

## SAUL CENTERS WHITE FLINT WEST

### PRELIMINARY PLAN AMENDMENT NO. 12016008A

#### Description

Request to extend the Preliminary Plan validity period by six (6) years which is set to expire on July 10, 2023 and extend the Adequate Public Facilities (“APF”) validity period phasing schedule by six (6) years which is set to expire on July 10, 2025 for Parcel A and July 10, 2030 for Parcel B; associated with a 2016 approval for redevelopment on the Site with up to 655 multi-family dwelling units and up to 204,000 square feet of non-residential uses.

No. 12016008A  
Completed: 5-5-2023

MCPB  
Item No.  
5-18-2023

Montgomery County  
Planning Board  
2425 Reedie Drive  
Floor 14  
Wheaton, MD 20902

## Planning Staff

Tamika Graham, Planner III, Midcounty Planning, Tamika.Graham@montgomeryplanning.org, (301) 495-4551

Matthew Folden, Supervisor, Midcounty Planning, Matthew.Folden@montgomeryplanning.org, (301) 495-4539

Carrie Sanders, Chief, Midcounty Planning, Carrie.Sanders@montgomeryplanning.org, (301) 495-4653



### SUMMARY

- The Applicant made a timely request to extend the validity periods for both the Preliminary Plan and the Adequate Public Facilities (“APF”) adequacy for the development. An APF validity period requires that all building permits for buildings on the recorded lots must be issued within the APF validity period established in the Resolution.
- The Applicant requests an extension of the Preliminary Plan validity period by six (6) years which is set to expire on July 10, 2023.
- The Applicant also requests an extension of the APF validity period phasing schedule by six (6) years which is set to expire on July 10, 2025 for Parcel A and July 10, 2030 for Parcel B.
- Per the Applicant’s statement of justification, market conditions have not been favorable for redevelopment leading up to and through the pandemic. The Applicant has indicated that the Project is still viable for financing and construction and the extension will allow the necessary time to validate the Plan.
- The required findings to grant a 6-year extension of the APF validity period from Section 50.4.3.J.7.d. are not satisfied. Therefore, the Applicant requests a Subdivision Regulation Waiver for extension of the Preliminary Plan APF validity from the construction progress timeframes identified in Section 50.4.3.J.7.d.i of the Subdivision Regulations.
- Staff recommends approval of the Preliminary Plan amendment with conditions and shorter extension deadlines than the Applicant proposes.
- No community correspondence has been received for this Application.

#### LOCATION

11520, 11560, and 11564 Rockville Pike

#### ZONE

CR-4.0, C-3.5, R-3.5, H-300

#### MASTER PLAN

2010 *White Flint Sector Plan*

#### PROPERTY SIZE

5.48 acres

#### APPLICANT

Metro Pike Center, LLC

#### ACCEPTANCE DATE

March 13, 2023

#### REVIEW BASIS

Chapter 50, Subdivision Regulations

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of Saul Centers White Flint West Preliminary Plan Amendment No. 12016008A to extend the Plan Validity Period and APF Validity Period. All site development elements shown on the latest electronic version of the Preliminary Plan Amendment 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 other conditions and findings of Preliminary Plan No. 120160080 as contained in the Planning Board's Resolution MCPB No. 16-001-dated June 10, 2016, that were not modified herein, remain in full force and effect.

### Modified Conditions

Condition No. 24 and No. 25 of Preliminary Plan No. 120160080, as modified herein (the deleted text is in strikethrough, new text is underlined):

~~24. The Property is within the Walter Johnson High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level for the multifamily high-rise with structured parking unit rate for all 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.~~

25. The Adequate Public Facilities (APF) validity period for the non-transportation elements of the approval for the residential uses is hereby extended and subject to the following phasing schedule:

~~Phase I— Issuance of building permits for Parcel A for 330 residential units, which must include 12.5 % MPDUs, within 84 months from the 30<sup>th</sup> day after the Resolution is mailed; and~~

~~Phase II— Issuance of building permits for Parcel B for 325 residential units, which must include 12.5% MPDUs, within 60 months from the expiration date of the Phase I validity period.~~

- a. Phase I – By July 10, 2028, the Applicant must obtain building permits for all buildings on Parcel A (330 residential units, which must include 12.5% MPDUs, and up to 15,500 square feet of non-residential uses), as shown on Certified Site Plan 820160030 unless an extension is obtained.

- b. Phase II – By July 10, 2033, the Applicant must obtain building permits for all buildings on Parcel B (325 residential units, which must include 12.5% MPDUs, and up to 188,500 square feet of non-residential uses), unless an extension is obtained.
- c. By July 10, 2033, the Applicant must obtain building permits for all remaining development in the Preliminary Plan. If the Applicant fails to comply with the deadline in this condition, the APF Preliminary Plan approval is revoked for that portion of the Subject Property that has not obtained building permits.

### **New Conditions**

- 28. Prior to submittal of the Certified Amended Preliminary Plan, the Applicant must Include the Amended Preliminary Plan resolution on the approval or cover sheet(s).
- 29. The Preliminary Plan will remain valid until July 10, 2026, and before the expiration date 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 filed.

## SECTION 2: SITE DESCRIPTION

### VICINITY

The 5.48-acre Property is a combination of three (3) lots (11520, 11560 and 11564 Rockville Pike) and generally located on the west side of Rockville Pike between Marinelli Road and Nicholson Lane, east of the proposed Woodglen Drive Extended, also known as the Metro Pike Shopping Center. The Property is in the “Metro West District” as identified by the 2010 *White Flint Sector Plan* (Sector Plan) and falls within a ¼-mile radius from the existing North Bethesda Metro Station entrance (formerly White Flint) at the intersection of Rockville Pike and Marinelli Road.

The Property is bounded on the west by The Grand -- a high-rise rental apartment building, and The Wisconsin -- The Grand’s companion high-rise condominium building. To the south, the Property is bounded by Nicholson Lane and a one-story retail building on a one-acre lot known as the Landow Property. To the north, it is bounded by Marinelli Road. Bethesda North Marriott Hotel and Conference Center are located on the north side of Marinelli Road. The neighborhood surrounding the Property has predominately commercial uses and includes retail shopping centers, midrise office buildings, auto-related uses, multifamily housing, and surface parking.

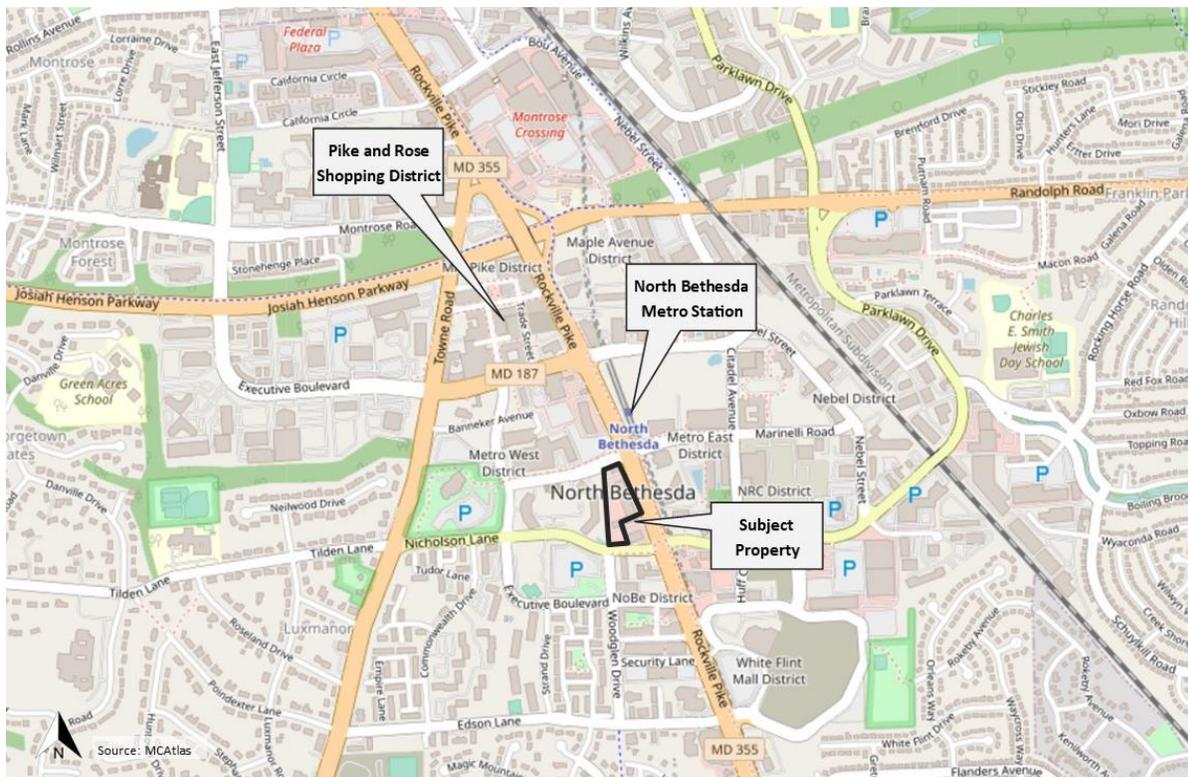
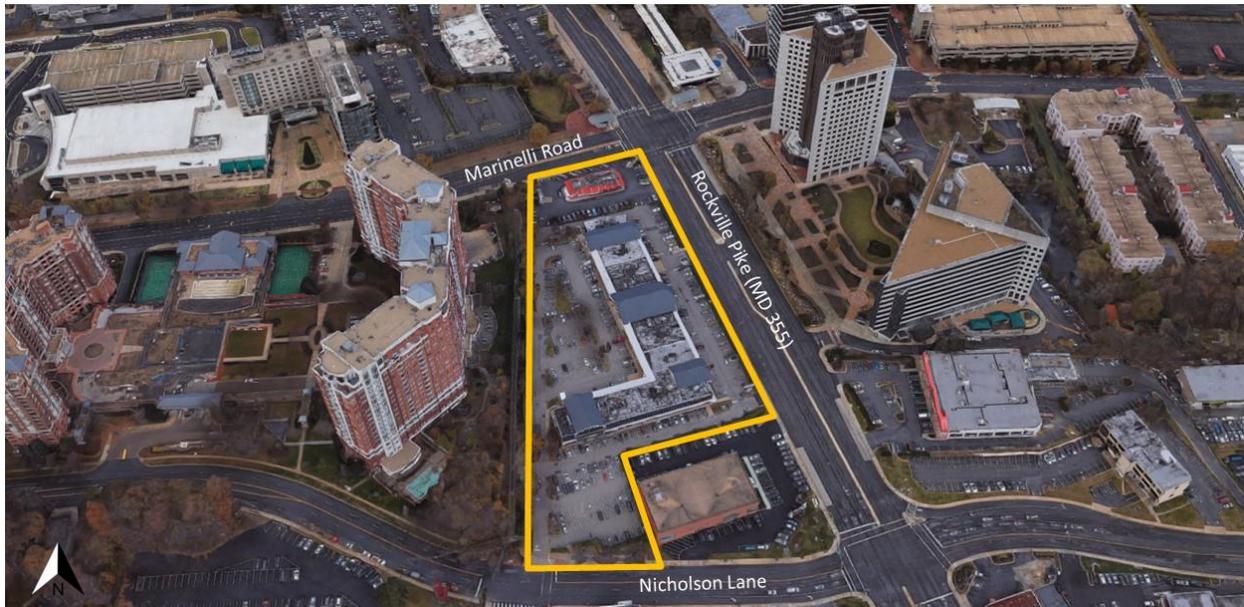


Figure 1: Vicinity Map

## PROPERTY DESCRIPTION

The Property is zoned Commercial Residential (CR) 4.0: C3.5, R3.5, H300 and is currently improved with approximately 66,000 square feet of a variety of retail stores in a two-story strip center, drive aisles, access roads, and a McDonald's with associated surface parking. In terms of topography, the Property generally slopes north to south with an elevated center. The Property is currently served by public water and sewer.



