive approval for an amendment to Site Plan Amendment No. 81988046F.

SECTION 2: SITE DESCRIPTION

VICINITY

The Site is located in the core of Silver Spring's Central Business District, which is characterized by office, retail, transit, and medium-density multi-family residential uses. The Silver Spring Transit Center is located to the southwest, and future Purple Line and station is located to the south of the Property at the Silver Spring Library.

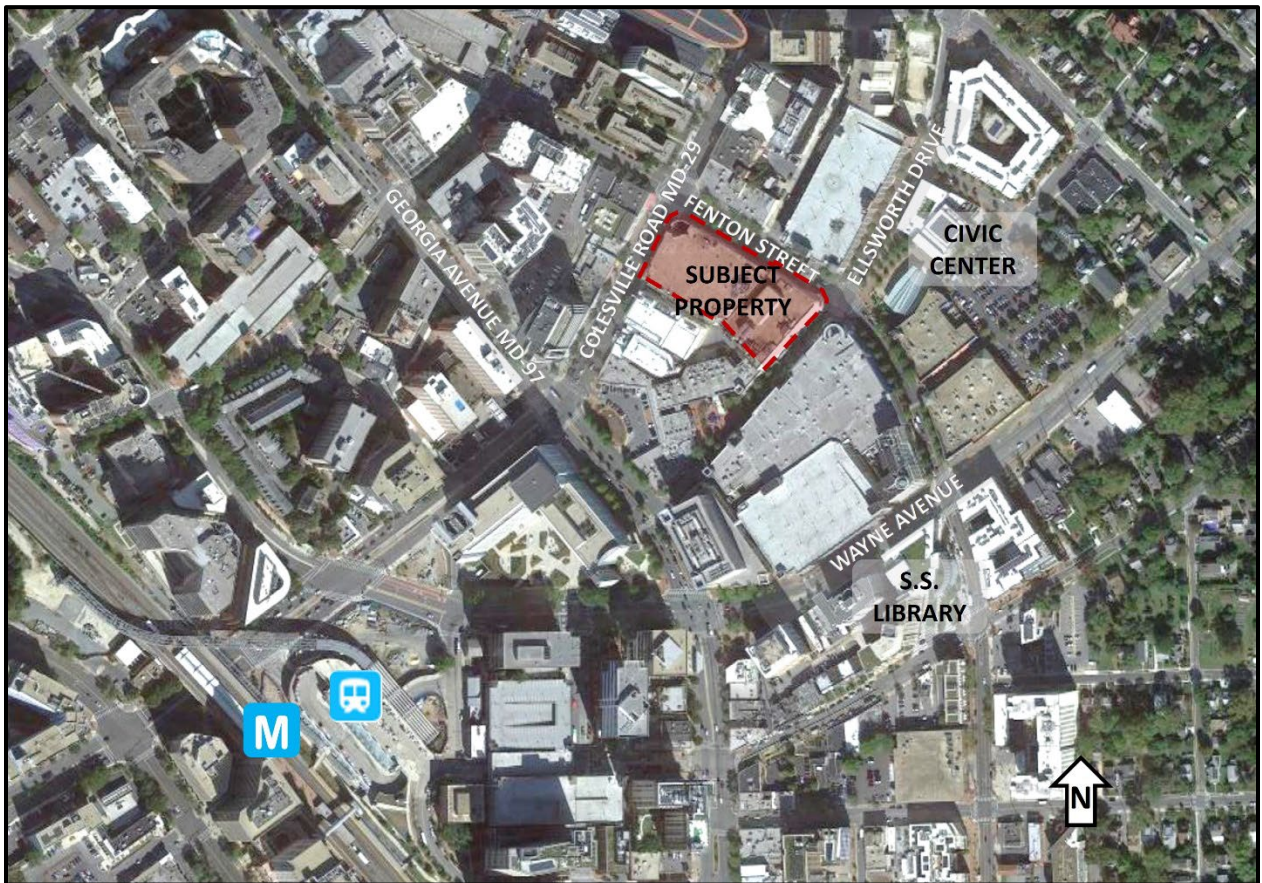


Figure 1 - Vicinity Map

PROPERTY DESCRIPTION

The Subject Property consists of one lot totaling 2.48 acres in size, as recorded on Plat No. 17983. The Property is located on the southeast corner of Colesville Road and Fenton Street, with frontage on Fenton Street and Ellsworth Drive, within the Central Business District of Silver Spring. The Site is

currently developed with a five-story structure totaling approximately 436,270 square feet of commercial uses known as Ellsworth Place.



