



**STAFF REPORT: Preliminary Plan #120040740**  
**ITEM #**

**MCPB HEARING**  
**DATE:**

December 2, 2010

**REPORT DATE:**

November 22, 2010

**TO:**

Montgomery County Planning Board

**VIA:**

Rose Krasnow, Chief  
 Development Review Division

**FROM:**

Catherine Conlon, Subdivision Supervisor  
 Development Review Division (301-495-4542)

**APPLICATION**  
**DESCRIPTION:**

Bauer Tract, 120040740 – Request for extension of the preliminary plan validity period.

**APPLICANT:**

4811 Battery Lane LLC

**FILING DATE:**

May 4, 2010

**RECOMMENDATION:**

Grant 9-month extension until May 25, 2011



**EXECUTIVE SUMMARY:** The subject preliminary plan was approved by the Planning Board on October 21, 2004. Per Section 50-35(h)(2) of the Subdivision Regulations, the plan remained valid until February 25, 2008, by which time the property was required to have been recorded by plat. A record plat was not filed by that date; however, under a provision added to State law in 2009, the plan validity period was extended until August 25, 2010, provided that a valid extension request was made to the County prior to that date. On May 4, 2010, such an extension request was filed, but as of the current date, the property has still not been recorded and the extended validity date has passed. The applicant is now requesting an additional extension under the Subdivision Regulations until October 31, 2011. Based on the justification provided, staff is recommending a shorter extension until May 25, 2011.

Approval signatures

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## SITE DESCRIPTION AND PREVIOUS APPROVALS

The property that is the subject of this application (“Subject Property” or “Property”) includes 2.42 acres of land in the I-1 zone located at the southern terminus of Oakmont Road, and extending west along the northern side of the ramp from Sam Eig Highway (I 370) to northbound Frederick Road (MD 355) in Gaithersburg. The Property consists of one recorded parcel and a part of a second, containing three buildings with 57,649 square feet of warehouse use and accessory office and carry-out food sales that are permitted as accessory uses in the zone.



On October 21, 2004, the Planning Board approved a Preliminary Plan for the Property (Preliminary Plan 120040740) to create one recorded lot and permit a 10,314 square foot addition to one of the existing buildings. The approval was subject to the conditions contained in the Board’s Opinion dated January 25, 2005 (Attachment A). Under Section 50-35(h)(2) of the Subdivision Regulations, that approval remained valid

for 37 months from the date of the Opinion, or until February 25, 2008, by which time, the record plat for the Property had to be recorded. The Preliminary Plan approval also stipulated that the approval of the adequate public facilities (APF) review remained valid until February 25, 2010, by which time a building permit had to be issued for the new square footage.

## **DISCUSSION OF THE EXTENSION REQUEST**

The applicant failed to submit an application, or obtain approval of a record plat within the specified plan validity period, and the original preliminary plan approval expired on February 25, 2008. In April of 2010, a representative of the applicant met with staff to explore options for reinstating and extending the expired plan. Staff determined that, as a result of a change to State law that had been passed in May of 2009, the applicant's plan was actually still valid.

### Applicable Provisions of State Law

The State law provisions (Article 24, Section 23-101 and 102 – Attachment B) applied to “any permit<sup>1</sup> for construction or development issued by the State or any county or municipality on or after January 1, 2008, and on or before June 30, 2010”. They stipulated that the running of the period of approval for any permit was “tolled beginning on January 1, 2008, and ending on June 30, 2010”. Thus, under these provisions, the validity period for the subject Preliminary Plan, which had 56 days of validity remaining on January 1, 2008, was extended to August 25, 2010 (56 days beyond the end of the State tolling period). However, the State law did not require the local jurisdiction that had issued the original development approval to recognize this extension unless an applicant had filed an extension request under whatever provisions were included in the local laws, and paid any appropriate fees. Further, the provisions of this law were only in effect until June 30, 2010, and anyone who did not request an extension prior to that date could not use the law to get one.

