

July 11, 2005

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Ms. Cathy Conlon  
Maryland-National Capital Park and  
Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Gateway Commons; Preliminary Plan No. 1-02048 (the "Preliminary Plan")

Dear Ms. Conlon:

On behalf of our client, Gateway Commons, L.L.C. ("Gateway Commons"), owner and developer of the property that is the subject of the above-referenced Preliminary Plan, approved by the Planning Board by Opinion dated August 13, 2002, a copy of which is attached hereto as Exhibit "A" (the "Opinion"), and in connection with a Road Participation Agreement recently executed between Gateway Commons and Montgomery County (the "County") for the construction of Stringtown Road in Clarksburg, as more fully described below, the purpose of this letter is to request amendments to Conditions 5 and 6 of the Opinion regarding the on-site construction of a small portion of the Maryland Route 355 By-Pass now known as Roberts Tavern Drive (hereinafter the "355 By-Pass" or "Roberts Tavern Drive") and off-site right-of-way acquisition for the 355 By-Pass.

Condition 5 of the Opinion currently reads as follows:

For the first 200 building permits as a condition of site access, construct the outside lanes of MD 355 by-pass through the property as a two-lane arterial road including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided roadway.

Condition 6 of the Opinion currently reads as follows:

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(6) Prior to the issuance of the 201<sup>st</sup> building permit, but not later than eighteen (18) months after approval of the Preliminary Plan, obtain two (2) appraisals of the fair market value of the right-of-way for the By-Pass ("ROW") and make a cash offer to the owner of this ROW of up to 110 percent of the highest appraised value ("maximum cost") via certified letter.

a. If the offer is not accepted by the owner(s), or no response is received, the County shall act to acquire the ROW. The applicant shall be responsible to reimburse the County the maximum cost and to construct a half-section of the roadway in accordance with County standards at their sole cost and expense.

b. In the event neither the applicant nor the County acquires the ROW within three years of preliminary plan approval of Gateway Commons, the applicant shall be free to proceed with full build-out of Gateway Commons and be issued all remaining building permits without obtaining the ROW or construction the By-Pass.

Pursuant to the terms of Condition 6, Gateway Commons diligently pursued acquisition of the right-of-way within the eighteen months following Preliminary Plan approval. Despite these efforts, Gateway Commons has been unable to acquire the right-of-way. Gateway Commons also understands the County is not pursuing acquisition of this right-of-way and, therefore, pursuant to the terms of the condition, Condition 6 will expire automatically on August 13, 2005, allowing Gateway Commons to proceed with full build-out without obtaining the right-of-way.

However, in connection with its development, Gateway Commons has been voluntarily working with the County for nearly three years in order to determine how the needs of the County and Gateway Commons with regard to construction of certain roadways may be best served. Through these efforts, Gateway Commons was made aware of the County's CIP project to construct two lanes of Stringtown Road from Gateway Center Drive through the intersection with Observation Drive, extend Stringtown Road between Observation Drive and Maryland Route 355, and construct intersection improvements to the Stringtown Road and Gateway Center Drive intersection. Pursuant to Condition 3 of the Preliminary Plan, Gateway Commons is required to construct only the outside lanes of Stringtown Road from Gateway Center Drive through the intersection with Observation Drive as a two-lane arterial road with grading for a

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future four-lane divided highway. These respective responsibilities are illustrated on Exhibit "B", attached hereto (collectively, the "Stringtown Road Extension"). To expedite construction and potentially provide for the construction of all of the Stringtown Road Extension improvements at one time, thereby reducing disruption to the traveling public, Gateway Commons and the County have agreed to enter into a Road Participation Agreement ("RPA") for the construction of the Stringtown Road Extension. This agreement has been fully negotiated and executed by Gateway Commons and is in the process of execution by the County. The RPA not only serves to accelerate and consolidate the construction of this important improvement, but also addresses other important issues, such as stormwater management. Under this RPA, Gateway Commons hopes to commence construction of the Stringtown Road Extension by August 31, 2005, if all conditions precedent to construction such as this requested minor amendment to the Preliminary Plan conditions are satisfied, and to complete construction within one year in order to provide the public the benefit of this much-needed roadway.

Since the RPA increases the responsibilities and expenditures of Gateway Commons for Stringtown Road beyond that currently required by the Preliminary Plan, the County will not be proceeding with the 355 By-Pass, and Condition 6 will automatically expire on August 13, 2004, thereby relieving Gateway Commons from any obligations to acquire the off-site right-of-way for the 355 Bypass, the County has agreed to support a modification of Gateway Commons' obligations pertaining to the full construction of the on-site portion of the 355 By-Pass. Specifically, Gateway Commons proposes to complete the full-width grading of all on-site portions of Roberts Tavern Drive, construct the two outside lanes of Roberts Tavern Drive from Observation Drive to within forty-five (45) feet of the property line, and dedicate the remaining on-site right-of-way from Latrobe Lane to the property line. This modification will, however, require the amendment of Condition 5 (quoted above) to read as follows:

(5) For the first 200 building permits as a condition of site access, construct the outside lanes of MD 355 by-pass through to within 45 feet (as measured from the center line of the right-of-way) of the property line as a two-lane arterial road including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided roadway.