Figure 2 – View of Subject Property on Fenton Street at Ellsworth Drive

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

In 1988, the Planning Board approved Preliminary Plan 119871900 to allow the creation of one lot for up to 532,505 square feet of commercial uses. The building was constructed in 1991. In 2007, the Planning Board approved Preliminary Plan Amendment No. 11987190A to increase the maximum square footage on the lot to 739,269 square feet consisting of 299,307 square feet of office and 439,962 square feet of retail space, including 91,772 square feet of cellar space which is not counted towards gross floor area (GFA). The 2007 Amendment included an Adequate Public Facilities validity set for 61 months from the date of the Planning Board Resolution (October 16, 2007).

The Montgomery County Council passed a series of automatic extensions to APF validity periods beginning in 2009, with the latest 2-year extension being passed in 2020. A summary of the extensions and its application to this project are provided in the table below.

Table 1 - Plan and APF Validity Period

Plan Name / Legislation	Action Type	Initiation / Effective Date	Incremental Validity Period	Expiration of Amended Validity
119871900	Preliminary Plan	--	--	--
11987190A	Preliminary Plan Am.	11/16/2007	5 years	11/16/2012
SRA No. 09-01	Legislation	4/1/2009	2 years	11/16/2014
SRA No. 11-01	Legislation	4/1/2011	2 years	11/16/2016
SRA No. 13-01	Legislation	4/1/2013	2 years	11/16/2018
SRA No. 15-01	Legislation	3/31/2015	2 years	11/16/2020
SRA No. 20-01	Legislation	7/28/2020	2 years	11/16/2022

PROPOSAL

The Applicant requests the Adequate Public Facilities validity be extended 30-months (2.5-years), as allowed per Section 50.4.3.J.7.d of the Subdivision Ordinance, with a Waiver of the 60% construction requirement of Section 50.4.3.J.7.d.i(c)(2). As summarized above, the current APF validity period expires on November 16, 2022 and the 30-month extension request would extend the validity period to May 16, 2025.

The Applicant states that current market conditions do not allow for the office tower to move forward within the established APF validity period, particularly given recent impacts to retail and office facilities due to the COVID-19 pandemic. If the extension is granted, the Applicant states the additional 30-months will be used to develop an approach, to complete the next phase of development.

PHASING

As required by the criteria established in Section 50.4.3.J.7.a.i of the Subdivision Ordinance, the Applicant provided a revised phasing plan, creating a third phase for realization of the commercial development. Preliminary Plan Amendment No. 11987190A included the following two-phase approach:

Phase I: total of 703,012 square feet consisting of 491,235 square feet of existing retail space including theater, and 211,777 square feet for the office tower, this includes 91,722 square feet of cellar space, which is excluded from gross floor area. The actual FAR totals 611,240 square feet without cellar space.

Phase II: conversion of the theater into two story office space with 439,962 square feet of retail and 299,307 square feet of office, for a total of 739,269 square feet (647,497 square feet after cellar space is reduced).

With this Preliminary Plan Amendment and APF extension request, the Applicant proposes to modify the previously approved phasing from 2 phases to 3 phases as follows:

Phase I (no change proposed): up to 491,235 square feet of existing retail space including potential theatre and a cellar space of 91,772 resulting in a gross floor area of 399,463 square feet.

Phase II: up to 491,235 square feet of development consisting of 439,962 SF of retail space, and up to 51,273 SF of office space, including a cellar space of 91,772 SF, maintaining a GFA of 399,463 SF. The theater may or may not be converted to office space in the future pursuant to this approval, but the footprint of the building will not change whether the theater is used as office space or retail space.

Phase III (new): completion of the approved maximum development of 739,269 square feet including up to 439,962 square feet of retail space (which includes 91,772 square feet of cellar space), and up to 299,307 square feet of office space.

As the development currently exists today it is within Phase II, the existing mall and office lobby have been constructed totaling 344,498 square feet of gross floor area (GFA). SDAT records show a total of 436,270 square feet of building, which includes 91,772 square feet of cellar space that by definition is not counted towards GFA.

SECTION 5: PRELIMINARY PLAN 11987190C FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 119871900, resolution mailed on October 26, 1988, to create one lot on the Subject Property for up to 532,505 square feet of development subject to conditions. On July 26, 2007, the Planning Board approved an amendment, Preliminary Plan Amendment No. 11987190A, resolution mailed on October 16, 2007 to allow an increase in density for a total of 739,269 square feet of development, including 91,772 square feet of cellar space.

