



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

MEMORANDUM

Date: February 16, 2012

To: Montgomery County Planning Board

Via: Glenn Kreger, Acting Chief
Area 2 Division

From: Patrick Butler, Senior Planner Joshua Sloan, Planner Coordinator
Area 2 Division Area 2 Division

Re: Preliminary Plan 120120020 and Site Plan 820120020, Mid-Pike Plaza

This memorandum provides analysis to the Applicant's request for a 12-year Adequate Public Facilities and 12-year Plan Validity Period.

Applicant Request for a 12-year Adequate Public Facilities (APF) Validity and 12-year Plan Validity

The Applicant has requested the maximum APF and Plan Validity for the total 3,442,888 square feet of development proposed on the Subject Property. Pursuant to Section 50-20(c)(3)(A)(iii) of the Subdivision Regulations (Attachment A), 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, 2013." In accordance with Sections 50-20(c)(3)(B) (Attachment B) and 50-34(g) (Attachment C), and 50-35(h)(2)(B) (Attachment D) 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 and a 12-year (144 month) Plan Validity Period subject to the following phasing schedule:

Phase I – Recordation of plats and issuance of building permits for 174 residential units, including 12.5 % MPDUs;

Phase II – Recordation of plats and issuance of building permits for 319 residential units, including 12.5% MPDUs, and

Phase III – Recordation of plats for commercial development and recordation of plats and issuance of building permits for the balance of the residential units to be built in the project.

Further, based on the timing of the above phases and the phasing schedule for recordation of plats pursuant to Section 50-35(h)(2)(B) of the Subdivision Regulations, the Plan Validity period is requested to be as follows:

Phase I – 36 months from the 30th day after the written opinion is mailed;

Phase II – 48 months from the expiration date of the Phase I validity period; and

Phase III – 60 months from the expiration date of the Phase II validity period.

Background

In the White Flint Sector Plan area, there is no APF validity period for transportation because of the laws associated with the White Flint Special Taxing District. Specifically, the Montgomery County Council adopted Resolution 16-1324 on April 27, 2010, which amended the 2009-2011 County Growth Policy (currently known as the Subdivision Staging Policy) to exempt any proposed development in the White Flint Metro Station Policy Area from both Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). In turn, the Montgomery County Council enacted Bill No. 50-10 on November 30, 2010, which established the White Flint Special Taxing District, authorized the assessment of an *ad valorem* tax, and permitted the issuance of bonds to fund certain transportation and infrastructure improvements within the White Flint Sector Plan Area. On that same day, the Montgomery County Council adopted Resolution 16-1570, which, among other things, identified a list of infrastructure improvements to be financed by the White Flint Special Taxing District, and stated that the White Flint Special Taxing District was intended to replace payments associated with adequate public facilities requirements for PAMR and LATR.

The White Flint tax has now been implemented, and the applicant is paying the assessment for Mid-Pike Plaza. Additionally, by Montgomery County Planning Board Regulation 11-01, effective July 13, 2011, the Planning Board established regulations for implementing the Subdivision Staging Policy's White Flint Alternate Review Procedure. These regulations establish standards and procedures for allocation of staging capacity under the White Flint Sector Plan at the time of building permit.

Staff Review

Although an APF Validity Period for commercial transportation impact is not required, school capacity is still subject to a determination of APF. 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. Staff agrees with the Applicant that the project is a complex, multi-use development that will likely be required to achieve full build-out over several years. The total Preliminary Plan approval will allow a maximum density of 3,442,888 square feet of development, including a maximum of 1,716,246 square feet of commercial uses, on 24.38 gross acres of land zoned CR3 C1.5 R2.5 H200 and CR4 C3.5 R3.5 H300. Allowing the longer APF and Plan Validity period requested promotes the public interest by better allowing this development to implement the previously approved sketch plan (Sketch Plan No. 320110010) and facilitate the recommendations contained in the White Flint Sector Plan, including the transformation of automobile dependent strip mall development 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. Staff agrees that it will promote the public interest for the Applicant to have the additional time requested in order to effectively implement the project, thereby achieving the goals and recommendations of the White Flint Sector Plan.

Recently, staff has not recommended requests for extended APF and Plan Validity in the Life Sciences Center (LSC) of the Great Seneca Science Corridor (GSSC) Master Plan area. Staff feels this request is different from those recent requests in the LSC for various reasons. First, staff and the Planning Board have established a policy of discouraging the continual hoarding of capacity in the LSC. The Planning Board made it very clear during the writing of the GSSC Implementation Guidelines that, unless a substantially large project requires multiple phases or other substantial extenuating circumstances, the Board will likely limit APF and Preliminary Plan approvals to the minimum validity periods in the GSSC to discourage hoarding of capacity. This policy is unnecessary in White Flint because capacity is not allocated until building permit. Second, the plans that recently requested longer APF and Plan Validity in the LSC were substantially smaller in size and scope than the Proposed Plan; staff did not find phasing, and thus, a longer than minimum APF and Plan Validity period to be necessary. Last, when considering a request for a longer APF Validity Period, typically it is necessary for staff to anticipate the potential negative impacts to the overall transportation network and nearby intersections. Staff would then have to weigh those impacts against any benefits that lengthening an APF or Plan Validity would provide.

Because of the Special Taxing District in White Flint, transportation is not considered as part of the request for a longer APF and 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 proposed residential units are multi-family high-rise (which typically produce a low yield of school age children), staff feels that a longer APF and Plan Validity period would not cause a burden on capacity of the local schools.

Based on the analysis above staff finds approval of the extended APF and Plan Validity period as requested is desirable to facilitate the achievement of the goals and recommendations of the White Flint Sector Plan, which promotes the public interest.

Therefore, staff recommends the Planning Board approve the requested 12-year APF and Preliminary Plan Validity period subject to the phasing schedule contained in this report.