

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-82068  
NAME OF PLAN: WESTFARM

On 04-29-82, WESTFARM ASSOC. INC. , submitted an application for the approval of a preliminary plan of subdivision of property in the I3 zone. The application proposed to create 23 lots on 142.19 ACRES of land. The application was designated Preliminary Plan 1-82068. On 10-21-82, Preliminary Plan 1-82068 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. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-82068 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-82068, subject to the following conditions:

1. Dedication along East Randolph Road (relocated) and Cherry Hill Road in accordance with master plan
2. Record plat to show 100 year flood plain and 25' building restriction line
3. Denied access to relocated East Randolph Road
4. Site plan to show appropriate buffer along stream, south of Broadbirch Drive
5. Necessary slope and drainage easements
6. Plan to meet conditions of Transportation Memo dated 10/5/82
7. No clearing or grading or recording of plats prior to approval of site plan for streets and buffer area by Montgomery County Planning Bd
8. DOT requirements in connection with relocated East Randolph Road

Date of Mailing: October 26, 1982

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

June 17, 2005

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**By Hand Delivery**

Ms. Cathy Conlon  
Development Review Division  
Montgomery County Planning Board  
~~8787 Georgia Avenue~~  
Silver Spring, Maryland 20910

Re: Westfarm Technology Park, Preliminary Plan No. 1-82068 – Request for Extension of Adequate Public Facilities (“APF”) Approval

Dear Ms Conlon:

On behalf of Kaiser Permanente (“Applicant”) we are submitting the enclosed Application to extend the validity period of the adequate public facilities (“APF”) approval for Preliminary Plan No. 1-82068 (the “Subdivision”) for six years to July 25, 2011. Currently, the Subdivision’s APF approval will expire on July 25, 2005. →

Enclosed herewith are the following items comprising the Application:

1. Application Form and Fee Schedule for extension of the Subdivision.
2. Check in the amount of \$925, representing the filing fee for the Application.
3. Tax Map Excerpt with the Subdivision and Parcels BB and CC highlighted, attached as Exhibit “A”.
4. Letter to Planning Board, dated March 29, 2001 (the “March 29, 2001 Letter”), attached as Exhibit “B”.
5. Montgomery County Planning Board Letter, dated August 2, 2001, attached as Exhibit “C”.
6. Use and Occupancy Permits for the Subdivision, attached, collectively, as Exhibit “D”.
7. Site Photos, attached, collectively, as Exhibit “E”.
8. List of adjoining and confronting property owners.

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**REGULATORY BACKGROUND**

Applicant owns two record lots within the Subdivision, Parcels BB and CC. The Subdivision was approved by a written opinion of the Montgomery County Planning Board, dated October 26, 1982. (See Exhibit "B", Appendix A, Preliminary Plan Opinion No. 1-82068 and Appendix B, record plats 131/15243 and 131/15244.) Pursuant to Section 50-20(c)(3)(ii) of the Montgomery County Code, the Subdivision's APF approval was to remain valid until July 25, 2001. Through the March 29, 2001 Letter, Kaiser requested an extension of the Subdivision's APF approval, pursuant to the Section 50-20(c)(3)(iv) of the Montgomery County Code. *Id.* Section 50-20(c)(3)(iv) provides that the APF approval may be extended by the Planning Board if:

- (A) At least forty percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative total of the development will meet or exceed the percentage requirement of this paragraph.
- (B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and
- (C) The development is an "active project" as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last four years before an extension request is made, if 60 percent of the project has been built or is under construction."

(Emphasis added.)

In the March 29, 2001 Letter, Kaiser established that its APF extension request satisfied all of the above-stated criteria because: (a) **1,293,844.6 square feet (or 61.6 percent)** of the **2,115,423.5 square feet** of development approved through the Subdivision had been built (satisfying Section 50-20(c)(3)(iv)(A)); (b) **all of the infrastructure** required by the Subdivision **had been constructed or payments** for construction had been **made** (satisfying Section 50-20(c)(3)(iv)(B)); and (c) **within the preceding four years, over 778,232.6 square feet (or 36.78 percent)** of the Subdivision's maximum allowable development had been **completed** (satisfying Section 50-20(c)(3)(iv)(C)). See Exhibit "B". The Planning Board's technical staff agreed with Kaiser's analysis and conclusions and, indeed, adopted the March 29, 2001 Letter as its report to the Planning Board. On April 26, 2001, the Planning

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Board voted unanimously to extend APF approval for Parcels BB and CC to July 25, 2005.  
*See Exhibit "C".*