Since the discussion with the applicant's representative occurred prior to the end of the State tolling period, staff determined that if an extension request was filed, the Preliminary Plan could be considered to be valid until August 25, 2010, and the applicant would have until that time to get a record plat approved. The applicant filed a request for extension on May 4, 2010, followed by a record plat application on May 10, 2010. Since the applicant did not anticipate being able to complete the record plat prior to the August 25, 2010 deadline, the letter accompanying the extension application requested a new plan validity date of October 31, 2011. The record plat was, in fact, not completed before the State law expiration date, so any extension must now be granted under County law.

### Applicable Provisions of the Subdivision Regulations

The extension is requested to afford the applicant adequate time to resolve remaining issues which will allow the pending plat to be recorded. Pursuant to Section

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<sup>1</sup> A “permit” under State law included development plan approvals granted by a local jurisdiction.

50-35 (h)(3)(d) of the Subdivision Regulations, “the Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant’s ability to perform terms of conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created by the applicant; or
- ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant’s control and not facilitated or created by applicant, have substantially impaired applicant’s ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.”

### **Justification for the Extension**

The applicant’s letter (Attachment C) cites as justification for the Board to grant an extension until October 31, 2011, delays subsequent to the plan approval that have materially prevented recordation of the Property to validate the plan. Staff agrees that some, but not all, of these delays are legitimate justification. First, the letter cites that the applicant was in discussions with various County departments regarding the off-site sidewalks required in Condition #4 of the Board’s Opinion. The applicant does not believe there is a need for these improvements and wants to avoid incurring the costs. Since bonding for these improvements is required before a record plat can be recorded, these discussions would have caused a delay in the platting process. However, in staff’s opinion, this delay was caused by the applicant and, therefore, does not support the argument for extending the preliminary plan. The applicant accepted the condition of the approval, and to date, has filed no amendment to request that the condition be modified.

The letter also cites as justification, delay associated with ongoing efforts by the applicant to secure an off-site forest planting area. Again, staff does not support this argument since use of a forest conservation bank is an acceptable alternative to actual off-site planting, and there have been several banks in operation and available during the time period since approval of the preliminary plan.

The cited delay because of the property owner’s illness is, in staff’s opinion, legitimate justification for extension. Likewise, staff is in agreement that the two-year negotiations between the applicant and the State Highway Administration over the I-370 alignment as it abuts the Subject Property caused a legitimate delay. Finally, the applicant cites overall economic conditions since 2008 as the last delay that kept him from being able to move forward until now. In staff’s opinion, these conditions also warrant consideration as support for granting some additional time to permit the applicant to record the plat.

It is staff’s determination that at least some of the delays outlined in the applicant’s letter and summarized above are reasonable justification upon which the

Planning Board can base the approval of an extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. Staff does not, however, support granting the entire time requested. While the applicant has experienced delays, he has also had a much longer time than typical to complete the validation of this plan. In reality, a plat could have been filed in early 2005 and would have been through the review process and waiting for the resolution of the cited delays. Instead, the original plan expiration date of February 25, 2008 passed without any attempt by the applicant to extend it. The application has technically been kept alive since then by State law, but staff is of the opinion that the applicant must now either expeditiously act to validate the plan or begin the process again and do a new preliminary plan. **Therefore, staff recommends extension of the validity period to May 25, 2011 by which time the pending record plat must be approved and recorded.**

Attachments:

- A – January 25, 2005 Planning Board Opinion
- B – Senate Bill 958 – State Tolling Legislation
- C – November 10, 2010 Applicant Justification Letter

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

JAN 25 2005

Date Mailed:

Action: Approved Staff  
Recommendation

Motion of Commissioner Bryant,  
seconded by Commissioner Robinson,  
with a vote of 5-0;  
Commissioners Berlage, Perdue,  
Bryant, Wellington and Robinson.