Preliminary Plan Amendment 11987190C¹, this Application, requests to extend the validity period created by Preliminary Plan Amendment No. 11987190A by 30-months (2.5-years), and a Waiver of Section 50.4.3.J.7.d.i(c)(2). The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable, except as modified below.

3. Public facilities will be adequate to support and service the area of the subdivision.

d) Adequate Public Facilities Extension

¹ An application was accepted on July 1, 2020, assigned Preliminary Plan Amendment No. 11987190B, to request an APF extension and was subsequently withdrawn after the adoption of SRA No. 20-01 which automatically extended the APF validity period an additional two years.

50.4.3.J.7.a.i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.

The Application for Preliminary Plan Amendment No. 11987190C was accepted on June 30, 2022, prior to the APF validity period expiration on November 16, 2022.

ii. **The applicant must submit a new development schedule or phasing plan for completion of the project for approval.**

With this Preliminary Plan Amendment and APF extension request, the Applicant proposes to modify the previously approved phasing from 2 phases to 3 phases as follows:

Phase I: up to 491,235 square feet of existing retail space including potential theatre and a cellar space of 91,772 resulting in a gross floor area of 399,463 square feet.

Phase II: up to 491,235 square feet of development consisting of 439,962 SF of retail space, and up to 51,273 SF of office space, including a cellar space of 91,772 SF, maintaining a GFA of 399,463 SF. The theater may or may not be converted to office space in the future pursuant to this approval, but the footprint of the building will not change whether the theater is used as office space or retail space.

Phase III: completion of the approved maximum development of 739,269 square feet including up to 439,962 square feet of retail space (which includes 91,772 square feet of cellar space), and up to 299,307 square feet of office space.

As the development currently exists today it is within Phase II, the existing mall and office lobby have been constructed totaling 344,498 square feet of gross floor area (GFA). SDAT records show a total of 436,270 square feet of building, which includes 91,772 square feet of cellar space that by definition is not counted towards GFA.

The Applicant states the APF extension of 30-months (2.5-years) will allow the Applicant to determine how to move forward with Phase 3 given the changes in market demand. The Application has been conditioned to update the phasing within the Preliminary Plan sheets and requires the Applicant submit a Site Plan Amendment prior to the start of Phase III.

iii. **For each extension of an adequate public facilities determination:**

(a) the applicant must not propose any additional development above the amount approved in the original determination;

No additional development is proposed as part of this Preliminary Plan Amendment No. 11987190C, which remains at a maximum of 739,269 square feet (including the cellar space of 91,772 square feet).

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

No additional conditions are recommended for additional public improvements with this Preliminary Plan Amendment application.

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;

The Applicant is not proposing any additional or modifications to the approved density. A finding for adequate public facilities was made with approval of Preliminary Plan Amendment No. 11987190A. Projects within the vicinity of the Site requiring transportation impact analysis have included the approved but unbuilt density associated with this Site as a pipeline project, which was incorporated into background and total future scenarios of those transportation impact studies. The validity period for the Preliminary Plan Amendment is still valid and therefore a transportation impact study is not required as part of the Subject Application.

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and

The lot was approved for a maximum of 739,269 square feet of development including 91,772 square feet of cellar space, for a total FAR of 647,467 square feet.

(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

Not applicable, Preliminary Plan Amendment No. 11987190C allows up to 739,269 square feet (647,497 square feet gross floor area) of maximum density for commercial development including retail and office. No residential density was approved or proposed as part of this Amendment Application, therefore school adequacy does not apply.

b. The Board may approve an amendment to the new development schedule approved under Section 4.3.J.7.a.ii if the applicant shows that financing has been secured for either:

i. completion of at least one new building in the next stage of the amended development schedule; or

ii. completion of infrastructure required to serve the next stage of the amended development schedule.

All infrastructure required by Preliminary Plan Amendment No. 11987190A has been constructed and all financing satisfied. These include improvements required by the Montgomery County Department of Transportation (Condition No. 5 of Preliminary Plan Amendment No. 11987190A) related to street

standard upgrades to Fenton Street and Ellsworth Drive, sidewalks along Colesville Road, Fenton Street, and Ellsworth Drive, as well as streetscaping amenities along all frontages. These improvements are adequate to serve all future phases as well.

c. Exclusively residential subdivisions. The Board may extend a determination of adequate public facilities for an exclusively residential subdivision beyond the otherwise applicable validity period if the Department of Permitting Services has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Board may approve one or more extensions if the aggregate length of all extensions for the development does not exceed:

- i. 2.5 years for a subdivision with an original validity period of 7 years or less; or**
- ii. 6 years for a subdivision with an original validity period longer than 7 years.**

Not applicable, this approval is not for an exclusively residential subdivision.