*Figure 2: Subject Property (outlined in orange)*

The Property is also situated within the White Flint Special Taxing District enacted by the Montgomery County Council Bill No. 50-10 on November 30, 2010. It is an *ad valorem* tax and uses the property taxes to fund mobility infrastructure required in the phasing recommendations of the *White Flint Sector Plan*. Therefore, in the *White Flint Sector Plan* area, there is no APF validity period for transportation.

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

#### NRI/FSD No. 420131570

Staff approved a Natural Resource Inventory/Forest Stand Delineation Plan (NRI/FSD No. 420131570) on May 29, 2013 and recertified that plan on June 29, 2015. There are no known rare, threatened, or endangered species on site; there are no forests, 100-year floodplains, stream buffers, wetlands, or other environmentally sensitive features on the Property, which is not within a Special Protection Area. The Subject Property lies within the Cabin John watershed (11564 Rockville Pike) and the Rock Creek watershed (11520 and 11560 Rockville Pike), which are State Use Class I streams. The Property has significant trees (between 24” and 30” diameter at breast height (DBH)) and specimen trees ( $\geq 30$ ” DBH). There are no known historic properties or features on the Property.

#### Sketch Plan No. 320140010

The Planning Board approved Sketch Plan No. 320140010 by MCPB Resolution No. 14-20 dated May 2, 2014, for two tracts of land separated by Rockville Pike (the tract on the west side of Rockville Pike is the Subject Property for the Preliminary Plan). The approval of the Sketch Plan voided the binding elements of the approved Development Plan No. G-860 and established several binding elements on the entire tract that can be modified by the Site Plan per Section 59-C-15.43(d) of the Zoning Code. The Sketch Plan approved a binding element of a maximum total density of 1,641,744 square feet of development including a minimum of 205,218 square feet of non-residential uses, with a maximum building height of 300 feet. Public benefits include the following: major public facility (bike share station), transit proximity, minimum parking, public parking, enhanced accessibility, structured parking, public open space, exceptional design, tree canopy, vegetated roof, cool roof, and building lot termination.

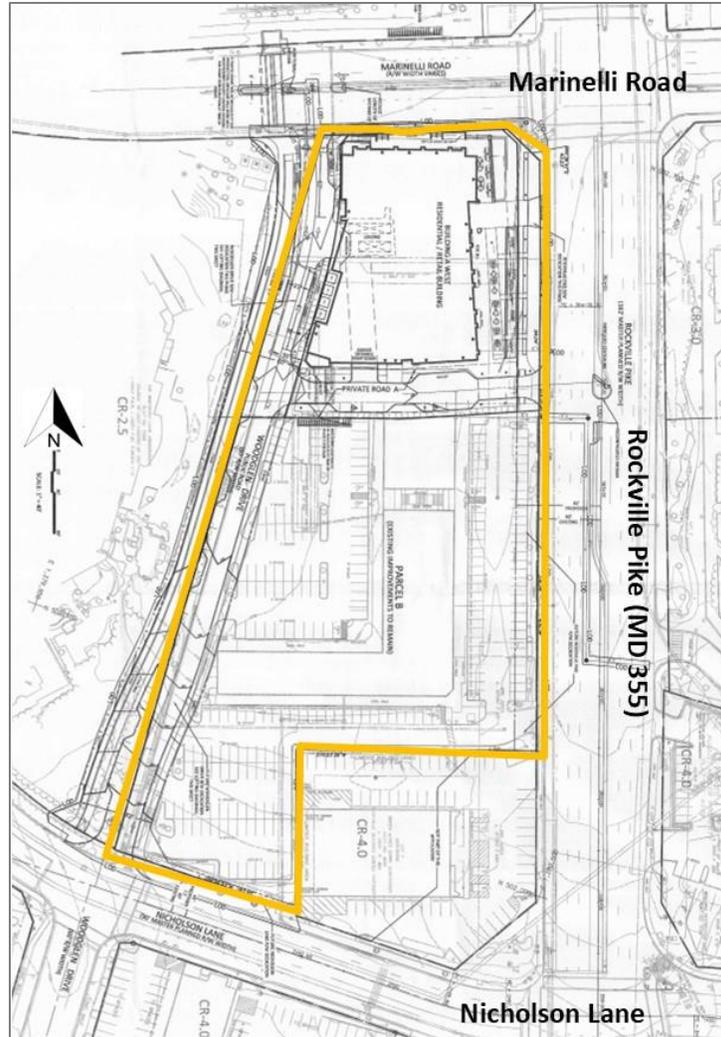
#### Pre-Preliminary Plan No. 720150080

Pre-Preliminary Plan No. 720150080 was accepted on February 3, 2015 and reviewed at the Staff level to discuss and achieve consensus between agencies on how to implement the proposed private road; how they should be delineated on any future preliminary plan, site plan, and record plat; and the timing of right-of-way dedication for Rockville Pike (MD 355) and Woodglen Drive.

Preliminary Plan No. 120160080

The Applicant received Preliminary Plan approval, as memorialized in the Planning Board Resolution MCPB No. 16-001 issued on June 10, 2016, to consolidate three (3) existing lots into two (2) new lots for up to 740,000 square feet of residential development with up to 655 multi-family dwelling units (including 12.5% of Moderately Priced Dwelling Units (MPDUs)), and up to 204,000 square feet of non-residential uses. A new platted lot (Parcel A) was created for the Site Plan development, establishing the right-of-way dedication for portions of Rockville Pike and the Woodglen Drive extension and providing a portion of the bicycle and pedestrian connections recommended along Woodglen Drive. Parcel A includes Private Road A, which provides a through connection from Woodglen Drive to Rockville Pike.

The Site Plan created a second new platted lot (Parcel B) for the existing improvements which will remain operational on that lot until Parcel B is ready for redevelopment. Right-of-way dedication for the portions of Rockville Pike and Woodglen Drive extension were not proposed for Parcel B at the time of the Site Plan application, because they overlap with the existing improvements and the required dedication would render them unusable. At such time that Parcel B is ready for redevelopment, an amendment to the Preliminary Plan will be required to dedicate the remaining portion of the Woodglen Drive extension, Rockville Pike, and Nicholson Lane rights-of-way, consolidate Parcels A and B into one new platted lot (Parcel C), and complete the necessary bicycle and pedestrian connections along Woodglen Drive and Nicholson Lane.



*Figure 3: Approved Preliminary Plan (Subject Property outlined in orange)*

The Site Plan created a new urban block bound by Rockville Pike (MD 355), Marinelli Road, Woodglen Drive, and Private Road A. The Applicant must dedicate and construct a portion of Woodglen Drive from Marinelli Road to Private Road A as part of Phase I. Vehicular access points will be from Rockville Pike and Woodglen Drive extended, and Private Road A will also provide vehicular access by providing a short private road connection between Woodglen Drive extended and Rockville Pike. The development is situated where master-planned pedestrian and bicycle facilities converge to provide access to the Metro Station. Woodglen Drive will have a two-way separated bike lane located adjacent to the sidewalk. With the implementation of the first phase, this facility will establish a portion of the separated bike lane and sidewalk along the west side of Woodglen Drive, which will connect to the existing bike lane and pedestrian facilities to the south of the development.

The Preliminary Plan approval also included required public use space and recreation facilities for the residential portion of the development.

### *Approved Validity Periods*

In 2016, the Planning Board approved a standard 60-month plan validity period along with an extended 7-year (Parcel A) and 12-year (Parcel B) APF Validity period subject to the phasing schedule contained in the original Preliminary Plan Application. Combined with County Council automatic extensions (via SRA 20-01, approved through Council Ordinance 19-12) the Property is subject to the following deadlines:

- Preliminary Plan Validity period: The Resolution established a validity period of 60 months from the initiation date (i.e., 30 days following approval of the Resolution). Based upon the automatic 2-year extension granted by County Council Ordinance No. 19-12 (as part of Subdivision Regulation Amendment No. 20-01), the Resolution requires that a Record Plat be recorded on or before July 10, 2023, to validate the Preliminary Plan.
- APF Validity Period Phasing Schedule: Condition No. 25 of the Preliminary Plan established the following APF validity period phasing schedule:
  - Phase I (Parcel A): The Resolution requires issuance of building permits for Parcel A for 330 residential units within 7 years (84 months) from the 30th day after the Resolution was mailed. Additionally, this APF validity period was automatically extended by two (2) years in accordance with County Council Ordinance No. 19-12; therefore, building permits for Parcel A must be issued prior to July 10, 2025.
  - Phase II (Parcel B): The Resolution requires issuance of building permits for Parcel B for 325 residential units within 12 years (144 months) of the 30th day after the Resolution was mailed. This APF validity period was automatically extended by two (2) years in accordance with County Council Ordinance 19-12; therefore, building permits for Parcel B must be issued prior to July 10, 2030.