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan 1-04074

NAME OF PLAN: Bauer Tract

JAN 25 2005

The date of this written opinion is                      (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

On 3/31/04, 4811 Battery Lane, LLC submitted an application for the approval of a preliminary plan of subdivision of property in the I-1 zone. The application proposed to add 10,314 square feet to an existing 57,649 square foot industrial building by adding a second and third story addition to the building. The site contains 2.42 acres of land. There also is an accessory office and carryout food sales area. The application was designated Preliminary Plan 1-04074. On 10/21/04, Preliminary Plan 1-04074 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the

application received by the Planning Board or its staff following submission of the application and prior to the Board's action following the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

During the course of the hearing, staff highlighted the scope of the expansion, characterizing it as a fairly minor addition. Staff did note, however, that the site has no frontage on Oakmont Avenue. Consequently, staff had recommended that the applicant provide a sidewalk from the existing drive to the underpass at Route 370, and additionally to provide a sidewalk from I-370 to a bus stop facility at Shady Grove Road, by coordinating with the state on in addition to other transportation improvements noted in the Transportation Planning Staff memorandum dated September 14, 2004. Staff also noted that the State Highway Administration and Montgomery County's Department of Public Works and Transportation will be making road improvements in the general area, and wanted to ensure that the applicant's improvements coordinate with those efforts, and consequently recommended that the applicant coordinate its construction efforts with the State. Staff recommended approval of the application.

The applicant appeared and testified that it agreed with the conditions and staff's recommendations, however for clarification that "coordinate" in condition numbers 5 and 6, below, simply means "contact" the State Highway Administration at the time of record plat, and that there is no obligation to enter into negotiations. The Board asked staff to clarify, and staff stated that the condition as proposed could be amended to indicate "contact" the State Highway Administration.

There is not testimony in the record, nor was testimony or evidence presented at the hearing, in opposition to any of the staff's recommendations or conditions.

#### **FINDINGS**

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies as required by the Montgomery County Code; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-04074 substantially conforms to the Gaithersburg & Vicinity.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.

- c) The additional square footage can be properly located on the existing lot, taking into consideration the lot's size, width, shape, and orientation, and the building's expansion is appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.
- g) Condition Numbers 5 and 6 below shall be amended, in keeping with the Applicant's request and staff's agreement, to change "coordinate" to "contact,"

#### **CONDITIONS OF APPROVAL**

Finding Preliminary Plan No. 1-04074 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04074, subject to the following conditions:

- 1) Approval under this preliminary plan limited to a 67,963 square foot warehouse, 10,314 square foot addition proposed to the existing 57,649 square feet, with accessory office and carry-out food sales that are permitted accessory uses in the I-1 zone.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Compliance with conditions of MCDPWT letter dated, October 7, 2004 unless otherwise amended.
- 4) Applicant to construct a five foot wide off-site asphalt sidewalk on Oakmont Avenue between the existing sidewalk north of the site and the north end of the I-370 bridge; and a five foot wide concrete sidewalk between the south end of the I-370 bridge and Shady Grove Road.
- 5) Prior to record plat, contact the SHA regarding a temporary construction easement required to build a retaining wall along the southern property line (i.e., adjoining I-370 right-of-way). Safe and adequate vehicular and pedestrian access must be maintained when building the retaining wall. The retaining wall would be part of the reconstruction of I-370, which is expected to become a segment of the master-planned Intercounty Connector that is currently under review.



- 6) Prior to record plat, contact MCDPWT regarding CIP Facilities Planning Project No. 509337 for Deer Park Bridge, Phase I, over the railroad tracks between Oakmont Avenue and Railroad Street. Although the current design plan does not impact the property's Oakmont Avenue frontage, future modifications of the design plans may result in extending the Oakmont Avenue improvements further southward and impacting the site.
- 7) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 8) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

ME 1/20/05  
Approved for legal sufficiency  
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, December 16, 2004, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Berlage, Perdue, Bryant, Robinson, and Wellington voting in favor of the motion, adopted the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 1-04074, Bauer Tract.