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

- (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;**

Currently, per State of Maryland Department of Assessments and Taxation (SDAT), the existing square footage of the building totals 344,498 square feet of the approved 647,497 square feet of gross floor area. This totals 53.2% of the total approved gross floor area, in excess of the required 40%.

- (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**

Per Finding 4.3.J.7.b.ii above, all infrastructure required by Preliminary Plan Amendment No. 11987190A has been constructed.

(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 documented in the Table below, occupancy permits and/or final building permits inspections within the last four (4) years comprise at least 5% of the total gross floor area approved for the project. This is allowed when at least 60% of the total gross floor area of the development has been built or is under construction. The Applicant requests a Subdivision Regulation Waiver to allow this section to be applied to the Project while only 53% of the total gross floor area of the development has been built or is under construction.

Table 2 – Building and/or use and occupancy permits issued within last four years

DPS permit number	Date Issued	Date Finaled	Square Footage	Suite#/Tenant
838042	7/11/2018	9/11/2018	9,715 sf	C-107 (Five Below)
867065	3/13/2019	6/21/2019	3,415 sf	8661
895539	2/25/2020	7/28/2020	3,167 sf	B-103 (Don Pollo)
969785	1/13/2022	8/04/2022	17,506 sf	DSW
969504	5/18/2022	Under construction	13,224 sf	C-101 (Commas)
Total sf of Permits Issued/Finaled			33,803 sf (5.2%)	
Minimum requirement (5% of GFA)			Required 32,375 sf (5%)	
Gross Floor area approved			647,497 sf	
Gross Floor area built			344,498 sf	
% of Gross Floor area built			Required – 60% / Existing – 53.2%²	

Table 2 demonstrates that five building permits have been issued and four building permits have been finalized within the last four (4) years totaling 33,803 square feet or 5.2% of the total approved gross floor area. Further, as discussed below, a Waiver is being requested to reduce the 60% requirement of construction to 53%.

ii. For any development that consists of more than one preliminary plan, the requirements of 7.d.i apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.

Not applicable, the Subject Property is only subject to one preliminary plan, Preliminary Plan No. 119871900, as amended, and is not combined with any other project or site.

² The Applicant is seeking a Subdivision Waiver per Section 50.9.3 of the Subdivision Ordinance and discussed below.

iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:

(a) 2.5 years for a subdivision with an original validity period of 7 years or less; or

(b) 6 years for a subdivision with an original validity period longer than 7 years.

The Amendment requests a 30-months (2.5-years) extension of the APF validity period as limited by this Section of the Subdivision Ordinance. If approved, the validity period would be extended from November 16, 2022 to May 16, 2025.

Section 50.9.3 – Subdivision Waiver of Section 50.4.3.J.7.d.i(c)(2)

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 existing building, minus the Phase III office tower, is fully built-out and through the pandemic, the Applicant has worked to maintain tenants and renovate as necessary to accommodate a rapidly changing retail environment. The office market, however, is under even more strain and uncertainty given changing remote work and office design evolution. The continuing pandemic and office market uncertainty is exacerbated by rising interest rates and supply chain issues. Under these practical difficulties and unusual circumstances additional time is necessary to get a sense of future prospects to start construction. This additional time –30-months (2.5-years) of the APF validity – will not adversely impact public health, safety, and welfare as the existing building and operations have existed for many years and will continue to serve the community.

2. The intent of the requirement is still met.

The intent of the 60% provision is to ensure that buildings are being constructed in a timely manner and to a substantial extent. Ellsworth Place continues to invest in upgrades and modifications to retain and attract tenants in a very uncertain retail climate. While many of these upgrades such as exterior signage and façade improvements, are not reflected in built gross floor area, they are an important part of, and contribute to, Silver Spring’s vital downtown. The 53% of approved and built square footage is attributed to the retail component, however due to market demand, the remaining gross floor area attributed to office remains infeasible. For these reasons, Staff recommends approval of the waiver as it allows for continued investment as the office component is explored.

3. The waiver is:

a. The minimum necessary to provide relief from the requirements.

The request – allowing 53.2% of the approved gross floor area as the threshold rather than 60% - is the minimum necessary to provide relief from the requirements.

b. Consistent with the purposes and objectives of the General Plan.