Since 2001, Kaiser has worked diligently with its real estate consultants (brokers and engineers), the Montgomery County Department of Economic Development, and numerous prospective purchasers to market and develop Parcels BB and CC. Between May 2001 and December 2002, Kaiser was involved in extensive negotiations with the Boy Scouts of America and Goodwill Industries to acquire and develop Parcels BB and CC. Unfortunately, in the aftermath of the coordinated terrorist attacks of September 11, 2001, and the following economic downturn, neither of these entities was able to mount successful capital campaigns to finance their acquisition and development plans. Since Fall 2003, Kaiser has explored a number of complex development proposals with various parties. The unique nature of these proposals has warranted extensive and complex due diligence/feasibility analyses, as well as a lengthy dialog with public agency staff, community representatives, area business leaders, and a member of County Council. Another significant complicating factor has been the pendency of the expiration of Parcels BB and CC's APF approvals on July 25, 2005, which leaves relatively little time to design a feasible plan of development, obtain site plan approval and the necessary post-site plan approval easements, and construction permits (erosion and sediment control, building permits, etc). By way of example, it has taken Kaiser approximately 15 months from the filing of a minor subdivision application to consolidate two lots (subject to a different preliminary plan), which are directly adjacent to Parcels BB and CC, and obtain the necessary post-approval easements and construction permits to build an addition to an existing structure located on one of the two former lots.

Kaiser is continuing its efforts to actively market and develop Parcels BB and CC – it is not simply sitting on its property rights. However, key to the ability to move forward on these properties is an extension of the APF approval. In 2001, the Planning Board determined that Section 50-20(c)(3)(iv)'s criteria had been met. The Planning Board's determination that the first two sub-criteria: (a) at least forty percent (40%) of the approved development has been built; and (b) all of the infrastructure required by the Subdivision has been constructed or payments for construction have been made, had been satisfied, remains valid. Accordingly, only the third and final sub-criteria remain to be addressed; that "the development is an active project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last four years before an extension request is made, if 60 percent of the project has been built or is under construction." As noted above, because at least 61.6 percent (1,238, 844.6 square feet) of the development approved by the Subdivision has been constructed (with completion of the additional 130,659 square feet within the last four years, for a total of 1,315,503 square feet, the Subdivision is now 64.5 percent complete), and all of the infrastructure required by the Subdivision has been constructed or payments for

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construction have been made, satisfaction of the final sub-criteria simply requires evidence that at least 105,772 square feet of development (5 percent of 2,115,423.5 square feet of development approved through the Subdivision) has been completed within the four years preceding this APF extension request.

A review of the use and occupancy permits issued for newly constructed structures within the Subdivision establishes that this requirement has been satisfied with at least 130,659 square feet of development (6.17 percent of the development approved through the Subdivision) having been completed within the four years preceding this extension request. (See chart below. See also, Use and Occupancy permits, attached, collectively, as Exhibit "D", and Site Photos, attached, collectively, as Exhibit "E".) Accordingly, the Subdivision continues to satisfy the APF extension standards of requirements of Section 50-20(c)(3)(iv), and the Applicant is therefore entitled to an extension of its APF validity period.

Parcel	Address/Description	User	Permit No.	Date	Square Footage
HHHH	12006 Plum Orchard Dr.	Clark Security	205661	5/23/02	30,700 sf
OO	12211 Plum Orchard Dr.	unnamed tenant	217776	8/14/02	8,600 sf
OO	12211 Plum Orchard Dr.	unnamed tenant	217568	5/01/03	8,819 sf
OO	12215 Plum Orchard Dr.	Soft Med	213321	6/03/02	75,240 sf
YYY	12056 Cherry Hill Rd.	Starbucks	219464	12/15/03	5,000 sf
YYY	12060 Cherry Hill Rd.	Chipotle	221613	2/12/04	2,300 sf
					130,659 sf

**SUMMARY**

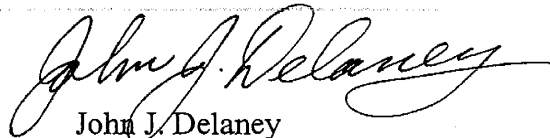
The APF expiration provisions were designed to ensure that development capacity was not "tied up" in dormant development projects – property owners were not permitted to sit on their approvals. Similarly, the APF extension provisions were expressly designed to provide relief to owners who are actively engaged in the marketing or development of their properties in accordance with their approved plans, but who, for various reasons (i.e., market conditions, scale of subdivision requiring lengthy build-out, etc.), were unable to develop their properties within the standard APF validity periods. At 2,115,423 square feet of approved development, the Subdivision is very large project, which necessarily involves a lengthy build-out. Indeed, a number of properties in the Subdivision have yet to be developed (Parcels RR, SS, and CCCC are also undeveloped; Parcel GGGG is under construction and a Use & Occupancy Permit for a 86,245 square-foot hotel pending). See Exhibit "D". However, at this time, well over 60 percent of the approved development has been constructed, with at least 5 percent constructed within the preceding four years. Additionally, all transportation infrastructure required of the Subdivision has been constructed or payments for construction have been made. Accordingly, the Subdivision, including the Applicant's properties, satisfies the APF extension criteria

