



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

MCPB
ITEM # 8
6/12/08



DATE: May 30, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Supervisor (301-495-4542) *CC*
Development Review Division

SUBJECT: Request for an extension to the preliminary plan validity period

PROJECT NAME: Chevy Chase Lake East
CASE #: 12002020A

ZONE: C-1, C-2, R-30 and I-1 zones
LOCATION: In the southeast quadrant of the intersection of Connecticut Avenue and Manor Road
MASTER PLAN: Bethesda-Chevy Chase

APPLICANT: Chevy Chase Land Company
ATTORNEY: Linowes and Blocher, LLP

FILING DATE: April 23, 2008

STAFF RECOMMENDATION: Grant extension of the Preliminary Plan validity period until November 22, 2014.

BACKGROUND

The subject Preliminary Plan was approved by the Planning Board on October 17, 2002, and subsequently amended on September 29, 2005, for development of up to 174,016 square feet of commercial retail and 74,356 square feet of office uses. The property is located in the southeast quadrant of the intersection of Connecticut Avenue and Manor Road in the Bethesda-Chevy Chase Master Plan area. The Opinion reflecting the Board's action on the amended preliminary plan established the preliminary plan validity period as December 22, 2008 (Attachment A). Prior to that date, the Applicant either had to (1) record all plats among the land records of Montgomery County or (2) submit a request to extend the validity period.

Attached, please find the applicant's timely request dated April 23, 2008, to extend the preliminary plan validity period for approximately six years, until November 22, 2014. The extension is requested to afford the Applicant adequate time to participate in the County's decision-making process regarding the Metro Purple Line while maintaining the ability to implement the proposed development if the Purple Line is not sufficiently progressing over the next several years.

Pursuant to Section 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."

DISCUSSION

As fully described in the applicant's April 23, 2008, letter (Attachment B), the subject property is currently developed with a shopping center and surface parking and adjoins the existing 100-foot wide right-of-way easement that has been preserved for the proposed Metro Purple Line. Although the preliminary plan approved redevelopment of the property for up to 248,372 square feet of commercial retail and office uses, the applicant is waiting to implement the plan in order to participate in the ongoing processes relating to location and design of the Purple Line since these processes may ultimately change the design of the proposed development. The Planning Board recognized the importance of the subject property in relation to these decisions in granting an extension

of the Adequate Public Facilities Ordinance (APFO) validity period, until November 22, 2014. That extension permits the Purple Line approval process to continue with the inclusion of the property while preserving the applicant's ability to implement the proposed improvements if the process is not concluded in a reasonable timeframe as relates to that date. The applicant is now requesting that the preliminary plan validity period be extended to the APFO validity date for the same reason. In the applicant's opinion, the costs incurred in platting the property would not be justified unless the current approval is implemented, and that would be contrary to the ongoing efforts regarding the Purple Line.

The request for extension is based on unique, significant and unusual facts and circumstances relative to the subject property that are beyond the applicant's control and justify a longer period to record the plat. The current timeframe for critical decisions pertaining to the Purple Line is roughly equivalent to the APFO validity period for this plan. Extension of the preliminary plan validity to that date will encourage the applicant to continue to participate in the County's efforts to reach these decisions. It is staff's determination that the ongoing decision-making process for the Purple Line constitutes a unique, significant and unusual circumstance relative to the subject property that provides reasonable justification upon which the Planning Board can base the approval of the requested extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. It is staff's further determination that recording the subdivision plat for the subject property before this process is sufficiently resolved would be an undue hardship to the applicant. The timeframe requested will provide adequate time for the plat to be recorded and does not exceed the APFO validity period. Therefore, staff recommends that the preliminary plan be extended to November 22, 2014.

ATTACHMENTS:

- A- Preliminary Plan Opinion
- B- Applicant's April 23, 2008 Letter (without attachments)



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

Board Approval Date: Sept. 29, 2005

Date Mailed: AUG 14 2007

Action: Approved Staff Recommendation
Motion of Commissioner Perdue, seconded by Commissioner Bryant, with a vote of 4-1; Chairman Berlage and Commissioners Bryant, Perdue, and Robinson voting in favor. Commissioner Wellington, voting against

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED OPINION

Preliminary Plan 12002020A (formerly 1-02020A)
NAME OF PLAN: Chevy Chase Lake East

The date of this written opinion is AUG 14 2007 (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).