### Site Plan No. 820160030

Submitted concurrently with Preliminary Plan No. 120160080, the Applicant filed Site Plan No. 820160030 for the 1.91-acre Parcel A (Phase I) in the northernmost portion of the 5.48-acre Property known as the Building A West Site Plan. The Applicant received Site Plan approval per Resolution MCPB No. 16-008 issued on August 23, 2016. The Plan entails the construction of Private Road A and a portion of the Woodglen Drive Extended from Marinelli Road south to the new Private Road A, which will serve as an east-west street. A large landscape median will be provided between Private Road A and a vehicular drive aisle that will facilitate circulation for the portion of the existing shopping center to remain. A condition of approval included interim landscape improvements along Rockville Pike until the implementation of the planned bus rapid transit. Future Site Plan approval is necessary for

the remainder of the development. As conditioned, prior to Site Plan approval for Parcel B and/or Phase II, the Applicant must amend the Preliminary Plan to address dedications, lotting, and phasing.

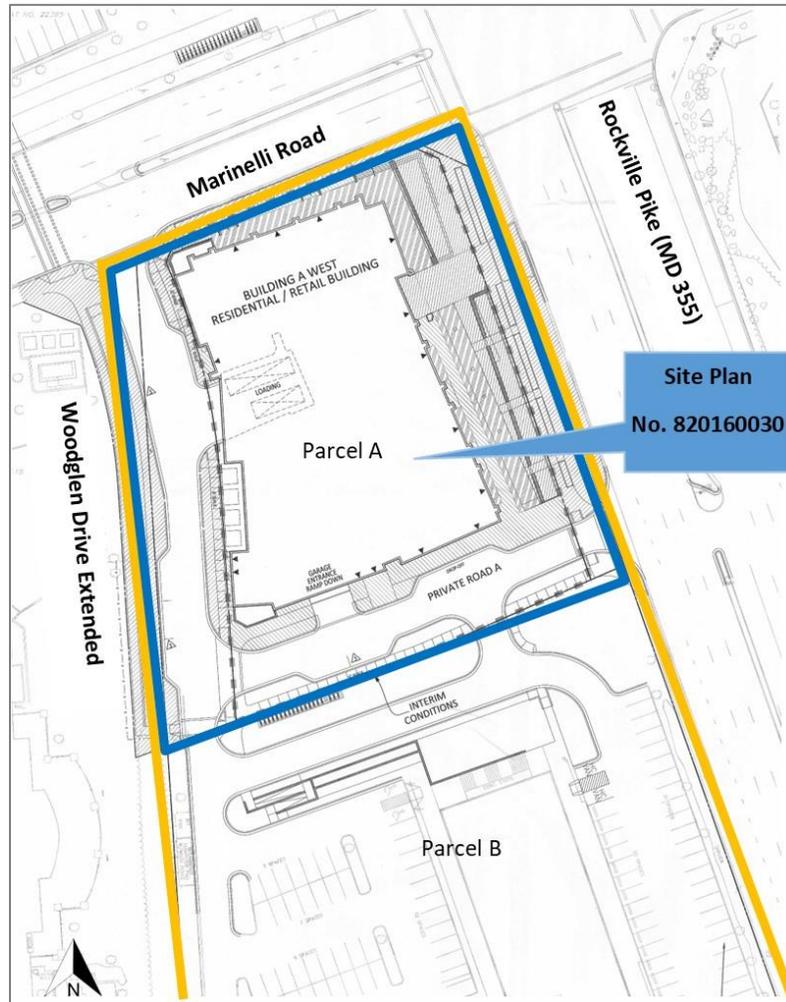


Figure 4: Approved Site Plan for Parcel A/ Phase I (outlined in blue)

## SECTOR PLAN STAGING

Based on the 2010 *White Flint Sector Plan*, new development in the plan area is subject to phasing caps. The Sector Plan and the 2011 *White Flint Sector Plan Implementation Guidelines* requires Planning Board approval of a Staging Allocation Request (SAR) prior to the submission of building permit applications. It states: “Any development approvals that predate the approval of this Sector Plan are considered to be in conformance with the Sector Plan. For such approvals, only the difference between the amount of the prior approval and any requested increase would be subject to the phasing caps.” (p. 69). County Council Resolution No. 17-213, adopted on July 19, 2011,

specifically exempts the Metro Pike Center (the Subject Property) with 247 dwelling units and 201,822 square feet of non-residential square footage from the Sector Plan’s phasing caps.

**PROPOSAL**

The Applicant requests approval to extend the Preliminary Plan validity period by six (6) years (currently to expire on July 10, 2023) and to revise existing Condition No. 25 to extend the Adequate Public Facilities (“APF”) validity period phasing schedule by six (6) years per phase (Phase I currently set to expire on July 10, 2025, and Phase II to expire on July 10, 2030). The Applicant’s requested extension dates are shown in the table below.

*Table 1: Existing and Requested Validity Expiration Dates*

|                                  | Expiration date based on previous Planning Board approval | Adjusted expiration based on Council countywide 2-year extension | Applicant’s requested extension expiration date |
|----------------------------------|---|--|---|
| Plan Validity                    | July 10, 2021   | July 10, 2023  | July 10, 2029                                   |
| APF Validity Phase I (Parcel A)  | July 10, 2023   | July 10, 2025  | July 10, 2031                                   |
| APF Validity Phase II (Parcel B) | July 10, 2028   | July 10, 2030  | July 10, 2036                                   |

As proposed, the Applicant’s extension request is effectively a combined total of 12 years for the APF validity period (Phases I and II).

## SECTION 4: PRELIMINARY PLAN 12016008A FINDINGS AND ANALYSIS

### PRELIMINARY PLAN VALIDITY PERIOD EXTENSION

The current Preliminary Plan validity period is set to expire on July 10, 2023, whereas the Applicant made a timely request for extension prior to this date.

Section 50.4.2.H of the Subdivision Regulations allows the Planning Board to consider the extension of Preliminary Plan validity. As part of an extension the Planning Board may only grant an extension to a Preliminary Plan the minimum amount of time it deems necessary to validate the plan (i.e., record plats), and it must only grant an extension to a Preliminary Plan that has a valid APFO, unless further extensions of the APF validity are allowed or pending. Additionally, per Section 50.4.2.H.3.a. the Planning Board must find 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 the validate the plan) would result to the Applicant if the plan were not extended.

Further, per Section 50.4.2.H.4.b, the Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame.

The Applicant's statement of justification (Attachment B) explains the delay is due to events after the Preliminary Plan was approved, beyond the Applicant's control and not caused by the Applicant. The Applicant states that "market conditions have not evolved as anticipated, in part due to significant, unusual and unanticipated events in the form of the pandemic, heightened construction costs, relatively flat rents and the more recent inflationary period being experienced across global capital markets, have delayed and substantially impaired Saul's ability to validate the Preliminary Plan." However, despite unforeseen delays and market conditions and challenges, the Applicant remains confident that the requested extension of time will help facilitate the implementation of the Project that will bring with it significant public improvements. The Applicant has indicated certainty that the Project remains viable and is capable of being financed, constructed, and marketed if the Preliminary Plan validity period is extended by six (6) years.

### Staff's Recommendation

Due to the explanation provided in the statement of justification and responses to review comments, Staff does not recommend that the Planning Board support the 6-year Preliminary Plan validity extension. The Applicant *may request* no more than 6 years based on *grounds for an extension* as required by the Subdivision regulations (Section 50.4.2.H.3). While the Applicant may request a waiver to grant an extension, the Board also has authority to determine the final number of years granted in the extension. Per Section 50.4.2.H.5.b *“If voting to approve an extension, the Board must only grant the minimum time it deems necessary for the applicant to validate the plan.”*

*Table 2: Existing and Recommended Preliminary Plan Validity Dates*

|                           | Expiration date based on 2016 Planning Board approval & Council extension | Applicant's requested extension expiration date | Staff's Recommended extension expiration date |
|---------------------------|---|---|---|
| Preliminary Plan Validity | July 10, 2023   | July 10, 2029                                   | July 10, 2026                                 |

Given the Applicant's reassurance of financial soundness to eventually proceed, Staff recommends that the Planning Board require the Applicant to validate the Preliminary Plan within three (3) years from the current expiration date, which is the minimum time deemed necessary and represents a good faith effort towards implementing the approved Phase I Site Plan.

Upon further coordination, the Applicant concurs that the validity period extension can be reasonably reduced to a timeframe that is the minimum necessary as required by the Code.

If the validity period is extended by 36 months or 3 years from the current expiration date, that would allow for coordination and sequencing between filing the record plat and seeking building permit for Phase A of the redevelopment. The Applicant's original plan validity approval was phased to have a maximum of 2 years between record plat and commencement of construction. A 3-year extension would maintain this same sequencing based on the recommended APF validity period extension dates.

A unique circumstance for the Applicant is that the Subject Property (Metro Pike Center) is currently an occupied retail center that is planned to continue to operate until redevelopment can commence. If the record plat is filed before a realistic construction timeframe can be identified, the Property would create non-conformities with the existing retail improvements and potentially require closing the retail center before tenant lease obligations can be fulfilled. The proposed plan validity extension will ensure a well-planned transition between the existing center and the new development.

This three (3)-year extension would afford the Applicant a total of 10-years to confirm their subdivision approval and enable them to file additional Preliminary Plan amendments and Site Plan(s), as necessary.

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#### ADEQUATE PUBLIC FACILITIES (APF) VALIDITY EXTENSION

The Applicant has submitted a request for extension of the APF validity period for up to six (6) years to allow building permits to be issued for the approved but undeveloped residential and commercial uses. The current two-phased APF validity period is set to expire on July 10, 2025 and July 10, 2030, respectively, whereas the Applicant made a timely request for extension prior to these dates.

This Application is being reviewed under Section 50.4.3.J.7 of the Subdivision Regulations which allows the Planning Board to extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the applicable validity period, pursuant to a series of findings. The extension is limited to 2.5 years for any subdivision with an original validity period of seven years or less, and six years for a subdivision with an original validity period longer than seven years.

To grant an extension of the APF validity period, the Planning Board must consider the following findings of Sections 50.4.3.J.7.a. (all application types) and 50.4.3.J.7.d. (nonresidential or mixed-use subdivisions):

#### **Section 50.4.3.J.7., Extensions.**

- a. Application. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.***
  - 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 expires.***

The current APF validity period is set to expire on July 10, 2025 for Parcel A and on July 10, 2030 for Parcel B. This Application was submitted to the Planning Department prior to these established expiration dates.

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

Under the approval of Preliminary Plan No. 120160080 and the Phase I Site Plan No. 820160030, the Applicant included a phasing schedule within their overall

Development Program. Per that approval, the development is expected to be delivered in two phases.

The Applicant proposes a new development schedule as follows: Phase I building permits by July 10, 2031, and Phase II permits by July 10, 2036. Under this schedule, the APF extension would be a combined total of a 12 years, whereas no more than 6 years may be considered by the Planning Board.

**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;**

The Applicant does not propose any development beyond what was approved in the original determination.