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outlined in Section 50-20(c)(3)(iv). Furthermore, because the Applicant has and continues to work actively to market and develop its properties, it is entitled to an APF extension. Therefore, it is respectfully requested that the Planning Board grant the Applicant's request to extend the APF approval for the Subdivision until July 25, 2011.

Very truly yours,

LINOWES AND BLOCHER LLP



John J. Delaney



Mark M. Viani

Enclosures

cc: Lorena Stranigan, *Kaiser Permanente*  
Rose Krasnow, *M-NCPPC*  
Richard Weaver, *M-NCPPC*

**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

September 29, 2005

**Mark M. Viani**  
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**By Hand Delivery**

Ms. Cathy Conlon  
Development Review Division  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Westfarm Technology Park, Preliminary Plan No. 1-82068 –  
Request for Extension of Adequate Public Facilities (“APF”) Approval

Dear Ms. Conlon:

On behalf of Kaiser Permanente (“Kaiser”), this letter will update and supplement the summary letter included in Kaiser’s June 17, 2005 Application to extend the validity period of the adequate public facilities (“APF”) approval for Preliminary Plan No. 1-82068 (the “Subdivision”) to July 25, 2007. This letter will also confirm that Kaiser has had an opportunity to review, and concurs with Planning Board staff’s September 13, 2005 memorandum on this matter.

**REGULATORY BACKGROUND**

Kaiser owns two undeveloped record lots within the Subdivision, Parcels BB and CC. The Subdivision was approved by a written opinion of the Montgomery County Planning Board, dated October 26, 1982. Pursuant to Section 50-20(c)(3)(ii) of the Montgomery County Code, the Subdivision’s APF approval was to remain valid until July 25, 2001. On April 26, 2001, the Planning Board voted unanimously to extend APF approval for Parcels BB and CC to July 25, 2005. In keeping with the Planning Board’s practice for extension requests, an application filed prior to the expiration of the validity period remains timely filed even if it does not go to the Board for action prior to the expiration date. Therefore, the Board may properly approve Kaiser’s APF extension request.

Section 50-20(c)(3)(iv) of the Montgomery County Code provides that a subdivision’s APF approval may be extended by the Planning Board if:

- (A) At least forty percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative total of the development will meet or exceed the percentage requirement of this paragraph;

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- (B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and
- (C) The development is an “active project” as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last four years before an extension request is made, if 60 percent of the project has been built or is under construction.

(Emphasis added.)

For purposes of Section 50-20(c)(3)(iv)(A), the total amount of approved development in the Subdivision is established by adding the development authorized in two trip reduction agreements (an agreement between Westfarm Associates and the Planning Board, dated May 11, 1991 (the “Westfarm Agreement”) and an agreement between Kaiser Permanente and the Planning Board, dated May 14, 1991 (the “Kaiser Agreement”) (collectively, the “Trip Reduction Agreements”)) to the existing development on Parcel Y, which was developed prior to 1991 and is not subject to a trip reduction agreement. The Westfarm Agreement, which applies to all properties within the Subdivision except Parcels Y, W, BB, and CC, limits the total amount of development thereon to 1,968,699 square feet.<sup>1</sup> The Kaiser Agreement, which applies to Parcels W, BB, and CC, limits the total amount of development thereon to 367,959 square feet. Parcel Y is improved with a 62,500 square-foot office building that was constructed in 1988. Adding the development authorized in the Trip Reduction Agreements to the existing development on Parcel Y results in the total of 2,399,158 square feet of the development authorized for the Subdivision.

As outlined in the table below, the equivalent of 1,296,634 square feet of development has been constructed in the Subdivision. This represents approximately 54 percent of the Subdivision’s approved development, and therefore the Subdivision satisfies the requirements of Section 50-20(c)(3)(iv)(A).

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<sup>1</sup> In 1997, pursuant to the recommendations of the Fairland Master Plan, a 45-acre portion of the Property included in the Westfarm Agreement was rezoned from the I-3 zone to the C-6 zone, and was resubdivided into existing parcels AAA, BBB, ZZ, YY, XX, and WW through Preliminary Plan No. 1-97077. Through Site Plan No. 8-97024, the 920,000 square feet of office space previously allocated to the properties included in Preliminary Plan No. 1-97077 was converted to 460,000 square feet of retail space. Therefore, for purposes of calculating development in the Subdivision, one square foot of retail space equals two square feet of office space.