I. INTRODUCTION

On 7/05/05, Chevy Chase Land Company ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the C-1, C-2, R-30, and I-1 zones. The application proposed to create 1 lot on 8.08 acres of land located in the southeast quadrant of the intersection of Connecticut Avenue and Manor Road, in the Bethesda Chevy Chase master plan area. The application was designated Preliminary Plan 12002020A (formerly 1-02020A). On 9/29/05, Preliminary Plan 12002020A (formerly 1-02020A) 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.

APPROVED AND LEGAL SUBJECT TO
PHO 3/10/07

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 at the conclusion of 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.

II. SITE AND PROJECT DESCRIPTION

The subject property consists of 8.08 acres of land located in the southeast quadrant of the intersection of Connecticut Avenue and Manor Road. The property is currently developed as a shopping center (Chevy Chase Lake), parking lot and retail lumber yard.

The roadway network for this vicinity is comprised of Connecticut Avenue (a major highway), Manor Road and Jones Bridge Road (both primary streets). Manor Road extends from Connecticut Avenue to Jones Bridge Road to the east of the subject site. The intersections are both controlled with traffic signals as is the intersection of Connecticut Avenue and Jones Bridge Road.

A preliminary plan application for redevelopment of the subject property was filed in September, 2001 and presented to the Planning Board at a public hearing on October 17, 2002. The application proposed a total of 248,372 square feet of commercial retail and office uses. The plan included 2-story retail and 3 story office and retail buildings with both underground and surface parking. Site access is provided by a monumental drive isle to the underground parking facility from Connecticut Avenue and by three access points along Manor Road. An easement area 100 feet in width was preserved along the southern boundary of the property for the future Georgetown Branch transit way and Capital Crescent Trail system.

III. PROPOSED PRELIMINARY PLAN AMENDMENT

The Planning Board granted Preliminary Plan and Adequate Public Facilities Ordinance (APF) approval for the subject project by opinion dated November 22, 2002. That approval withheld final approval of 25,648 square feet of office space because there was insufficient transportation capacity available to support jobs that such office space would generate in the Bethesda-Chevy Chase Policy Area. The proposed amendment requests approval of this remaining office space. By letter dated July 5, 2005, the Applicant cites two grounds for the additional development: (1) changes

made to the County's Annual Growth Policy in 2004, which created the requisite transportation capacity; and (2) the fact that Policy Area review and staging ceiling requirements have been eliminated in the current AGP, as support for the requested amendment. The additional 25,648 square feet of office was included in the Local Area Traffic Review (LATR) as part of the APF analysis for the original preliminary plan, which provides the analysis for the adequacy of road capacity for the additional square footage requested.

In addition to approval of the remaining office use, the Applicant requested approval of new preliminary plan and APF validity periods. The Applicant's August 2, 2005 supplemental letter justifying the request cited to the fact that this property is adjacent to a proposed future transit station in the MTA preferred alternative for the Purple Line. The Applicant testified that the redevelopment of the subject property would take on a completely different look and feel if the Purple Line comes to fruition, and asked to have the flexibility to await the completion of the planning and environmental phases of the Purple Line recently funded as part of the 6-year federal transportation bill for federal transportation funds.

IV. DISCUSSION

A. Local Area Transportation Review for the Additional Office Space

Staff recommended approval of the additional office square footage. The 25,648 square feet of office use was included in the LATR review during the original preliminary plan approval and public facilities can accommodate the additional traffic under current regulations by virtue of the fact that traffic capacity was created in the policy area, and the fact that AGP requirements have changed. The traffic study prepared for the original Preliminary Plan application examined five nearby intersections to determine the impact of this development on the local area transportation system. The analysis concluded that the then applicable¹ congestion standard of 1650 critical lane volume (CLV) would be exceeded at the intersections of Connecticut Avenue/Manor Road and Connecticut Avenue/Jones Bridge Road.