Additionally, as noted above, although Condition 6 will expire automatically on August 13, 2005, the anticipated timing of commencement of construction on the Stringtown Road Extension and slight modifications to the plan are such that Gateway Commons also requests the deletion of this condition from the Opinion. Therefore, the RPA is conditioned upon the

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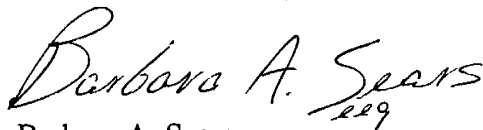
formal amendments by the Planning Board of Conditions 5 and 6 as requested. Aside from these modifications, no other modifications to the Opinion are requested.


In connection with this request, enclosed please find a completed application form for an Amendment to Approved Preliminary Plan, an adjoining and confronting property owner's list, the filing fee, and twenty-five (25) copies of a revised Preliminary Plan. We respectfully request that, due to the sensitive timing in the RPA regarding the commencement of construction of the Stringtown Road Extension, this request be brought before the Planning Board, if necessary, prior to their August recess.

Thank you for your consideration of this request. If you have any questions or concerns, or require any additional information, please feel free to contact us.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Barbara A. Sears

  
Erin E. Girard

Enclosure

cc: Mr. Richard Weaver  
Mr. Shahriar Etemadi  
Mr. Edgar Gonzalez  
Mr. Bruce Johnston  
Mr. Bill James  
Mr. Ron Mijan

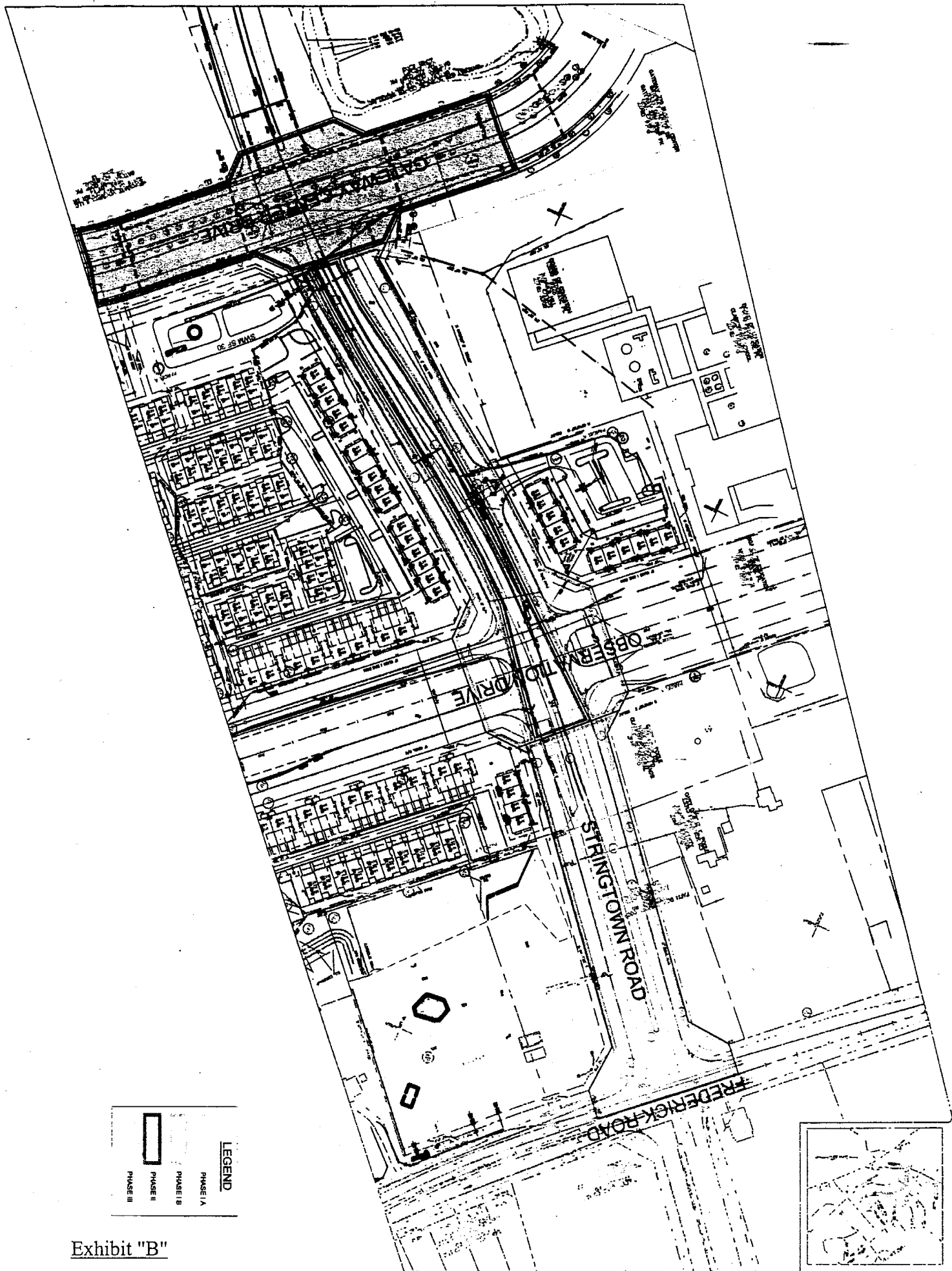


Exhibit "B"

STRINGTOWN ROAD PHASING  
EXHIBIT B  
GATEWAY COMMONS

DEVELOPER  
L. H. H. CORPORATION  
3000 WEST BATHURST AVENUE  
SILVER SPRING, MD 20910  
Phone: (301) 411-1100  
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