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

No additional public improvements are required to be provided by the Applicant.

**(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.**

Staff has not required the Applicant to submit a traffic study. The Property is in the White Flint Special Taxing District; therefore, only the non-transportation portion of the APF requirements (primarily school adequacy) apply to the Preliminary Plan.

**(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.**

Not Applicable.

**(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**

Based on the date this Application was submitted, it is subject to the 2020-2024 *Growth and Infrastructure Policy* (GIP) in effect. While the Property is not subject to transportation impact assessment because of the White Flint Special Taxing District, school capacity is applicable and must be retested with this Amendment.

This Project was approved for up to a total of 655 multi-family high-rise units that would generate more than 10 students at any school serving the development. Therefore, the FY23 Annual School Test, approved by the Planning Board on June 16, 2022 and effective July 1, 2022 is applicable to this Preliminary Plan Amendment application.

**SCHOOL ADEQUACY TEST**

The Project is served by Garrett Park Elementary School, Tilden Middle School, and Walter Johnson High School. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

*Table 3: Applicable FY2023 School Adequacy*

| School                         | Projected School Totals, 2026 |            |               |                  | Adequacy Status | Adequacy Ceilings |        |        |
|--------------------------------|-------------------------------|------------|---------------|------------------|-----------------|-------------------|--------|--------|
|                                | Program Capacity              | Enrollment | % Utilization | Surplus/ Deficit |                 | Tier 1            | Tier 2 | Tier 3 |
| Garrett Park ES                | 777                           | 722        | 92.9%         | +55              | No UPP          | 140               | 211    | 327    |
| Tilden MS                      | 1,216                         | 973        | 80.0%         | +243             | No UPP          | 369               | 487    | 669    |
| Walter Johnson HS <sup>1</sup> | 2,321                         | 2,121      | 91.4%         | +200             | No UPP          | 380               | 665    | 1,013  |

The school adequacy test determines the extent to which an Applicant is required to make a Utilization Premium Payment (UPP) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. Under the FY23 Annual School Test, Garrett Park Elementary School, Tilden Middle School and Walter Johnson High School do not require any UPP as identified in Table 3. If the Project is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

<sup>1</sup> Projected enrollment reflects the estimated impact of CIP P651908, which will reassign students between the Downcounty Consortium, Walter Johnson High School and Woodward High School in 2026.

**CALCULATION OF STUDENT ENROLLMENT IMPACTS**

To calculate the number of students generated by the Project, the number of dwelling units<sup>2</sup> is multiplied by the applicable School Impact Area student generation rate for each school level. With a net of 655 multifamily high-rise units that are not age-restricted, the Project is estimated to generate the following number of students based on the Property’s location within an Infill Impact Area:

*Table 4: Estimated Student Enrollment Impacts*

| Type of Unit  | Net Number of Units | ES Generation Rates | ES Students Generated | MS Generation Rates | MS Students Generated | HS Generation Rates | HS Students Generated |
|---------------|---------------------|---------------------|-----------------------|---------------------|-----------------------|---------------------|-----------------------|
| SF Detached   | 0                   | 0.195               | 0.000                 | 0.096               | 0.000                 | 0.139               | 0.000                 |
| SF Attached   | 0                   | 0.166               | 0.000                 | 0.091               | 0.000                 | 0.116               | 0.000                 |
| MF Low-rise   | 0                   | 0.059               | 0.000                 | 0.023               | 0.000                 | 0.032               | 0.000                 |
| MF High-rise  | 655                 | 0.034               | 22.270                | 0.015               | 9.825                 | 0.016               | 10.480                |
| <b>TOTALS</b> | <b>655</b>          |                     | <b>22</b>             |                     | <b>9</b>              |                     | <b>10</b>             |

As shown in Table 4, on average, this Project is estimated to generate 22 elementary school students, 9 middle school students, and 10 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 3, therefore no additional UPPs are required, and neither are partial payments across multiple UPP tiers.

- 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.***

The Applicant proposes a new development schedule as follows: Phase I building permits (completion of 330 residential units, which must include 12.5 % MPDUs,

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<sup>2</sup> Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

and up to 15,500 square feet of non-residential uses) by July 10, 2031, and Phase II building permits by July 10, 2036.

(As previously explained, under this schedule, the APF extension would be a combined total of 12 years, whereas no more than 6-years may be considered by the Planning Board.)

**Section 50.4.3.J.7.d., Nonresidential or mixed-use subdivisions.**

To grant an extension of the APF validity period, the Planning Board must consider the following findings of 50.4.3.J.7.d. However, the Applicant requests a waiver of the construction threshold timeframes identified in Section 50.4.3.J.7.d.i of the Subdivision Regulations. Details of the waiver are provided in the subsequent report subsection.

***i. The Board may extend a determination of adequate public facilities for a preliminary plan for non-residential 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 (GFA) for the project;***

Due to the status of the record plat filing and other preconstruction requirements, the Applicant has not pursued building permits for any of the approved gross floor area of the development.

***(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***

Infrastructure required by the Preliminary Plan conditions of approval has not been constructed by the Applicant, which includes transportation improvements, storm water management, and utilities. Public infrastructure improvements as part of the redevelopment project includes the dedication and construction of Woodglen Drive extended to establish a portion of the separated bike lane and sidewalk along the west side of Woodglen Drive, and the dedication and frontage improvements along Rockville Pike for improved sidewalks, bicycle facilities, and bus rapid transit.

***(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.**

To date, none of the Project has been built. Summarized from the Applicant's statement of justification (Appendix B), market conditions for the Property and the surrounding conditions were not favorable following the concurrent approval of the Preliminary Plan and Phase I Site Plan. In the years following, those unfavorable market conditions overlapped with "significant, unusual and unanticipated events in the form of the pandemic, heightened construction costs, relatively flat rents and the more recent inflationary period being experienced across global capital markets". The Applicant did not validate the Preliminary Plan prior to the existing expiration date and therefore unable to accomplish the construction of any units.

**ii. For any development that consists of more than one preliminary plan, the requirements for 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.

**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.**

Preliminary Plan No. 120160080 set a plan validity period of 60 months and an APF validity period of 84 months or 7 years (Parcel A) and 60 months or 5 years (Parcel B), for a total of 144 months or 12 years which is above the seven-year validity required for a longer extension period. Therefore, the Applicant is eligible for up to a 6-year extension of the APF validity period.

- iv. The extension expires if the Applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Board or the Director has approved a revision to the schedule or phasing plan.**

This finding is not applicable.

- v. In addition to the extension permitted under 7.d.iii, the Board may approve one or more additional extensions of a determination of adequate public facilities, not to exceed a total of 2.5 or 6 years, as applicable, if:**
- (a) Development that comprises 30% or less of the total approved gross floor area for the project remains to be built of either the entire approved development or the share of the development to be built by that applicant; or**
- (b) The applicant will commit to reduce the amount of unbuilt development by at least 10 percent, and the validity period for the amount to be reduced will expire as scheduled.**

Since more than 30% of the total approved project remains to be built and the Applicant has not provided a formal statement indicating a commitment to reduce the amount of unbuilt development by at least 10%, the Applicant does not qualify for an additional 6-year extension of the APF validity period beyond the maximum of six (6) years that may be granted. Additionally, the Applicant has not requested a waiver of this section of the Subdivision Regulations.

#### *Staff's Recommendation*

The Applicant is effectively requesting a combined total of a 12-year APF extension with 6 years for Phase I out to 2031 and 6 years for Phase II out to 2036, whereas up to a *maximum of 6 years total* may be considered. Following the same calculation logic of the original 12-year APF approval, the interim year for phasing must be subsumed within the 6-year period. The table below is provided to assist with the clarification. Staff recommends the 6-year maximum for the APF validity period as permitted for consideration per Section 50.4.3.J.7.d.iii.

Table 5: Existing and Recommended APF Validity Period Dates

|                                  | Expiration date based on 2016 Planning Board approval | Applicant’s requested extension expiration date* | Staff’s Recommendation for expiration dates* |
|----------------------------------|---|--|--|
| APF Validity Phase I (Parcel A)  | July 10, 2023<br>(84 months/ 7 yrs.)                  | July 10, 2031<br>(72 months/ 6 yrs.)             | July 10, 2028<br>(36 months/ 3 yrs.)         |
| APF Validity Phase II (Parcel B) | July 10, 2028<br>(60 months/ 5 yrs.)                  | July 10, 2036<br>(72 months/ 6 yrs.)             | July 10, 2033<br>(36 months/ 3 yrs.)         |
|                                  | 144 months/ 12 yrs.                                   | 144 months/ 12 yrs.                              | 72 months/ 6 yrs.                            |

\*Factors in the 2-year Council extension.

**SUBDIVISION WAIVER REQUEST**

As described above, the Applicant has not met the requirements of Section 50.4.3.J.7.d. of the Subdivision Regulations related to the minimum thresholds for infrastructure improvements and construction progress. Therefore, the Applicant requests a waiver from the findings of this section.

Per Section 50.9.3.A, a request for a waiver must be submitted to the Planning Board stating all facts supporting approval of a waiver. Further, the following findings must be satisfied:

**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;**

The Applicant is seeking deviation from the requirements associated with minimum percentages for issuance of building permits, remaining gross floor area to be built, and delivery of public infrastructure improvements. Considering the unusual circumstances cited by the Applicant, these thresholds could not be reasonably met, and the lack thereof does not pose any adverse impacts to the Property or the surrounding area at this time. The Subject Property is currently improved with approximately 66,000 square feet of a variety of retail stores in a two-story strip center, drive aisles, access roads, and a fast-food restaurant with associated surface parking. Additional improvements are not required to solely ensure the public health, safety, and general welfare. However, the implementation of the approved Project will deliver public infrastructure investments prioritized in the White Flint Sector Plan that will expand transit accommodations, revamp pedestrian and bicycle facilities, enhance vehicular circulation, add open space, and reduce building setbacks to improve the urban experience at the block level. More specifically, the Project will dedicate and construct Woodglen Drive extended, dedicate necessary right-of-way along Rockville Pike and construct

associated frontage improvements, and provide much needed housing. Therefore, by granting the waiver to approve the 6-year extension to the APF validity period phasing schedule, the public health, safety, and general welfare will be substantially advanced beyond the present circumstances with the completion of these improvements.

