

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, 14th 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 30th 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 30th 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

Page 5

- 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