The waiver is consistent with the General Plan that encourages mixed-use development in downtown, metro-accessible areas. Ellsworth Place is an excellent example of commercial development in difficult times for retail and non-residential buildings. This waiver supports continued investment in a vibrant downtown Silver Spring.

SECTION 7: COMMUNITY OUTREACH

A notice of the subject Amendment was sent to all required parties by the Applicant on October 4, 2022. The notice gave the interested parties 15 days to review and comment on the contents of the Amendment. Staff did not receive any correspondence regarding the Amendment.

SECTION 8: CONCLUSION

As conditioned, Ellsworth Place, Preliminary Plan Amendment Application No. 11987190C satisfies the findings of the Subdivision Regulations with Waiver of Section 50.4.3.J.7.d.i(c)(2), and substantially conforms to the recommendations of the 2000 *Silver Spring CBD Sector Plan*. Therefore, Staff recommends approval of Ellsworth Place, Preliminary Plan Amendment No. 11987190C and Waiver with modified Condition No. 9 and new Conditions No. 10 & 11 specified at the beginning of this report.

ATTACHMENTS

Attachment A: Prior Approvals

Attachment B: Statement of Justification



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications, Motion of Comm. Floreen, seconded by Comm. Keeney, with a vote of 4-0; Commissioners Floreen, Keeney, Hewitt and Christeller voting in favor, with Comm. Henry temporarily absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87190
NAME OF PLAN: CITY PLACE

On 8/4/87, PETRIE DIERMAN & PARTNERS submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-3 zone. The application proposed to create 2 lots on 2.46 acres of land. The application was designated Preliminary Plan 1-87190. On 8/11/88, Preliminary Plan 1-87190 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and upon evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87190 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended), including the Adequate Public Facilities Ordinance (Section 50-35(k)) pursuant to the guidelines for administration contained in the Annual Growth Policy, and approves Preliminary Plan 1-87190, subject to the following conditions:

1. Agreement with Planning Board limiting development to 298,455 square feet gross leasable area retail uses and 234,050 square feet office uses and requiring that Georgia Avenue/Colesville Road intersection improvements 1.A and 1.B from 8/8/88 Transportation Division memo be under construction prior to receiving building permit for office building
2. Execution of traffic mitigation agreement pursuant to the attached Transportation Management District conditions dated 10/20/88 prior to receiving any building permits
3. Dedication along Fenton Street 80' right-of-way except where existing building will remain. Applicant to provide covenant that remaining right-of-way will be dedicated if building is ever removed
4. Resolution of issues concerning use of existing alley prior to recording of plat

1-87190

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5. Conditions of DEP stormwater management waiver
6. Site plan approval prior to recordation
7. Necessary easements
8. Smaller lot to be re-recorded with note limiting use to that shown on site plan

Date of Mailing: October 26, 1988



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

MCPB No. 07-176
Preliminary Plan No. 11987190A
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on August 16, 2006, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would amend a previously approved preliminary plan that created one lot on 2.48 acres of land located in the southeast quadrant of the intersection of Colesville Road and Fenton Street ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11987001A, City Place ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated July 3, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]

 M-NCPPC LEGAL DEPARTMENT
 DATE 10/02/07

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

MCPB No. 07-176
Preliminary Plan No. 11987190A
City Place
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WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Bryant; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor; Commissioner Robinson absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 11987190A to amend a previously approved preliminary plan that created one lot on 2.48 acres of land located in the southeast quadrant of the intersection of Colesville Road and Fenton Street ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for 299,307 square feet of office space and 439,962 square feet of retail space, for a total building area of 739,269 square feet, including 91,772 square feet in cellar space.
- 2) Final approval of the number and location of buildings, site circulation, sidewalks, and other improvements will be determined at site plan approval.
- 3) No clearing, grading or recording of plats may take place prior to certified site plan approval.
- 4) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation ("DPWT") letter dated March 13, 2007, unless otherwise amended.
- 6) The Applicant must provide access and improvements as required by DPWT prior to recordation of the record plat.
- 7) At time of site plan approval, bicycle storage and other bicycle accommodations must be provided as recommended to encourage non-automobile transportation for the site.
- 8) Other necessary easements must be shown on the record plat.
- 9) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The Silver Spring Central Business District Sector Plan recommends that the Subject Property be zoned CBD-3, which was accomplished through a Sectional Map Amendment in July 2000. The proposed subdivision complies with the recommendation adopted in the sector plan in that three of the goals for revitalizing Silver Spring listed in the sector plan are supported by the project: a commercial downtown, a pedestrian-friendly downtown, and a transit-oriented downtown. The proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street. It will make the downtown more pedestrian-friendly by providing streetscape improvements.