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

The requirements associated with minimum percentages for issuance of building permits, remaining gross floor area to be built, and delivery of public infrastructure improvements aims to ensure projects do not linger for unreasonable amounts of time without measurable progress. Further, the thresholds outlined in Section 50.4.3.J.7.d.i aim to indicate the practicability of a project to reach full completion. Circumstances outside of the Applicant's control has led to a temporary delay such as unexpected events in the form of the pandemic, unfavorable market conditions, and unprecedented construction costs. The Applicant has indicated that the Project remains capable of being financed, constructed, and marketed based on the timeframe of the requested extension. Therefore, by granting the waiver to approve the requested extensions to the APF validity period phasing schedule, the Project remains viable because the Applicant can proceed with filing record plats, filing additional Site Plan(s) as necessary, and satisfying other preconstruction requirements to finance and fully construct the Project as phased. Additionally, the transportation APF does not apply to this Project since it is subject to the White Flint Taxing District, and as demonstrated through the new FY2023 school adequacy test and utilization rates there is adequate school capacity. Therefore, the Applicant would not be withholding APF capacity from other projects.

**3. *the waiver is:***

***a. the minimum necessary to provide relief from the requirements; and up to 6 years would be the minimum necessary.***

With a 6-year extension, up to 3 years would be made available for Phase I and up to 3 years to complete Phase II. This new timeline accommodates Staff's recommendation to validate the Preliminary Plan as quickly as possible to maximize the APF extension time granted by the Board and still allow the Applicant time to meet existing obligation of their current tenants.

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

During the initial Preliminary Plan approval, the Planning Board found the Project to be consistent with the 2010 *White Flint Sector Plan*. Additionally, the Project is consistent with the purposes and objectives of the recently adopted Thrive Montgomery 2050 General Plan. A fundamental element for Thrive 2050 is promoting growth along major transportation corridors to maximize the efficient use of land and create Complete Communities. The Plan

specifically identifies the Rockville Pike (MD 355) corridor that connects several activity centers and considers this corridor appropriate for more intensive development. Infill and redevelopment along major corridors will retrofit outdated buildings, redevelop surface parking lots, create a finer-grained network of streets, and add gathering spaces that complement publicly-owned parks. Thrive 2050 also recommends retrofitting “centers of activity and large-scale older facilities such as shopping centers, abandoned federal campuses, office parks, and other single-use developments to include a mixture of uses and diversity of housing types and to provide a critical mass of housing, jobs, services, and amenities necessary for vibrant, dynamic Complete Communities.” Therefore, by granting the waiver to approve the requested extensions to the APF validity period phasing schedule, the redevelopment of the Subject Property along one of the County’s major corridors will implement the vision and objectives of both the Sector Plan and the Thrive 2050 General Plan.

### *Staff’s Recommendation*

Overall, the above noted waiver requirements have been met and the minimum necessary timeframe is being sought for APF validity period extension, and therefore the Planning Board’s approval is recommended.

As conditioned, the Applicant may return to the Board to request an additional extension should it be deemed necessary based on market conditions, and other unique but specific circumstances befallen to the Applicant in the coming years. At that time, the Applicant can address the necessary findings, not presently addressed, in the form of tangible progress and key milestones achieved for the Board to consider and potentially grant an extension that would be the minimum necessary.

## SECTION 5: COMMUNITY OUTREACH

### PUBLIC CORRESPONDANCE

The Applicant provided notice for the Application in accordance with the requirements set forth in the Administrative Procedures for Development Review and the Zoning Ordinance. A pre-submission public meeting is not required for this Application. At the time of the report posting, Planning Staff has not received any public correspondence on this Application.

## SECTION 6: CONCLUSION

### RECOMMENDATION

Based on the analysis above and conditions at the beginning of this report, Staff recommends approval of a three (3)-year extension of the Preliminary Plan validity from the current date of July 10, 2023, and to expire on July 10, 2026, and a six (6)-year extension of APF validity period to expire on July 10, 2036. The minimum timeframe recommended by Staff is intended to be sufficient considering the scope of the concurrent Site Plan with the infrastructure that is necessary to support construction of one building. Unless specially 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. This Application meets all the applicable requirements established in the Montgomery County Code, Chapter 50, the Montgomery County Subdivision Regulations per Sections 50.4.3.J.7.a. and 50.4.3.J.7.d., and substantially conforms with the recommendations of the applicable Sector Plan. Staff recommends approval of Preliminary Plan Amendment No. 12016008A with the revised conditions listed at the beginning of the Staff Report.

### ATTACHMENTS

Attachment A: Prior Approvals

Attachment B: Applicant's Statement of Justification

# Attachment A



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

JUN 10 2016

MCPB No. 16-001  
Preliminary Plan No. 120160080  
Saul Centers White Flint West  
Date of Hearing: June 2, 2016

## RESOLUTION

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

WHEREAS, on October 20, 2015, Metro Pike Center LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision to consolidate three existing lots into two, for up to 740,000 square feet of residential uses for up to 655 dwelling units, and up to 204,000 square feet of non-residential uses, and a private road on approximately 5.48 acres of land in the CR 4.0: C 3.5, R 3.5, H 300 Zone, located in the southwest quadrant of the intersection of Rockville Pike and Marinelli Road at 11520, 11560, and 11564 Rockville Pike ("Subject Property"), in the *2010 White Flint Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160080, Saul Centers White Flint West ("Preliminary Plan" or "Application"); and

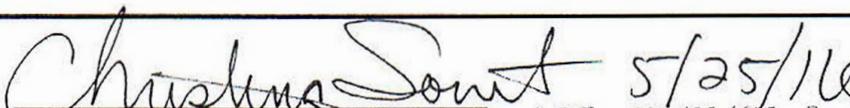
WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated May 23, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 2, 2016, 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 as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120160080 to consolidate three lots into two for up to 740,000

Approved as to  
Legal Sufficiency:

A handwritten signature in black ink that reads "Christina Sout" followed by the date "5/25/16".

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

square feet of residential uses for up to 655 dwelling units, and up to 204,000 square feet of non-residential uses, and a private road, subject to the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to two (2) lots for a maximum of 740,000 square feet of residential development for up to 655 dwelling units, of which a minimum of 12.5% must be Moderately-Priced Dwelling Units (MPDUs), and up to 204,000 square feet of non-residential uses.
- 2) Prior to Site Plan approval for Parcel B and/or Phase II, the Applicant must amend the Preliminary Plan to address dedications, lotting, and phasing as shown on the Preliminary Plan.
- 3) The Applicant must comply with the conditions of approval of the Preliminary Forest Conservation Plan No. 120160080 and variance request:
  - a. The Final Forest Conservation Plans must be consistent with the Preliminary Forest Conservation Plan.
  - b. Prior to issuance of the final Use and Occupancy permit, the Applicant must plant three 4-inch caliper native shade trees as mitigation for the removal of protected specimen trees with the timing specified by the Site Plan. All mitigation trees must be located at least 5 feet outside of any stormwater management areas, and outside of the public right-of-way.
- 4) The Applicant must submit a noise analysis to be reviewed for uses associated with each subsequent site plan.
- 5) The Applicant must participate in the White Flint Special Taxing District, and make the required special taxing district payment, which will constitute APFO approval for transportation.
- 6) The Applicant must provide Private Road A, subject to the following conditions:
  - a. The Private Road must be shown as a 48-foot-wide Private Road Easement, or Staff approved equivalent, on the record plat within the proposed lot (Parcel A). The terms of the Easement must include design, construction, operations and maintenance of the Private Road, which is subject to approval by the M-NCPPC Office of General Counsel and must, at a minimum, meet the conditions specified by the subsequent Site Plan and be recorded in the Land Records with the Liber and Folio referenced on the record plat.
  - b. The Private Road must be designed and constructed according to the Montgomery County Road Code Standard MC-2005.01 per the modified

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<sup>1</sup> 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.

- typical section specified by the subsequent Site Plan. Prior to recordation of the plat, the Applicant must provide certification to MCDPS by a structural engineer that the Private Road has been designed to these specifications.
- c. The Private Road must also provide for other necessary improvements as required by the subsequent Site Plan, including sidewalks, bikeways, storm drainage facilities, stormwater management, street trees and street lights.
  - d. The Private Road must meet all necessary Montgomery County Department of Fire and Rescue Service (MCDFRS) requirements for emergency access.
- 7) The Applicant must dedicate (or in the case of Woodglen Drive dedicate and facilitate dedication by others) and show on the record plat(s) (with frontage dedicated with the record plat following site plan approval for each phase of development) the following dedications:
- a. Approximately 21 feet for a total right-of-way (ROW) of 81 feet from the centerline along the Property's Rockville Pike frontage in two phases as shown on the Preliminary Plan;
  - b. Approximately 5 feet for a total ROW of 45 feet from the centerline along the Property's Nicholson Lane frontage in the second phase as shown on the Preliminary Plan; and
  - c. In conjunction with dedication to be made by the adjacent property owner to the west, approximately 60 to 72 feet, in two phases, as shown on the Preliminary Plan, along Woodglen Drive Extended consisting of:
    - i. The ROW for Woodglen Drive as part of the record plat for the Woodglen Drive frontage associated with Parcel A and/or Phase I as shown on the Preliminary Plan (including ROW from the property owner to the west per previous agreement).
    - ii. The ROW for Woodglen Drive as part of the record plat for the Woodglen Drive frontage associated with Parcel B and/or Phase II as shown on the Preliminary Plan (including ROW from the property owner to the west per previous agreement).
- 8) Prior to the release of any building permit, the Applicant must enter into a Traffic Mitigation Agreement with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to participate in the North Bethesda Transportation Management Organization (TMO), as required by the *White Flint Sector Plan*, to help achieve the Sector Plan's recommended non-auto driver mode share of 34%.

- 9) The Applicant must construct all protected bike lanes (cycle tracks), sidewalks, and roads as shown on the Certified Preliminary Plan according to the timing established by subsequent Site Plan approvals.
- 10) The Applicant must construct the protected bike lane (cycle track) along the Property's Nicholson Lane frontage with the final alignment, design, and timing to be determined during review of the subsequent Preliminary Plan Amendment and Site Plan(s).
- 11) The Applicant must provide a separate pedestrian and bicycle crossing of Marinelli Road on the west side of Woodglen Drive Extended within existing ROW, with final design and alignment (including whether crossing is separate) to be determined by MCDOT and the M-NCPPC Staff. Final crossing must be shown on the Certified Site Plan.
- 12) The Applicant must provide ROW truncation of at least 10 feet on the east side of Woodglen Drive at the intersection of Woodglen Drive and Marinelli Road. The Applicant must not reduce the truncation by more than 15 feet from the typical requirement of 25 feet.
- 13) The Applicant must provide ROW truncation of at least 14 feet on the south side of Marinelli Road at the intersection of Marinelli Road and Rockville Pike. The Applicant must not reduce the truncation by more than 11 feet from the typical requirement of 25 feet.
- 14) The Applicant must coordinate with MCDOT and the M-NCPPC Staff regarding Rockville Pike cross-section and the following planning efforts:
  - a. MCDOT's Capital Improvements Program (CIP) Project No. 501116, White Flint West Workaround regarding Rockville Pike cross-section between Flanders Avenue and Hubbard Drive.
  - b. The functional-master-planned Bus Rapid Transit Corridor No. 4 MD 355 South and its station near the White Flint Metrorail Station.
- 15) The Applicant must provide a 19-dock bikeshare station (52 feet by 6 feet, with an additional 6 feet of clearance) on the Subject Property and south of Private Road A, unless an alternate size bikeshare station and/or location is approved by MCDOT.
- 16) The Planning Board accepts the recommendations of the Maryland State Highway Administration (SHA) in its letter dated January 20, 2016, 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.