Certification As To Vote of Adoption  
Technical Writer

# SENATE BILL 958

C2, L6, P3

EMERGENCY BILL

(9lr3258)

**ENROLLED BILL**

*—Education, Health, and Environmental Affairs / Environmental Matters—*

Introduced by **Senator Rosapepe**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Construction Permits - Expiration Dates**

3 FOR the purpose of requiring the running of the period of approval for certain permits  
4 issued by the State to be tolled for a certain period; requiring the running of the  
5 period of approval for certain permits issued by a county or municipality to be  
6 tolled for a certain period; requiring a certain person who was issued a certain  
7 permit by the State, a county, or a municipality that will expire during a certain  
8 time period to pay any applicable renewal fees; requiring the Department of  
9 Planning to report to certain persons on certain matters; authorizing the State,  
10 a county, or a municipality to cancel a certain permit under certain  
11 circumstances; making certain conforming changes; defining certain terms;  
12 declaring the intent of the General Assembly; providing for the application of  
13 this Act; making this Act an emergency measure; providing for the termination  
14 of this Act; and generally relating to the expiration of construction and  
15 development permits.

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber / conference committee amendments.



1 BY repealing and reenacting, with amendments,  
2 Article – State Government  
3 Section 11–103(a)  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2008 Supplement)

6 BY adding to  
7 Article – State Government  
8 Section 11–201 and 11–202 to be under the new subtitle “Subtitle 2. Permit  
9 Extensions”  
10 Annotated Code of Maryland  
11 (2004 Replacement Volume and 2008 Supplement)

12 BY adding to  
13 Article 24 – Political Subdivisions – Miscellaneous Provisions  
14 Section 23–101 and 23–102 to be under the new title “Title 23. Construction and  
15 Development Permits”  
16 Annotated Code of Maryland  
17 (2005 Replacement Volume and 2008 Supplement)

18 Preamble

19 WHEREAS, There exists a state of national recession, which has drastically  
20 affected various segments of the Maryland economy, but none as severely as the  
21 State’s banking, real estate, and construction sectors; and

22 WHEREAS, The real estate finance sector of the economy is in severe decline  
23 due to the subprime mortgage problem and the resultant widening mortgage finance  
24 crisis; and

25 WHEREAS, The extreme tightening of lending standards for home buyers and  
26 other real estate borrowers has reduced access to the capital markets; and

27 WHEREAS, As a result of the crisis in the real estate finance sector of the  
28 economy, real estate developers, homebuilders, and commercial, office, and industrial  
29 developers have experienced an industry-wide decline, including reduced demand,  
30 canceled orders, declining sales, rental price reductions, increased inventory, fewer  
31 buyers who qualify to purchase homes, layoffs, and scaled back growth plans; and

32 WHEREAS, The process of obtaining planning board and zoning board  
33 approvals for subdivisions, site plans, and variances can be difficult, time consuming,  
34 and expensive both for private applicants and government bodies; and

35 WHEREAS, The process of obtaining other government approvals required  
36 pursuant to legislative enactments and their implementing rules and regulations can  
37 also be difficult and expensive; and

1           WHEREAS, Permits and approvals can be impossible to renew or reobtain if  
2 expired or lapsed; and

3           WHEREAS, County and municipal governments obtain determinations of  
4 master plan consistency, conformance, or endorsement with State or regional plans,  
5 from State and regional government entities that may expire or lapse without  
6 implementation due to the state of the economy; and

7           WHEREAS, The current national recession has severely weakened the building  
8 industry, and many landowners and developers are seeing their life's work destroyed  
9 by the lack of credit and dearth of buyers and tenants due to the crisis in real estate  
10 financing and the building industry, uncertainty over the state of the economy, and  
11 increasing levels of unemployment in the construction industry; and

12           WHEREAS, The construction industry and related trades are sustaining severe  
13 economic losses, and the lapsing of government development approvals would, if not  
14 addressed, exacerbate those losses; and

15           WHEREAS, Financial institutions that lend money to property owners,  
16 builders, and developers are experiencing erosion of collateral and depreciation of  
17 their assets as permits and approvals expire, and the extension of these permits and  
18 approvals is necessary to maintain the value of the collateral and the solvency of  
19 financial institutions throughout the State; and