Per the still applicable previous conditions of approval, the Applicant has agreed to reconfigure the lane use on westbound Manor Road as it approaches Connecticut Avenue. The Applicant will participate in the cost sharing of the state-run improvements at the intersection of Connecticut Avenue and East West Highway, which was required in lieu of additional road improvements at the time of the original approval based upon community opposition to road widening of the affected roadways. In addition, the Applicant will make a one-time contribution of \$1,000,000 to the Montgomery County Department of Public Works and Transportation in lieu of making physical improvements to the intersection of Connecticut Avenue and Jones Bridge Road.

¹ As of July 2004, the congestion standard for the Bethesda-Chevy Chase region has been lowered to 1600 CLV.

These actions will adequately mitigate the anticipated peak-hour trips, even with the additional 25,648 square feet of office space added to the preliminary plan.

B. Adequate Public Facilities Validity Period

The Adequate Public Facilities Ordinance (APFO) review for this application will expire on December 22, 2007 per the previous conditions. The Applicant requested a seven-year extension of the APFO, which was not supported by Transportation Planning staff. Staff testified that the proposed development will result in a considerable number of additional peak-hour trips added to the surrounding network, and that a new traffic study should be required at the time of development, to mitigate the actual number of new trips that will be added at the time of buildout. The conclusion of the traffic study at the time of the original approval determined that mitigation would be required to offset the impact of these additional trips. The previous conditions of approval bind the Applicant to a series of actions designed to mitigate and/or minimize the consequences of development. These actions were established according to the needs and conditions of the transportation infrastructure at the time of the traffic study. These needs will change over time and staff does not believe the APFO should be extended out to twelve years without an updated traffic study.

Staff believes that a one-year extension of the APFO validity period, which would correspond to the requested additional three-year validity period for the preliminary plan, is acceptable. The change in needs and conditions of the transportation infrastructure for the area should not be significant for an additional year, as opposed to the requested seven.

C. Preliminary Plan Validity Period

The original preliminary plan approval for this application will expire on December 22, 2005 and the Applicant is requesting establishment of a new 3-year validity period with this amendment. The request is based on delays which occurred in processing their request for inclusion of the additional office square footage needed to initiate the project, and their desire to preserve the flexibility to respond to decisions which may be made in the near future on the proposed Purple Line transit way. If the on-site Purple Line alternative were chosen, the plans for redevelopment of the property would likely change.

Section 50-35(h)(4) of the Montgomery County Code, Subdivision Regulations, states that an amendment to an approved preliminary plan will affect the established validity period for the plan as established in Section 59-D-2.6 which authorizes the Planning Board to determine whether the validity period should be extended and, if so, for what duration. The Board must consider the nature and scope of the requested amendment in making their determination.

Staff supports creation of a new three-year validity period for this project based upon the desirability of maintaining options to fully utilize potential mass transit that may serve this site, and the fact that key decisions on the transit may be made in the near future. Staff also acknowledges the delay which occurred in the review and processing of the Applicant's request for this amendment, and believes this should be a consideration in granting a new validity period. Therefore, staff recommends a new preliminary plan validity period until December 22, 2008, which corresponds to the date recommended for extension of the APFO approval.

V. PUBLIC HEARING

The Applicant testified in support of its position, as detailed above in Sections IV B. and IV C., above. One additional speaker testified in opposition to the project, raising generalized concerns about the increased traffic on local roadways over the past several years, and urged the Board to require a new traffic study to ensure the roads are adequate for the proposed development.

In response to Board questioning, the Applicant testified that the Board has the statutory authority to extend APFO validity period up to 12 years, and the monetary contributions the Applicant is required to provide for road improvements under the original approval are based upon a formula that takes into account the number of trips that will be generated by the square footage approved by the project. With respect to the \$1,000,000 contribution, however, the Board was concerned that this amount should be adjusted for inflation, to ensure that this monetary contribution would have the same effect in mitigating new trips, even taking into consideration the impact of inflation over time.

Commissioner Wellington dissented from the majority vote, based upon her concerns that the additional square footage would not be subject to a new traffic study; that the original traffic study may have been inadequate; and that the Purple Line transit facility would not be in place before the project builds out.