- 17) The Planning Board accepts the recommendations of the MCDOT in its letter dated May 5, 2016, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 18) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 19) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter dated April 22, 2016, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 20) The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Service – Fire Code Enforcement Section in its letter dated February 18, 2016, 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 Montgomery County provided that the amendments do not conflict with other conditions of Preliminary Plan approval.
- 21) Prior to the recordation of any plat, Site Plan No. 820160030 must be certified by the M-NCPPC Staff.
- 22) No clearing or grading of the site, or recording of plats are permitted prior to Certified Site Plan approval.
- 23) In the event that a subsequent site plan and/or site plan amendment approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration, ROW width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the Site Plan.

- 24) The Property is within the Walter Johnson High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level for the multifamily high-rise with structured parking unit rate for all 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.
- 25) The Adequate Public Facilities (APF) validity period for the non-transportation elements of the approval for the residential uses is subject to the following phasing schedule:  
Phase I – Issuance of building permits for Parcel A for 330 residential units, which must include 12.5 % MPDUs, within 84 months from the 30<sup>th</sup> day after the Resolution is mailed; and  
Phase II – Issuance of building permits for Parcel B for 325 residential units, which must include 12.5% MPDUs, within 12 years from the 30<sup>th</sup> day after the Resolution is mailed.
- 26) The record plat must show necessary easements.
- 27) 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 by the Site Plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.

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 Sector Plan.*

The Application is in substantial conformance with the recommendations of the Sector Plan. The Property is located in the Metro West District (Block 3: Holladay) and is identified in the Sector Plan as the Holladay property, after the name of the previous property owner. The Sector Plan states that the "Wisconsin and The Grand multifamily developments reflect earlier success with high-rise residential development, while the [proposed] Holladay development along Rockville Pike represents the type of mixed-use

envisioned in this Sector Plan. There is already substantial residential development in this block and redevelopment should focus on employment and retail uses” (p.29).

#### Density and Building Height

The Sectional Map Amendment, approved and adopted subsequent to the Sector Plan, rezoned the Subject Property to the CR-4: C3.5, R3.5, H300 Zone. While the Sector Plan’s zoning recommendations focus on employment and retail use, the Zoning Ordinance provides the flexibility for a redevelopment project to be predominantly residential in response to market demands. The Application proposes a total of 3.87 FAR on the 5.48-acre site (approximately 0.85 Non-Residential and 3.02 Residential), and 300-foot height for Building A, which are consistent with the Sector Plan’s recommendation and the CR Zoning for the Property.

#### Transportation Network

The street network, as shown on the Preliminary Plan, is consistent with Sector Plan recommendations and the 2010 *White Flint Urban Design Guidelines* (“Design Guidelines”).

Along Rockville Pike (M-6), the Sector Plan envisions the reconstruction of Rockville Pike (MD 355) into an urban boulevard with improved pedestrian sidewalks, on-road bicyclist accommodation, and bus priority lanes (p.53). Rockville Pike is designated as a six-lane divided major highway, with a recommended 162-foot wide right-of-way. The 2013 *Countywide Transit Corridors Functional Master Plan* recommends two-lane median BRT treatment for the MD 355 South Corridor within the Sector Plan area. The MCDOT and SHA will conduct future design studies for this Corridor. The Applicant is dedicating 21 feet along the Property’s frontage for a total 81 feet from the centerline of Rockville Pike.

Woodglen Drive Extended along the Property frontage is designated as a two-lane business district street, B-3, with a 60-foot wide right-of-way, and a shared use path, SP-41. Along this frontage, ROW dedication of 60 to 72 feet from the opposite right-of-way line is required since the ROW widens as Woodglen Drive Extended approaches Nicholson Lane in order to align with the existing segment of Woodglen Drive south of Nicholson Lane. The Applicant is providing the 60-foot wide ROW for Woodglen Drive with dedication from the Site. The adjacent property on the west side of Woodglen Drive has already placed the required ROW in escrow, which will be used to widen Woodglen Drive Extended by this Applicant. Dedication for the northern most portion of Woodglen Drive between Marinelli Road and Private Road A will occur with Phase I of this Application. In order to permit the existing improvements on Parcel B to remain operational, dedication for the remaining Woodglen Drive will occur during a consolidation of Parcel A and Parcel B with the Site Plan(s) for Building B West and/or Building C West as part of the next phase of development. In Fall 2014, Montgomery County opened its first separated bike lane along Woodglen Drive between Nicholson

Lane and Edson Lane as a two-way bikeway along the western curb. The Applicant is required to continue this separated bike lane along Woodglen Drive as depicted on the Preliminary Plan.

Marinelli Road is designated as a four-lane business district street, B-6, with a 90-foot wide right-of-way, a shared use path, SP-41, on the north side, and a signed shared roadway (i.e., bike lanes without signage). While no dedication is required, Planning Staff and MCDOT reconsidered the Sector Plan's recommendation for bike facilities to ensure safety of bicyclists traveling from the separated bike lane on Woodglen Drive Extended to the White Flint Metro Station. In December 2015, the Planning Board reviewed the proposed separated bike lane network in White Flint, including Woodglen Drive Extended and Marinelli Road. This network will be incorporated into the Bicycle Master Plan that is currently in progress. On Woodglen Drive Extended, there is agreement to provide two-way separated bike lanes on the west side of the street, which will connect with the existing shared use path on the north side of Marinelli. Vehicles heading westbound on Marinelli Road will be able to make a left turn onto Woodglen Drive, but vehicles heading northbound on Woodglen Drive will be restricted to right turns only onto Marinelli Road to protect the bicyclists and pedestrians crossing Marinelli Road. On Marinelli Road, the design of the separated bike lanes depends on whether a traffic signal is provided at the intersection of Marinelli Road and Woodglen Drive Extended, which would facilitate a safe crossing for bicycling and walking. If the signal is approved, the separated bike lanes could be implemented as a two-way bikeway on the north side of the street or a paired, one-way bikeway on both sides of the street. If a traffic signal is not implemented, the separated bike lanes would be a two-way bikeway on the south side of the street.

Nicholson Lane is designated as a four-lane arterial, A-69, with the recommended 90-foot wide ROW, including bike lanes, BL-27, and the recreation loop on the south/opposite side. Dedication along Nicholson Lane will occur during a consolidation of Parcel A and Parcel B with the Site Plan(s) for Building B West and/or Building C West as part of the next phase of development. As part of the next phase of development, the Applicant is required to implement the bike facilities along the Subject Property's Nicholson Lane frontage. Currently, there is agreement to provide paired, one-way separated bike lanes on both sides of the street. However, final design will be determined at that time.

#### *Pedestrian and Bicycle Facilities*

The Applicant is required to provide the following pedestrian and bicycle improvements:

1. A 19-dock Bikeshare Station (52 feet by 6 feet area to be accompanied by an additional 6 feet of clearance) on the Subject Property south of Private Road A, unless an alternate size bikeshare station or location is approved by MCDOT;
2. The Sector-Planned recreation loop on the north side of Nicholson Lane as part of Phase II; and

3. Pedestrian and bike crossings at the intersections of Woodglen Drive Extended with Marinelli Road and Nicholson Lane.

### Private Streets

Private Road A is shown as a local street in Map 46 of the Sector Plan (p.51). The Design Guidelines (p.10) note that local streets might include:

- right-of-way of 60 feet or less;
- streetscape components (sidewalk paving, tree spacing, lighting) compatible with adjoining public streets;
- alternative roadway pavement materials;
- ground floor active uses;
- character elements to distinguish between neighborhoods;
- limited on-street parking;
- roadway width to be determined once streetscape requirements are met;
- may be implemented as private streets, subject to the provisions in the Sector Plan.

Private Road A is consistent with the recommendations in the Sector Plan and Design Guidelines. The right-of-way for Private Road A will be approximately 48 feet, and will be located within a private road easement. Streetscape components are consistent and compatible with the adjoining public streets, ground floor active uses in the form of ground floor retail along the eastern half of Private Road A, and limited on-street parking (approximately four spaces on the south side of Private Road A). Applicants are typically required to create separate parcel(s) for private roads in addition to a private road easement; however, in this case, the Applicant is proposing to provide an underground parking garage that would cross lot lines that would be created by the standard requirement creating separate parcels for private roads. MCDPS has determined that an impenetrable firewall would be required to accommodate the garage if a separate parcel is also required for Private Road A, since the structure would be crossing a right-of-way line, and, in effect, would connect two separate properties by a single structure. This would render the underground garage inefficient and infeasible in this urban setting. Therefore, the Planning Board is not requiring the Applicant to create a separate parcel for Private Road A (so that the underground garage can be one continuous space without firewalls), but Private Road A must be located in a Private Road Easement granted to M-NCPPC so that it will be a public street in all its functions and rights of the public to use it.

### Public Use

The public use spaces are consistent with the Sector Plan recommendations. The Sector Plan recommends a hierarchical public use space system in which each space contributes variety in function and setting (pg.20). The development provides an urban plaza and promenade with design elements that include public art, street furniture,

bicycle racks, planted areas, and way-finding devices to enhance the neighborhood experience of residents, workers, shoppers, and visitors.

### Environment

The Sector Plan contains several recommendations to create an environmentally sustainable district. Minimization of carbon emissions; reduction of energy through site design and energy-efficient buildings; improving air and water quality; and usage of environmental site design techniques are some of the Sector Plan's recommendations. The development provides vegetated and cool roofs throughout the development along with bio-filters and stormwater vaults.

### White Flint Urban Design Guidelines

The Preliminary Plan is in substantial conformance with the recommendations and objectives of the Design Guidelines, which provide specific recommendations for the Metro West and NRC districts. As shown on the Preliminary Plan, Building A West is consistent with the intent of the Design Guidelines. The Design Guidelines recommend to "locate and size taller building components to reduce the impact of their shadows on streets and public use spaces," and establish a build-to-line along Rockville Pike (p.29). Building A West is perpendicular to Rockville Pike, so it reduces shadows on Private Road A and the public use space at the intersection of Marinelli Road and Rockville Pike.