20           WHEREAS, Due to the current inability of builders and their purchasers to  
21 obtain financing, under existing economic conditions, more and more once-approved  
22 permits are expiring or lapsing and, as these approvals lapse, lenders must reappraise  
23 and thereafter substantially lower real estate valuations established in conjunction  
24 with approved projects, thereby requiring the reclassification of numerous loans  
25 which, in turn, affects the stability of the banking system and reduces the funds  
26 available for future lending, thus creating more severe restrictions on credit and  
27 leading to a vicious cycle of default; and

28           WHEREAS, As a result of the continued downturn of the economy, and the  
29 continued expiration of approvals which were granted by State and local governments,  
30 it is possible that thousands of government actions will be undone by the passage of  
31 time; and

32           WHEREAS, Obtaining an extension of an approval pursuant to existing  
33 statutory or regulatory provisions can be costly in terms of time and financial  
34 resources, with the costs falling on the public as well as the private sector; and

35           WHEREAS, Obtaining an extension of an approval pursuant to existing  
36 statutory or regulatory provisions may be insufficient to cope with the extent of the  
37 present financial situation; ~~and~~

1       ~~WHEREAS, It is the purpose of this Act to prevent the wholesale abandonment~~  
2 ~~of approved projects and activities due to the present unfavorable economic conditions,~~  
3 ~~by tolling the term of these approvals for a period of time, thereby preventing a waste~~  
4 ~~of public and private resources;~~ now, therefore,

5       SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7                               **Article - State Government**

8       11-103.

9               (a)   **EXCEPT AS PROVIDED UNDER SUBTITLE 2 OF THIS TITLE, THIS**  
10 **TITLE:**

11               (1)   ~~[This] EXCEPT AS PROVIDED UNDER SUBTITLE 2 OF THIS~~  
12 ~~TITLE, THIS title~~ applies only to a development project and only through the  
13 completion of a final action under § 11-520 of this title; **AND**

14               (2)   ~~This title~~ does not apply to an application for a renewal,  
15 amendment, or extension of a development permit.

16                               **SUBTITLE 2. PERMIT EXTENSIONS.**

17       11-201.

18               (A)   **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
19 **INDICATED.**

20               (B)   **“PERMIT” INCLUDES A DEVELOPMENT PERMIT, AS DEFINED UNDER**  
21 **§ 11-101(D) OF THIS TITLE.**

22       11-202.

23               (A)   **THIS SUBTITLE APPLIES TO A PERMIT ISSUED BY A COUNTY OR**  
24 **MUNICIPALITY FOR A PROPOSED CONSTRUCTION OR DEVELOPMENT.**

25               (B)   **THIS SUBTITLE DOES NOT APPLY TO:**

26                       (1)   **ANY PERMIT OR APPROVAL ISSUED BY THE UNITED STATES**  
27 **GOVERNMENT OR ANY FEDERAL AGENCY;**

28                       (2)   **ANY PERMIT OR APPROVAL ISSUED JOINTLY BY THE UNITED**  
29 **STATES GOVERNMENT AND A COUNTY OR A MUNICIPALITY;**

1           **(3) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY ANY FEDERAL**  
2 **AGENCY AND A COUNTY OR A MUNICIPALITY;**

3           **(4) ANY PERMIT OR APPROVAL THAT HAS AN EXPIRATION DATE**  
4 **ESTABLISHED UNDER A LAW OR REGULATION OF THE FEDERAL GOVERNMENT;**  
5 **OR**

6           **(5) ANY PERMIT, LICENSE, OR APPROVAL ISSUED UNDER TITLE 4,**  
7 **SUBTITLE 1 OR SUBTITLE 2 OF THE ENVIRONMENT ARTICLE.**

8           **(C) THE RUNNING OF THE PERIOD OF APPROVAL FOR ANY PERMIT**  
9 **ISSUED BY A COUNTY OR MUNICIPALITY SHALL BE TOLLED BEGINNING ON**  
10 **JANUARY 1, 2008, AND ENDING ON ~~DECEMBER 31, 2012~~ JUNE 30, 2010.**