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

According to the traffic study submitted in March 2007, the table below shows the number of peak-hour vehicular trips generated by the proposed land uses during the weekday morning and evening peak periods, 6:30 to 9:30 AM and 4:00 to 7:00 PM. Trips generated by the existing portion of the mall are accounted for in the existing traffic counts reported in the study.

Table 1 - Trip Generation of Additional development

Proposed Land Uses	Proposed	Weekday Peak-Hour Trips	
		AM	PM
Office	290,000 SF	406	406
Retail (Removal)	40,000 SF	- 20	-80
Total Vehicular Trips Proposed		386	326

In the traffic study, the table below shows the resulting Critical Lane Volume (CLV) values for the existing, background, and the total future traffic conditions. The background traffic condition includes existing traffic plus traffic generated by approved developments.

Table 2 - Results of Intersection Capacity Analysis

Intersection	Weekday Peak-Hour	Traffic Condition		
		Existing	Background	Total
1. Georgia Avenue (MD97) & Spring Street	AM	1,176	1,221	1,264
	PM	1,080	1,242	1,284
2. Georgia Avenue (MD97) & Cameron Street	AM	1,081	1,201	1,220
	PM	866	927	973
3. Colesville Road (US29) & Georgia Avenue (MD97/US29)	AM	1,372	1,423	1,436
	PM	910	961	963
4. Georgia Avenue (US 29) and Wayne Avenue	AM	1,196	1,281	1,290
	PM	1,301	1,349	1,367
5. Georgia Avenue (US 29) and Bonifant Street	AM	997	1,064	1,065
	PM	1,017	1,063	1,063
6. Georgia Avenue (US 29) and Silver Spring Avenue	AM	659	697	698
	PM	772	808	808
7. East-West Hwy (MD410) & Colesville Road (MD384)	AM	1,127	1,133	1,158
	PM	1,610	1,627	1,628
8. Colesville Road (US29) and Wayne Avenue	AM	880	902	906
	PM	792	814	832
9. Colesville Road (US29) & Fenton Street	AM	943	987	1,039
	PM	1,038	1,079	1,132
10. Colesville Road (US 29) and Spring Street	AM	1,123	1,251	1,294
	PM	1,248	1,289	1,343
11. Fenton Street and Cameron Street	AM	473	588	595
	PM	644	683	733
12. Fenton Street and Ellsworth Drive	AM	419	483	498
	PM	678	714	807
13. Fenton Street and Wayne Avenue	AM	842	888	907
	PM	1,060	1,102	1,111
14. Fenton Street and Bonifant Street	AM	684	707	710
	PM	849	874	889
15. Fenton Street and Thayer Avenue	AM	719	749	752
	PM	878	914	929
16. Spring Street and Cameron Avenue	AM	638	836	853
	PM	1,074	1,348	1,350
17 Cedar Street and Ellsworth Drive	AM	195	285	303
	PM	368	444	505

As noted in the table, the weekday peak-hour CLV at all of the study intersections are below the Silver Spring CBD Policy Area congestion standard of 1,800.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lot and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the CBD-3 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

The site contains no environmentally sensitive areas or natural resources, and the application is exempt from the Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("DPS") that the Stormwater Management Concept Plan meets DPS' standards.*

The Application is exempt from stormwater management requirements, based on a memo from DPS dated March 6, 2007.

BE IT FURTHER RESOLVED, that 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) 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 among the Montgomery County Land Records or a request for an extension must be filed; and

OCT 16 2007 BE IT FURTHER RESOLVED, that the date of this Resolution is (which is the date that this Resolution is mailed to all parties of record); and

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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).

* * * * *

At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 11987190A, City Place.



