

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-058
Preliminary Plan Amendment No. 12016008A
Saul Centers White Flint West
Date of Hearing: May 18, 2023

JUN 06 2023

RESOLUTION

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

WHEREAS, on June 10, 2016, the Planning Board, by Resolution MCPB No. 16-001, approved Preliminary Plan No. 120160080, creating two (2) lots on 5.48 acres of land in the CR-4.0, C-3.5, R-3.5, H-300 zone, located at 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 ("Subject Property"), in the White Flint Policy Area and 2010 *White Flint Sector Plan* ("Sector Plan") area; and

WHEREAS, on December 30, 2022, Metro Pike Center, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to extend the Preliminary Plan validity period by six (6) years and to revise existing Condition No. 25 to extend the Adequate Public Facilities ("APF") validity period by six (6) years for each phase on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12016008A, Saul Centers White Flint West ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated May 5, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 18, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Pedoeem, seconded by Commissioner Bartley, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, Commissioners Bartley, Hedrick, and Pedoeem voting in favor.

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12016008A to extend the Preliminary Plan validity period by three (3) years from its current expiration date of 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 with a three (3) year extension for each phase (Phase I currently set to expire on July 10, 2025 and Phase II currently set to expire on July 10, 2030) by modifying and adding the following conditions:¹

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 30th 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.

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

- 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.

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

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

Preliminary Plan Validity Period Extension

The previously approved Preliminary Plan validity period is set to expire on July 10, 2023, and 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 APF, 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. Delay 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 explains the delay is due events after the Preliminary Plan was approved, beyond the Applicant's control and not caused by the Applicant. The Applicant has stated 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.

The Applicant requested an extension expiration date of July 10, 2029. Given the Applicant's reassurance of financial soundness to eventually proceed, the Planning Board required the Applicant to validate the Preliminary Plan within three (3)-years from the current expiration date, which is the minimum time deemed necessary.

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. The 3 year extension 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 approved APF validity period extension dates and ensure a well-planned transition between the existing center and the new development.

Adequate Public Facilities (APF) Validity Extension

The Applicant submitted a request for extension of the APF validity period for six (6) years per phase, totaling a 12-year request, to allow building permits to be issued for the approved but undeveloped residential and commercial uses.

This Application was 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 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 previously approved 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 proposed 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.

The Applicant was not required 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

This Application is subject to the 2020-2024 *Growth and Infrastructure Policy* (GIP). 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.

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, the schools that serve the Site - Garrett Park Elementary School, Tilden Middle School and Walter Johnson High School - do not require any UPP. 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.

With a net of 655 multifamily high-rise units that are not age-restricted, 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, 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 requested a new development schedule as follows: Phase I building permits 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 a 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 Section 50.4.3.J.7.d. However, the Applicant requested a waiver of the construction threshold timeframes identified in Section 50.4.3.J.7.d.i of the Subdivision Regulations.

- 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 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, 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.

This finding is 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. 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 did 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 did not requested a waiver of this section of the Subdivision Regulations.

Therefore, the Planning Board approved the 6-year maximum for the APF validity period as permitted per Section 50.4.3.J.7.d.iii, as shown in Table 1.

Table 1: APF Validity Period Dates

	Expiration date based on 2016 Planning Board approval	Expiration date based on 2-year Council Extension	Approved expiration date based on 2023 Planning Board approval
APF Validity Phase I (Parcel A)	July 10, 2023	July 10, 2025	July 10, 2028
APF Validity Phase II (Parcel B)	July 10, 2028	July 10, 2030	July 10, 2033

Subdivision Waiver Request

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 requested a waiver from the findings of this section. Per Section 50.9.3.A, 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 requested a 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 and 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 the Planning Board's approval of 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 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 extension. Therefore, by the Planning Board granting the waiver to approve the requested extension for the APF validity period, 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 the Planning Board's extension to validate the Preliminary Plan as quickly as possible to maximize the APF extension time granted by the Board and allows the Applicant adequate time to meet existing obligation to 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.

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 06 2023 (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 the motion of Commissioner Hedrick, seconded by Commissioner Pedoeem, with a vote of 4-0, Chair Zyontz, and Commissioners Bartley, Hedrick, and Pedoeem voting in favor Commissioner Piñero necessarily absent, at its regular meeting held on Thursday, May 25, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

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