11           **(D) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, A PERSON**  
12 **WHO WAS ISSUED A PERMIT BY A COUNTY OR MUNICIPALITY THAT WILL EXPIRE**  
13 **DURING THE PERIOD BEGINNING ON JANUARY 1, 2008, AND ENDING ON JUNE**  
14 **30, 2010, IS REQUIRED TO PAY ANY APPLICABLE RENEWAL FEES.**

15           **Article 24 - Political Subdivisions - Miscellaneous Provisions**

16           **TITLE 23. CONSTRUCTION AND DEVELOPMENT PERMITS.**

17           **23-101.**

18           **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
19 **INDICATED.**

20           **(B) "PERMIT" INCLUDES A DEVELOPMENT PERMIT, AS DEFINED UNDER**  
21 **§ 11-101(D) OF THE STATE GOVERNMENT ARTICLE.**

22           **23-102.**

23           **(A) THIS TITLE APPLIES TO A PERMIT ISSUED BY THE STATE FOR A**  
24 **PROPOSED CONSTRUCTION OR DEVELOPMENT.**

25           **(B) THIS TITLE DOES NOT APPLY TO:**

26           **(1) ANY PERMIT OR APPROVAL ISSUED BY THE UNITED STATES**  
27 **GOVERNMENT OR ANY FEDERAL AGENCY;**

28           **(2) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY THE UNITED**  
29 **STATES GOVERNMENT AND A COUNTY OR A MUNICIPALITY;**

1           (3) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY ANY FEDERAL  
2 AGENCY AND A COUNTY OR A MUNICIPALITY;

3           (4) ANY PERMIT OR APPROVAL THAT HAS AN EXPIRATION DATE  
4 ESTABLISHED UNDER A LAW OR REGULATION OF THE FEDERAL GOVERNMENT;  
5 OR

6           (5) ANY PERMIT, LICENSE, OR APPROVAL ISSUED UNDER THE  
7 FOLLOWING PROVISIONS OF THE ENVIRONMENT ARTICLE:

8                   (I) TITLE 4, SUBTITLE 1 OR SUBTITLE 2;

9                   (II) TITLE 5, SUBTITLE 5; OR

10                   (III) TITLE 9.

11           (C) THE RUNNING OF THE PERIOD OF APPROVAL FOR ANY PERMIT  
12 ISSUED BY THE STATE SHALL BE TOLLED BEGINNING ON JANUARY 1, 2008, AND  
13 ENDING ON ~~DECEMBER 31, 2012~~ JUNE 30, 2010.

14           (D) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, A PERSON  
15 WHO WAS ISSUED A PERMIT BY THE STATE THAT WILL EXPIRE DURING THE  
16 PERIOD BEGINNING ON JANUARY 1, 2008, AND ENDING ON JUNE 30, 2010, IS  
17 REQUIRED TO PAY ANY APPLICABLE RENEWAL FEES.

18           ~~SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall~~  
19 ~~be interpreted to affect any permit or approval issued by the government of the United~~  
20 ~~States or any federal agency, or any permit or approval that has an expiration date~~  
21 ~~established pursuant to law or regulation of the federal government.~~

22           SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That nothing in this Act  
23 shall affect the authority of the State or any county or municipality to revoke or  
24 modify a permit. The State or any county or municipality may cancel a permit affected  
25 by the provisions of this Act if the State or the county or municipality determines that  
26 the permit presents a threat to the public health, safety, or welfare of its citizens.

27           SECTION ~~4.~~ 3. AND BE IT FURTHER ENACTED, That, *except as otherwise*  
28 *provided in this Act*, this Act shall be construed to apply retroactively and shall be  
29 applied to and interpreted to affect any permit for construction or development issued  
30 by the State or any county or municipality on or after January 1, 2008, and on or  
31 before June 30, 2010.

32           SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December  
33 31, 2009, the Maryland Department of Planning shall report to the General Assembly,  
34 in accordance with § 2-1246 of the State Government Article, on the impact of this



1 Act, whether the toll period should be extended, and what other alternatives might be  
2 available to the State and local jurisdictions in light of the current economic downturn.