Royce Hanson, Chairman
Montgomery County Planning Board

Ellsworth Place (AKA City Place) APF Extension Request

ATTACHMENT B

VIKA Maryland, LLC
20251 Century Blvd.
Suite 400
Germantown, MD 20874
301.916.4100

vika.com

~~May 31, 2022~~

~~Revised August 30, 2022~~

Revised October 5, 2022

Montgomery County Planning Department

ATTN: Ms. Grace Bogdan
Planner Coordinator, Downcounty Area
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Adequate Public Facilities Extension & Subdivision Regulations Waiver Request for Ellsworth Place, Preliminary Plan 11987190C

Dear Ms. Bogdan,

On behalf of GBT Realty Corporation, the owner of Ellsworth Place (as Avante Ellsworth Ventures I, LLC) in Downtown Silver Spring, VIKA Maryland, LLC (VIKA) is submitting this request to extend the approved Adequate Public Facility (“APF”) validity period by two and one-half (2.5) years, as allowed under Chapter 50, Article II, Section 4.3.J.7.d of the Subdivision Regulations, for Preliminary Plan 11987190C, Ellsworth Place (previously named City Place). The current APF validity period expires on 11/16/2022. A previous request, given application number 11987190B, was withdrawn after the County Council provided an automatic 2-year extension due to the pandemic.

Associated with this APF extension, we are submitting a Subdivision Regulation Waiver Request under Division 50.9. Waivers from this Chapter. This justification summarizes the extension request findings and the waiver request.

In addition, Subsection 4.3.J.7.a.ii requires submission of a new development schedule or phasing plan for completion of project approval. The following section provides an updated phasing plan.

Approved Office Tower Phasing:

Phase I includes a total of 703,012 SF consisting of 491,235 SF of existing retail space including the theater, and 211,777 SF for the office tower. This also includes a cellar space of 91,772 SF. Thus, the actual FAR proposed is 5.7 or 611,240 SF.

Phase II includes potential conversion of the one-story theater space into a two-story office space with 439,962 SF of retail & 299,307 SF of office space, for a total of



739,269 SF. This results in an FAR of 6.0 or 647,497 SF because of the cellar space. The existing theater has a lease until April 30, 2012. Thus, it may not be possible to implement the complete Phase II portion until that time. However, this does not impact the exterior design or footprint of the building.

Revised Office Tower Phasing:

Phase I includes up to 491,235 SF of existing retail space including the theater and a cellar space of 91,772 SF resulting in a gross floor area (GFA) of 399,463 SF.

Phase II includes potential conversion of the one-story theater space into a two-story office space with up to 439,962 SF of retail space, including a cellar space of 91,772 SF, and up to 51,273 SF of office space, maintaining a GFA of 399,463 SF. The theater space is currently being leased for retail use and may continue as retail use. The theater may or may not be converted to office space in the future pursuant to this approval, but the footprint of the building will not change whether the theater is used as office space or retail space.

Phase III includes completion of the approved 739,269 SF of development including up to 491,235 SF of retail space, of which 91,772 SF is cellar space, with the remainder as office space resulting in a GFA of 647,497 SF.

Under the subsection 4.3.J.7.d.i, the Planning Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential development beyond the otherwise applicable validity period if three conditions 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.

With the minor waiver described below, the project has met each of these conditions, as described below.

Regarding subsection i.(a), the existing mall and office lobby have been constructed totaling 344,498 SF of GFA (total of 436,270 square feet built per tax records minus 91,772 Sf of cellar



area) of the total 647,497 square feet of approved GFA. This equals 53.2% of the total approved gross floor area, exceeding the required 40%. A copy of the tax records is submitted in support of this request as 32-SDAT-11987019C.

Regarding subsection i.(b), all infrastructure required by the conditions of the original preliminary plan approval have been constructed. These include the improvements required by DPWT (now DOT) under approved Preliminary Plan Condition No. 5: improving Fenton Street and Ellsworth Drive to the applicable street standards; providing sidewalks to the applicable standard street section along the frontages of Colesville Road, Fenton Street, and Ellsworth Drive; and streetscaping amenities along all of these frontages. Final Approval of DPS Permit No.326889 was signed 12/3/2014; a copy of this plan is submitted in support of this request as 32-PED PLAN-11987019C.

Regarding subsection i.(c)(2), building permits and use-and-occupancy permits have been issued for the project totaling at least 5% (32,375 square feet) of the approved total gross floor area of the project within the last 4 years (as of the date of the application, see list below). This is allowed when at least 60 percent of the total gross floor area approved for the project has been built or is under construction. As noted in the table, 53.2% (344,498 SF of the total approved 647,497 SF GFA) has been built. Because all the retail area is built out and the total is under 60% without room to expand until the office tower is built, a Subdivision Regulation Waiver is requested for this subsection.