Therefore, the Preliminary Plan is in substantial conformance with the Sector Plan.

- 2. Public facilities will be adequate to support and service the subdivision.*

### Available Transit Service

The following bus routes currently operate along the property's adjacent roadways:

1. Ride On routes 5, 38, & 46 and Metrobus route J5 operate along the property frontage of Rockville Pike; and
2. Ride On routes 26 and 81 operate along the property frontage of Marinelli Road.

No transit routes operate along the Property's Nicholson Lane frontage. The White Flint Metrorail Station is across Marinelli Road at its intersection with Rockville Pike.

### Transportation Demand Management

This site is within the North Bethesda Transportation Management District (TMD). As a new development, the Applicant will be required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the North Bethesda Transportation Management Organization (TMO) and assist in achieving and maintaining the non-auto driver mode share goal of 34% recommended by the White Flint Sector Plan.

The Applicant is proposing one Bikeshare Station, and is providing the required bike parking under the CR zone. In addition, the following trip reduction measures should be considered as part of the TMAg:

1. Cooperate with the MCDOT and/or the TMO to obtain residential and non-residential tenant participation in TMD Annual Commuter Survey;
2. Provide permanent information displays in a highly used location in the lobbies of the buildings;
3. Provide space for real time transit information signs at highly-used locations;
4. Make a good faith effort to promote the Guaranteed Ride Home Program and any other emergency ride programs that are available in the region for commuters who carpool, vanpool, use transit, or other commuter options;
5. Provide carpool and vanpool parking spaces for retail employees;
6. Provide car sharing parking spaces in highly visible locations;
7. Provide electric vehicle charging stations in highly visible locations;
8. Cooperate with MCDOT and/or TMD in their implementation of marketing efforts designed to attract employees working on-site or nearby to purchase or rent housing within the subject development; and
9. Provide an annual summary report (only 1 to 2 pages) to MCDOT and/or TMO outlining the on-site traffic mitigation efforts.

#### Transportation Public Facilities Review

The Applicant is required to participate, and make the special taxing district payment required for the new development/impact tax district, in the White Flint Sector Plan area in lieu of satisfying the transportation APF test (i.e., the LATR and TPAR tests).

#### Phased Adequate Public Facilities (APF) Validity

The Applicant has requested the maximum APF Validity for the total 740,000 square feet of residential uses for up to 655 dwelling units on the Property. The Applicant has not requested a phased Validity Period, and will plat both Phase I (Parcel A) and Phase II (Parcel B) within the standard plan validity period of 60 months. Pursuant to Section 50-20(c)(3)(A)(iii) of the Subdivision Regulations, the Planning Board can make an APF determination for "no less than 7 and no more than 12 years after the preliminary plan is approved, as determined by the Board at the time of approval, for any plan approved on or after April 1, 2009, but before April 1, 2017." In accordance with Sections 50-20(c)(3)(B) and 50-34(g) of the Subdivision Regulations, the Applicant has provided the required phasing plan for completion of the project to the Planning Board for its approval. To allow a validity period longer than the minimum, the Planning Board must find that the extended validity period would promote the public interest.

#### *Applicant's Request*

The Applicant requests a 12-year (144 month) APF Validity Period subject to the following phasing schedule:

Phase I – Issuance of building permits for Parcel A for 330 residential units, which must include 12.5 % MPDUs, within 84 months from the 30<sup>th</sup> day after the Resolution is mailed; and

Phase II – Issuance of building permits for Parcel B for 325 residential units, which must include 12.5% MPDUs, within 12 years from the 30<sup>th</sup> day after the Resolution is mailed.

An APF Validity Period for commercial transportation impact is not applicable because the White Flint Special Taxing District replaced the PAMR and LATR requirements. However, school capacity is still subject to a determination of APF, because schools are not covered by the White Flint Special Taxing District. The extended validity period for the residential units requested above is common and typical of a large, mixed-use multi-phased project, and is consistent with the Subdivision Regulations. Furthermore, the Applicant would like additional time for the tenants in the existing commercial building to make plans before redevelopment of the remainder of the Property during Phase II occurs. The Planning Board agrees with the Applicant that the project is a larger multi-use development that will likely require several years to achieve full build-out, and that granting additional time for the existing building on Parcel B (Phase II) is a reasonable request. The Preliminary Plan approval will allow a maximum density of up to 740,000 square feet of residential uses for up to 655 dwelling units, and up to 204,000 square feet of non-residential uses, on 5.48 gross acres of land zoned CR4.0 C3.5 R3.5 H300. Allowing the longer APF Validity period promotes the public interest by better allowing this development to implement the approved sketch plan (Sketch Plan No. 320140010) and facilitate the recommendations contained in the White Flint Sector Plan, including the transformation of automobile dependent strip mall into a pedestrian friendly, transit-oriented, mixed-use, and urban area.

The road system, open space, and public benefits of the project are site-wide, extensive, and interrelated. The Planning Board agrees that granting additional time will promote the public interest and help achieve the goals and recommendations of the Sector Plan.

Because of the Special Taxing District in White Flint, transportation is not considered as part of the request for a longer APF and/or Plan Validity. Thus, the school test becomes the only APF consideration subject to a validity period. Otherwise, an APF Validity Period would not be necessary. Since the residential units are multi-family high-rise (which typically produce a low yield of school age children), the Planning Board believes that a longer APF Validity Period would not cause a burden on capacity of the local schools.

Based on the analysis above, the Planning Board finds the extended APF Validity Period as requested is desirable to facilitate the achievement of the goals and recommendations of the Sector Plan, which promotes the public interest.

Therefore, the Planning Board approves the requested 12-year APF Validity period subject to the phasing schedule contained in this Resolution.

#### Other Public Facilities and Services

Except for schools, other public facilities and services are available and will be adequate to serve the development. The site is served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the Property. Police stations, firehouses, and health services are currently operating within the standards set by the effective Subdivision Staging Policy. Pursuant to County Council Resolution 16-1324, adopted April 27, 2010, the Property is exempt from LATR and PAMR analysis because it is subject to payments under the White Flint Special Taxing District. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS), which has determined that the Property has adequate access for emergency vehicles.

The Subject Property is within the Walter Johnson High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the multi-family unit rate for all 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.

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

The Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations in the Sector Plan, and for the type of development and use contemplated. As conditioned, the lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the Sector Plan. Access and public facilities (with the exception of schools, which requires a Schools Facility Payment) will be adequate to serve the lots. 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.*

### Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420131570) on May 29, 2013 and recertified it on June 29, 2015. The Subject Property lies in the Cabin John watershed, with no forest, streams, or associated buffers on-site. The Application is in compliance with the Environmental Guidelines.

### Forest Conservation

The development is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan (PFCP) for the entire project in conjunction with the Preliminary Plan. PFCP 120160080 covers the entire Subject Property and associated off-site disturbance, with a net tract area of 5.44 acres. The Final Forest Conservation Plans (FFCP) related to the PFCP will be phased with the associated Site Plans. FFCP 820160030 covers all disturbance associated with demolition of the existing McDonalds and a portion of the existing retail development and development of Parcel A in the northernmost portion of the Property. It will include the construction of Private Road A and a portion of the Woodglen Drive extension from Marinelli Road south to Private Road A. The net tract area for FFCP 820160030 is 2.49 acres and reflects the disturbance associated with Phase 1. The remaining 2.95 acres of tract area will be included in future phases.

### Forest Conservation Variance

Section 22A-12(b) (3) of the Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request on September 24, 2015 for the impacts to one tree. The approved layout will remove one tree that is considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

Section 22A-21 of the County Code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. The Planning Board has made the following determinations and findings based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*  
Granting this variance will not confer a special privilege on the Applicant as removal of the specified tree is necessary to extend Woodglen Drive, a master-planned road.
2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*  
The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the Subject Property.
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*  
The requested variance is a result of the location of tree and the required extension of Woodglen Drive.
4. *Will not violate State water quality standards or cause measurable degradation in water quality.*  
The Applicant will plant three 4-inch caliper native shade trees to replace the form and function of the variance tree being removed.

#### *Mitigation for Trees Subject to the Variance Provisions*

The Applicant is requesting a variance to remove one tree. The tree, #10, 39" tulip poplar, will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree. The Applicant will plant three 4-inch caliper trees which are shown on the Final Forest Conservation Plan.

#### *County Arborist's Recommendation on the Variance*

The County Arborist has reviewed the variance request and recommended approval with mitigation.

#### Conclusion

The Planning Board finds that the Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Therefore, the Planning Board approves the Preliminary Forest Conservation Plan and the associated variance, with the conditions cited at the beginning of this report.

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

The Department of Permitting Services (DPS) issued an approval letter for a Stormwater Management Concept on April 22, 2016. The stormwater management

concept meets the required stormwater management goals via green roof, planter boxes, roadside micro bioretention, a stormfilter including a pretreatment structure and a separate storage vault and modifications to the existing underground 48" CMP storage structure.