VI. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; 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:

² The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- a) The uncontested evidence of record demonstrates that Preliminary Plan No. 12002020A (formerly 1-02020A) substantially conforms to the Bethesda Chevy Chase master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. Specifically, the Applicant's road improvement requirements, its contribution to road improvements, and the addition of a cost of living inflationary index to the Applicant's \$1,000,000 contribution ensure that the requisite number of trips will be mitigated over time, even with a longer APFO validity period.
- c) The uncontested evidence of record demonstrates that the size, width, shape, and orientation of the proposed lots is appropriate for the location of the subdivision.
- d) The uncontested evidence of record demonstrates that 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 uncontested evidence of record demonstrates that 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) Aside from the validity period issues discussed above, 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.

VII. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 12002020A (formerly 1-02020A) in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 12002020A (formerly 1-02020A), subject to the following conditions:

- (1) Revise previous condition (1) to read:

Approval under this preliminary plan is limited to a maximum of 174,016 square feet of commercial retail and 74,356 square feet of office uses replacing the existing 67,009 square feet of general retail use.

- (2) Revise previous condition (2) to add the following sentence to the end of the previous condition:

Applicant's \$1,000,000 contribution in satisfaction of its LATR requirements will be adjusted annually pursuant to the consumer price index during years five through twelve of the APFO validity period.

- ~~(2)~~(3) Revise previous condition (9) to read:

The Adequate Public Facilities (APF) review for this preliminary plan will remain valid for an additional twelve (12) ~~months~~ years from the expiration date set by the November 22, 2002 Planning Board opinion, or until ~~December 22, 2008~~ November 22, 2014.

- ~~(3)~~(4) Revise previous condition (10) to read:

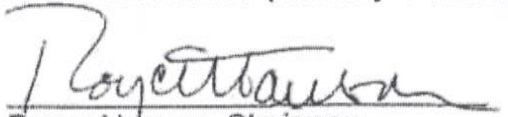
This preliminary plan will remain valid for an additional thirty-six (36) months from the expiration date set by the November 22, 2002 Planning Board opinion, or until December 22, 2008. Prior to expiration of this validity period, a final record plat for all the property delineated on the approved preliminary plan must be recorded or a request for extension must be filed.

- ~~(4)~~(5) All other previous conditions as included in the Planning Board opinion dated November 22, 2002 remain in full force and effect.

~~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.~~

* * * * *

At its regular meeting, held on Tuesday, August 7, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Vice Chair Robinson, seconded by Commissioner Bryant, with Chairman Hanson, Vice Chair Robinson, and Commissioner Bryant voting in favor. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 12002020A (formerly 1-02020A), Chevy Chase Lake East.


Royce Hanson, Chairman
Montgomery County Planning Board

Date Mailed: November 22, 2002

Action: Approved Staff Recommendation

Motion of Comm. Bryant, seconded by
Comm. Wellington with a vote of 4-0;

Comms. Berlage, Bryant, Robinson
and Wellington voting in favor with
Comm. Perdue absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-02020

NAME OF PLAN: CHEVY CHASE LAKE EAST

On 09/13/01, CHEVY CHASE LAND COMPANY submitted an application for the approval of a preliminary plan of subdivision of property in the C-1; C-2; R-30 zones. The application proposed to create 1 lot on 5.0 acres of land. The application was designated Preliminary Plan 1-02020. On 10/17/02, Preliminary Plan 1-02020 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 1-02020 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02020.

Recommended Conditions of Approval for Preliminary Plan No. 1-02020 – Chevy Chase Lake:

- (1) Approval under this preliminary plan is limited to a maximum of 174,016 square feet of Commercial retail and 48,708 square feet of office uses replacing the existing 67,009 square feet of general retail use. The remaining 25,648 square feet of office space (for a total of 74,356 square feet of office space) proposed may be approvable in Phase II when sufficient staging ceiling is available
- (2) Prior to the recordation of a plat of subdivision on the property, the applicant to enter into an agreement with Montgomery County to pay the sum of One million dollars for transit enhancements as part of the Local Area Transportation Review requirements. This agreement could be included in the standard Public Improvements Agreement administered by the Montgomery County Department of Public Works and Transportation. This contribution applies to the 174,016 square feet retail area and 74,356 square feet of office space
- (3) The applicant agrees to provide for the other following transportation related improvements:
 - a) Lengthen the southbound left turn lane on Connecticut Avenue at Manor Road to provide sufficient storage area for traffic turning left onto Manor Road in accordance with MDSHA permitting requirements
 - b) Reconfigure the two (2) lanes on the westbound approach to Manor Road to Connecticut Avenue to provide one exclusive right turn lane and a combined through/left turn lane