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<b>Parcel #</b>	<b>Owner</b>	<b>Year Built<sup>2</sup></b>	<b>Building Sq. Footage<sup>3</sup></b>
Y	Cameron	1988	62,500
PP	GBLLC	1989	39,600
QQ	GBLLC	1989	39,600
W	Kaiser	1989	46,300
RRR	USPS	1994	33,430
TT	SHA	1995	20,900
TTT	Target	1997	271,020
WWW	Kohl's	1997	185,152
AAAA	McDonalds	1999	10,000
ZZZ	Tosco Refining	2000	10,000
DDDD	7thDay Adv.	2000	80,000
XXX	First Security Bank	2000	49,200
OO/Tech I&II	GBLLC	2000	148,800
CCCC	SunTrust Bank	2001	10,000
VVV	Superfresh	2001	130,056
JJJ	Babies R Us	2001	74,800
HHHH	Clark Sec	2002	24,100
BBBB	Friendly's	2002	10,000
YYY	Frontier Dev.	2003	10,000
GGGG	Marriott Int.	2004	41,176
BB	Kaiser	0000	0
CC	Kaiser	0000	0
RR	GBLLC	0000	0
SS	GBLLC	0000	0
<b>TOTAL</b>			<b>1,296,634</b>

As part of the Planning Board's April 26, 2001 decision to extend the Subdivision's APF approval to 2005, it necessarily determined that Section 50-20(c)(3)(iv)(B)'s requirement that "all of the infrastructure required by the conditions of the original preliminary plan approval

<sup>2</sup> Dates obtained from finalized building permits, or, if not available, date of primary structure's construction as recorded in the property records of the Maryland State Department of Assessment & Taxation (SDAT).

<sup>3</sup> The square footage was obtained from the applicable site plans or mandatory referrals. The Trip Reduction Agreements specified square footage for office or warehouse uses. If retail or other uses other than these were approved, the office equivalent is reflected.

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has been constructed or payments for construction have been made” had been satisfied. This determination is binding and remains a factually correct statement/conclusion. Therefore, the Subdivision continues to satisfy the requirements of Section 50-20(c)(3)(iv)(B).

The Subdivision also satisfies the final APF extension criteria – Section 50-20(c)(3)(iv)(C)’s requirement that at least 10 percent of the project’s approved development has been completed within the last four years before the extension request is made. Here, this provision operates to require that 239,915 square feet of development in the Subdivision be completed since 2001. As outlined in the chart above, the equivalent of 300,132 square feet of development (or 12.5 percent of the total approved development) has been completed since 2001. Accordingly, the Subdivision also satisfied the requirements of Section 50-20(c)(3)(iv)(C).

#### **SUMMARY**

The APF expiration provisions were designed to ensure that development capacity was not “tied up” in dormant development projects – property owners were not permitted to sit on their approvals. Similarly, the APF extension provisions were expressly designed to provide relief to owners who are actively engaged in the marketing or development of their properties in accordance with their approved plans, but who, for various reasons (*i.e.*, market conditions, scale of subdivision requiring lengthy build-out, etc.), were unable to develop their properties within the standard APF validity periods. With a total of 2,399,158 square feet of approved development, the Subdivision is a very large project, which necessarily involves a lengthy build-out. Indeed, a number of other properties in the Subdivision also remain undeveloped (Parcels RR and SS). However, at this time, well over 40 percent of the approved development has been constructed, with at least 12.5 percent of the development completed within the preceding four years. Additionally, all transportation infrastructure required of the Subdivision has been constructed, or payments for construction have been made. Accordingly, the Subdivision, including Parcels BB and CC, satisfies the APF extension criteria outlined in Section 50-20(c)(3)(iv). Furthermore, as outlined more fully in the June 17, 2005 letter, because Kaiser has and continues to work actively to market and develop its properties, it is entitled to an APF extension. Therefore, it is respectfully requested that the Planning Board grant Kaiser’s request to extend the Subdivision’s APF approval until July 25, 2007.

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Very truly yours,

LINOWES AND BLOCHER LLP

A handwritten signature in black ink, appearing to read 'Mark M. Viani', enclosed within a large, loopy, hand-drawn oval scribble.

Mark M. Viani

cc: Lorena Stranigan, *Kaiser Permanente*  
Piera Weiss, *M-NCPPC*  
Cherian Eapan, *M-NCPPC*  
John J. Delaney, Esq.

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