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), 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 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 JUN 16 2016 (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 Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, June 2, 2016, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board

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

MS. LISA SCHWARTZ  
DHCA  
100 MARYLAND AENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MR. MARK BEALL  
MCDPS-ZONING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON  
MPDU MANAGER, DHCA  
100 MARYLAND AVENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ROBERT DALRYMPLE  
LINOWES AND BLOCHER  
7200 WISCONSIN AVE  
SUITE 800  
BETHESDA, MD 20814

[MONTE@LUKEFISHER.COM](mailto:MONTE@LUKEFISHER.COM)

SAUL CENTER

MR. GREG LECK  
MCDOT  
101 MONROE ST  
10<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ATIQ PANJSHIRI  
MCDPS-RIGHT-OF-WAY  
PERMITTING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

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

MR. ALAN SOUKUP  
MCDDEP-WATER & WASTEWATER POLICY  
255 ROCKVILLE PIKE  
SUITE 120  
ROCKVILLE, MD 20850

MR. CHARLES IRISH  
VIKA, INC  
20251 CENTURY BLVD  
SUITE 400  
GERMANTOWN, MD 20874

MR. MARK ETHERIDGE, MANAGER  
MCDPS-SEDIMENT/STORMWATER  
INSPECTION & ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

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

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

MR. BRIAN DOWNIE  
7501 WISCONSIN AVE  
SUITE 1500  
BETHESDA, MD 20814

MS. ANNE RANDALL  
WELLS & ASSOCIATES  
8730 GEORGIA AVE  
SUITE 200  
SILVER SPRING, MD 20910

# Attachment B

January 5, 2023

## VIA ELECTRONIC SUBMISSION

Mr. Jeff Zyontz, Chair  
and Members of the Montgomery County Planning Board  
Maryland-National Capital Park and Planning Commission  
2425 Reedie Drive, 14<sup>th</sup> Floor  
Wheaton, Maryland 20902

Re: Saul Centers White Flint West – Amendment to Preliminary Plan No. 120160080 (the “Preliminary Plan”)

Dear Chairman Zyontz and Members of the Planning Board:

On behalf of the Applicant, Metro Pike Center LLC (the “Applicant” or “Saul”), we hereby submit this amendment to the Preliminary Plan to request two (2) revisions to Planning Board Resolution MCPB No. 16-001 issued on June 10, 2016 (the “Resolution,” a copy of which is attached as Exhibit “A”) in order to extend the Preliminary Plan validity period by six (6) years and the Adequate Public Facilities (“APF”) validity period phasing schedule by six (6) years (the “Amendment”). As described below, since the Property is located in the White Flint Special Taxing District, only the non-transportation portion of the APF requirements (primarily school adequacy) apply to the Preliminary Plan. In this respect, the Applicant notes at the outset that all three (3) schools serving the Project (Garrett Park ES, Tilden MS and Walter Johnson HS) have sufficient capacity under the FY 2023 Schools Test such that approval of this Amendment will have no adverse impact on school adequacy.

Due to uncertain economic conditions and existing market demands that do not support the investment necessary to redevelop the Property in the near term, additional time is needed to validate the Preliminary Plan and satisfy the APF validity period phasing schedule. As explained in greater detail below, significant, unusual, and unanticipated events have occurred that are beyond the Applicant’s control and have substantially impaired its ability to implement the Preliminary Plan within the timelines established by the Resolution.

The property subject to the Preliminary Plan consists of the land identified as 11520, 11560, and 11564 Rockville Pike located on the west side of Rockville Pike, south of Marinelli Road, and east of the proposed Woodglen Drive extension (the “Property”). The Property is located in the White Flint Sector Plan (approved and adopted April 2010 – the “Sector Plan”) area of Montgomery County, and it is zoned CR-4.0, C-3.5, R-3.5, H-300 (Commercial/Residential) Zone. The Property is currently improved with an existing shopping center, including surface parking, drive aisles, and access roads. The Preliminary Plan allows for development of the Property with up to 655 multi-family dwelling units and up to 204,000 square feet of non-residential uses (the “Project”), with the following validity periods:

- Preliminary Plan validity period: The Resolution established a validity period of 5 years from the initiation date (i.e., 30 days following approval of the Resolution). Based upon the automatic 2-year extension granted by County Council Ordinance No. 19-12 (as part of Subdivision Regulation Amendment No. 20-01), the Resolution requires that a Record Plat be recorded in the Montgomery County Land Records on or before July 10, 2023, to validate the Preliminary Plan. *See Exhibit “A”, p. 16.*
- APF Validity Period Phasing Schedule: Condition No. 25 of the Preliminary Plan established the following APF validity period phasing schedule:
  - Phase I: The Resolution requires issuance of building permits for Parcel A for 330 residential units within 7 years from the 30<sup>th</sup> day after the Resolution was mailed. This APF validity period was also automatically extended by 2 years in accordance with County Council Ordinance No. 19-12; therefore, building permits for Parcel A must be issued prior to July 10, 2025.
  - Phase II: The Resolution requires issuance of building permits for Parcel B for 325 residential units within 12 years of the 30<sup>th</sup> day after the Resolution was mailed. This APF validity period was similarly automatically extended by 2 years in accordance with County Council Ordinance 19-12; therefore, building permits for Parcel B must be issued prior to July 10, 2030.

The Sector Plan recommendations for the Property include substantial public infrastructure improvements as part of redevelopment, including: (a) dedication and construction of Woodglen Drive extended to establish a portion of the separated bike lane and sidewalk along the west side of Woodglen Drive, and (b) dedication and frontage improvements along Rockville Pike to further the Sector Plan vision for reconstruction of this urban boulevard with improved pedestrian sidewalks, on-road bicyclist accommodation, and bus rapid transit. When the Applicant processed the Preliminary Plan for Planning Board review and approval, it anticipated that future market conditions for the Property and the surrounding area would support the reinvestment necessary for high-rise construction with the associated public infrastructure and benefits required by the regulatory approvals for the Project. However, market conditions have not evolved as anticipated, in part due to significant, unusual and unanticipated events in the form of the pandemic, heightened construction costs, relatively flat rents and the more recent inflationary period being experienced across global capital markets, have delayed and substantially impaired Saul’s ability to validate the Preliminary Plan. Further, undue hardship would result to Saul if the Preliminary Plan were not extended as it has spent considerable resources to achieve full CR Zone regulatory approvals that deliver on the Sector Plan vision and provide significant public benefits and infrastructure improvements as part of the Project. In this respect, the Applicant has obtained Site Plan and certain final engineering plan approvals required for Parcel A such that the Applicant can and will proceed to construction as soon as market conditions support the contemplated infill

redevelopment. Notwithstanding the current market conditions and challenges, Saul is confident that the Project remains viable and capable of being financed, constructed, and marketed if the Preliminary Plan validity period is extended by six (6) years. For the foregoing reasons and in accordance with Section 50-4.2.H.3 of the Subdivision Regulations, the Applicant respectfully requests approval of a six (6) year extension of the Preliminary Plan validity period.

In addition to the requested six (6) year extension for the Preliminary Plan validity period, Saul is seeking an amendment to the APF validity period phasing schedule incorporated as Condition No. 25 of the Preliminary Plan. In order to obtain approval of such an extension, Saul is requesting a Subdivision Regulation Waiver from the timeframes identified in Section 50-4.3.J.7.d.i of the Subdivision Regulations. More specifically, Section 50-4.3.J.7.d.i of the Subdivision Regulations establishes thresholds for construction progress to allow for extension of an APF validity period. However, as described above, significant, unusual and unanticipated events have delayed and substantially impaired Saul's ability to validate Preliminary Plan and commence construction to any degree. The Applicant's requested extension of the APF validity period phasing schedule satisfies all required findings for approval of a Subdivision Regulation Waiver under Section 50-4.9.3.A of the Subdivision Regulations as follows:

*1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

Strict application of the criteria requiring issuance of certain percentages of building and occupancy permits, and the construction of infrastructure, is not necessary in this case to protect the public health, safety and welfare because the future implementation of the Sector Plan recommendations will better advance the public interest. As discussed above, validation of the Preliminary Plan and commencement of construction of the Project will result in delivery of significant public infrastructure in the form of dedication and construction of Woodglen Drive extended and dedication of necessary right-of-way along Rockville Pike and associated frontage improvements to enhance connectivity throughout the Metro West district of the Sector Plan with improved pedestrian sidewalks, on-road bicyclist accommodation, and bus rapid transit. Absent the granting of the requested extensions to the APF validity period phasing schedule, the public health, safety, and general welfare will not be advanced because it will compromise delivery of these important public infrastructure improvements at the Property.

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

The intent of the underlying requirement will still be met in that the extended APF validity period phasing schedule maintains appropriate and necessary timing for a mixed-use Project of this scale to deliver public improvements and important multi-family housing (including Moderately Priced Dwelling Units) in a phased manner. As discussed above, the Subdivision Regulations

acknowledge the need for extensions to APF validity period phasing schedules and related Preliminary Plan validity periods where significant, unusual and unanticipated events have occurred that are beyond the control of an applicant. In this instance, there has been a confluence of unexpected events in the form of the pandemic, unfavorable market conditions, and unprecedented construction cost increases that have substantially impaired Saul's ability to implement the Preliminary Plan. The intent of these requirements will be met through the granting of an extension to the phasing schedule, which will allow for the Sector Plan vision to come to fruition through redevelopment of the Property in a market responsive fashion.

3. *the waiver is:*

- a. *the minimum necessary to provide relief from the requirements; and*
- b. *consistent with the purposes and objectives of the General Plan*

The requested extension is the minimum necessary to provide relief from the requirement. Significantly, Section 50-4.3.J.7.d.iii.b of the Subdivision Regulations allows for up to a six (6) year extension for any Preliminary Plan that contained an original APF validity period phasing schedule longer than seven (7) years. Since the original APF validity period phasing schedule in the Preliminary Plan created a 12 year APF validity period, the Amendment is eligible for a six (6) year extension. As noted above, Saul has determined that the requested extension is the minimum necessary to ensure that the significant, unusual and unexpected market and economic conditions have subsided, which will allow for the necessary capital investment to validate the Preliminary Plan.

In addition to being the minimum necessary to provide relief from the requirements of Section 50-4.3.J.7.d.i of the Subdivision Regulations, the Amendment is consistent with the purposes and objectives of the recently adopted General Plan ("Thrive 2050"). More Specifically, Thrive 2050 recommends retrofitting "centers of activity and large-scale older facilities such as **shopping centers**, abandoned federal campuses, office parks, and other single-use developments **to include a mixture of uses and diversity of housing types and to provide a critical mass of housing, jobs, services, and amenities** necessary for vibrant, dynamic Complete Communities." See Thrive 2050, p. 55 (emphasis added). While the Property remains a successful commercial shopping center, the Preliminary Plan will allow for the delivery of a mixed-use residential Project that fulfills both the Sector Plan and General Plan recommendations for the Property.

For the following reasons, the Applicant is respectfully requesting approval of the extended APF validity period schedule, of six (6) years for Phase I and II. Pursuant to the Preliminary Plan Amendment Checklist (signed by Mr. Matt Folden on December 1, 2022), we hereby submit the following plans and materials in support of the Application:

- Application Form
- Statement of Justification (this cover letter)

Chair Jeff Zyontz and Members of the Planning Board  
January 5, 2023  
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- Certificate of Compliance
- Notice List
- Draft Application Notice Letter
- Signage Information
- Markup of Approved Plans (redlined)
- Original Certified Plans and Resolution
- Checklist

Thank you for your consideration of the Amendment, and we ask that this be processed for Planning Board review as quickly as possible to provide the Applicant with the certainty necessary to allow the Property to be best positioned to respond to market demands when the current economic conditions improve to support development of the Project. Please contact us should you have any questions or require any additional information.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer  
& Polott, P.C.**

*Bob Dalrymple*  
C. Robert Dalrymple

*Matthew Gordon*  
Matthew M. Gordon

cc: Brian Downie  
John Collich  
Jeff Amateau, VIKA