Building or Use-and-Occupancy Permits Issued Within the Last Four Years

Permit #	Date	SF	Suite #/Tenant
838042	7/11/18	9,715	C-107 (Five Below)
867065/889068	3/13-9/25/19	3,415	8661
895539	2/25/20	3,167	B-103 (Don Pollo)
969785	1/13/22	17,506	DSW
969504	5/18/22	13,224	C-101 (Commas)
Total SF Permits Issued		47,027	SF
Min (5%) SF Permits Required		32,375	SF
Gross Floor Area Approved		647,497	SF
Gross Floor Area Built		344,498	SF
% Gross Floor Area Built		53.2	%

Under Section 50.9.3. Findings, the Planning Board may grant a waiver if it makes 3 findings. Each of these is listed and addressed below.

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 existing building, minus the Phase III office tower, is fully built-out and through the pandemic, the Applicant has worked steadfastly to maintain clients and renovate as necessary to accommodate a rapidly changing retail environment. The office market, however, is under even more strain and we are not likely to see the results



given changing remote work and office design evolution. The continuing pandemic and office market uncertainty is exacerbated by rising interest rates and turbulent labor and material forces. Thus, jumping into a volatile market is difficult to finance. Under these practical difficulties and unusual circumstances additional time is necessary to get a sense of future prospects to start construction. This additional time – 2.5 years of the APF validity – will not adversely impact public health, safety, and welfare.

2. *The intent of the requirement is still met.*

The assumed intent of the provision is to ensure that buildings are being constructed in a timely manner and to a substantial extent. Ellsworth Place continues to invest in upgrades and modifications to retain and attract tenants in a very uncertain retail climate. While many of these upgrades, such as exterior signage and façade improvements, do not show up as gross floor area, they are an important part of Silver Spring's vital downtown culture. The retail component, in particular, was fully constructed and tenant permits are pulled as new leases are signed. This extension will allow for continued investment as the office tower option is explored.

3. *The waiver is:*

a. *The minimum necessary to provide relief from the requirements.*

The request – allowing 53.2% of the approved gross floor area as the threshold rather than 60% - is the minimum necessary to provide relief from the requirements.

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

The waiver is consistent with the General Plan that encourages mixed-use development in downtown, metro-accessible areas. Ellsworth Place is an excellent example of commercial development in difficult times for retail and non-residential buildings. This waiver supports continued investment in a vibrant downtown Silver Spring.

Although GBT remains bullish on longer-term prospects for the project, and Silver Spring generally, market conditions do not allow GBT to construct the approved office tower within the approved validity period. And given recent impacts to retail and office facilities, the additional time is necessary to plan for the post-pandemic or endemic phase of the ongoing COVID-19 situation. GBT intends to use this time to develop an approach that it will bring to Staff and the Planning Board to complete the next phase of development. Between concept planning and the subsequent entitlement, certification, and permitting phases, though, GBT anticipates the need for the full 2.5-year extension allowed.





Figure 1: Existing Exterior Entrances

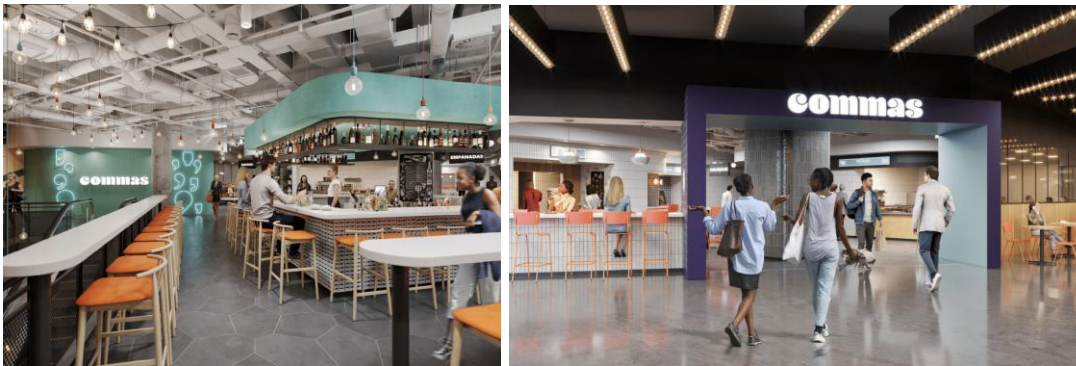


Figure 2: Proposed Commas Renderings

Accordingly, GBT respectfully requests approval of the validity period be extended to May 16, 2025. We appreciate your consideration of this request and are always available to respond to any questions.

Sincerely,

VIKA Maryland, LLC

Joshua Sloan

Joshua Sloan, RLA, ASLA, AICP
Vice President / Director of Planning & Landscape Architecture

cc: Fiona Haulter, GBT Realty Corporation