3 SECTION 5. AND BE IT FURTHER ENACTED, That, ~~except as otherwise~~  
4 ~~provided in this Act,~~ this Act is an emergency measure, is necessary for the immediate  
5 preservation of the public health or safety, has been passed by a yea and nay vote  
6 supported by three-fifths of all the members elected to each of the two Houses of the  
7 General Assembly, and shall take effect from the date it is enacted. It shall remain  
8 effective through ~~December 31, 2012~~ June 30, 2010, and, at the end of ~~December 31,~~  
9 ~~2012~~ June 30, 2010, with no further action required by the General Assembly, this Act  
10 shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.



Commercial Brokerage

Property Management

November 10, 2010

Ms. Catherine Conlon  
Development Review Division  
The Maryland-National Capital Park and Planning Commission  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

**Re: Bauer Tract**

Dear Cathy:

On behalf of Anthony Malek, we are hereby submitting a historical chain of events which led him to request an extension of the Bauer Tract site plan expansion in May of this year, in which an application was accepted by Park & Planning (with required engineering plans and related checks.)

Due to financial, health, governmental, and economic conditions, Mr. Malek was forced to postpone submittals for the original site plan expansion originally submitted in 2004.

- Approximately six (6) years ago, Mr. Malek originally requested a site plan expansion of 10,000 square feet of industrial space at 8500 Dakota Avenue, Gaithersburg, Maryland. Dick Witmer, of Witmer & Associates, LLC, land engineers and surveyors, submitted documentation for final site plan approval.
- Following submission, requirements were made by various County departments for an enormous amount of off-site work to be performed by and paid for by Mr. Malek. The two major requests were for construction of a sidewalk, which went nowhere under the newly proposed ICC, hundreds of yards from the Bauer Tract property. Mr. Malek felt that this was unnecessary, extremely costly, and worked with various County departments to convince them of its futility. Furthermore, a forest restoration request was to be implemented, but since there was insufficient area on the site to accommodate dozens of trees, keeping in line with the County's open space requirement, he was told that off-site plantings would be mandated. In order for the

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County to approve an off-site planting area, an owner must give their permission (which has not yet occurred).

- Mr. Malek is an owner of several small properties in Montgomery County, and a sole decision-maker of these properties, which are owned by additional members of his family. As he was working on this expansion, he underwent knee replacement and ran into major after-surgery difficulties, and was instructed by doctors at the Georgetown University Hospital to cease working for a long duration of time. In addition, his mother was diagnosed with severe Alzheimers, and he was the sole and primary caregiver, attempting to make arrangements for her continued care.
- Simultaneously, a major issue arose regarding a widening of the ICC as the Maryland State Highway Department completed their planning of the highway. Mr. Malek discovered that the ICC, as planned, would block his entranceway into his property and it would be landlocked. Mr. Malek met with Ms. Melinda Peters, Director in the Baltimore office, with his daughter Megan Malek, and the ICC staff. At this hearing, Mr. Malek informed them of their error as his thirty-six (36) tenants would not be permitted to access their rental bays. The ICC staff agreed to a realignment of the ICC at the Bauer Tract, which is now a part of today's working project. This realignment took two years, which includes removing the existing ramp 300 feet from the Bauer Tract.
- Following shortly thereafter came the economic chaos of 2008. Development in Montgomery County stopped, mortgages and loans became unavailable and vacancy rates in Gaithersburg grew to thirty percent.

All of these uncontrollable issues and hardships resulted in Mr. Malek waiting for resolution before requesting an extension of his application. In addition, Mr. Malek has spent many of thousands of dollars to date for plans, application fees, and legal costs. We sincerely hope that this extension is granted and will continue to work with all departments necessary for its final approval.

Sincerely,



Sandy Hunt  
Vice President



Marek Rich  
Assistant Vice President

cc: Anthony Malek (Via E-mail: [tonymalek@gmail.com](mailto:tonymalek@gmail.com))