- c) Participate with MDSHA in the programmed second left turn lane from eastbound East-West Highway to northbound Connecticut Avenue
 - d) Coordinate with the Maryland Mass Transit Authority (MTA) as part of the project planning and design process to optimize station access and circulation for the Bethesda to Silver Spring segment of the Purple Line
 - e) Design entrance "B" on Manor Road as a "right-in and right-out" only access
 - f) Provide a raised paver crosswalk on Manor Road in the vicinity of Village Park Place and the site entrance "C", subject to MCDPW&T approval
 - g) Extend the median on entrance "B" south on Manor Road to prevent traffic turning onto the site from turning left into the parking area along the south side of Manor Road
 - h) Provide signage on Manor Road, subject to approval by MCDPW&T, indicating the entrances for traffic destined to the office/retail area as opposed to traffic going to the grocery store location
 - i) Dedication of Connecticut Avenue 60' off centerline and 35' off center line for Manor Road
- (4) All road rights of way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Bethesda-Chevy Chase Master Plan, unless otherwise designated on the preliminary plan
 - (5) All roads shown of the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan "To be constructed by _____" are excluded from this condition
 - (6) Compliance with the conditions of MCDPS stormwater management approval
 - (7) Prior to issuance of building permits applicant to coordinate with M-NCPPC staff regarding the location and possible improvements associated with Master Planned Capital Crescent Trail and the coordination of public use space, recreation areas and pedestrian circulation as outlined in the Bethesda-Chevy Chase Master Plan
 - (8) Other necessary easements
 - (9) The Adequate Public Facilities (APF) review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
 - (10) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all the property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed

April 23, 2008

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com

The Honorable Royce Hanson
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Hand Delivered

Re: Chevy Chase Lake East, Preliminary Plan Amendment No. 12002020A (the "Preliminary Plan Amendment") / The Chevy Chase Land Company of Montgomery County, Maryland (the "Land Company") – Request for Extension of Validity Period

Dear Chairman Hanson:

By Corrected Opinion approved by the Planning Board on September 29, 2005 and mailed August 14, 2007 (attached hereto as Attachment "1"), the Preliminary Plan Amendment was approved (the "Preliminary Plan Amendment Approval") for the development of a maximum of 248,372 square feet of commercial retail and office uses (the "Proposed Improvements") on a single lot comprised of 8.08 acres of land located in the southeast quadrant of the intersection of Connecticut Avenue and Manor Road, in the Bethesda-Chevy Chase Master Plan area (the "Lake East Property"). The Preliminary Plan Amendment Approval is valid until December 22, 2008 (the "Preliminary Plan Validity Period"), by which time a record plat of subdivision must be recorded among the Land Records or a request for an extension of the Preliminary Plan Validity Period must be filed. Pursuant to Section 50-35(h)(3) of the Subdivision Regulations, the purpose of this letter, for the reasons discussed below, is to request an extension of the Preliminary Plan Validity Period (the "Preliminary Plan Validity Period Extension") to coincide with the validity period for the Adequate Public Facilities Ordinance approval (the "APFO Approval") for the Proposed Improvements on the Lake East Property, that date being November 22, 2014 (the "APFO Validity Period"). The unique, significant and unusual facts and circumstances relative to the Lake East Property and the Preliminary Plan Amendment Approval, especially in consideration of the ongoing processes relating to the Purple Line and the importance of the Lake East Property relative to the Purple Line, justify the granting of the Preliminary Plan Validity Period Extension.

I. Site and Surrounding Area Description

The Lake East Property consists of 8.08 acres of land located in the southeast quadrant of the intersection of Connecticut Avenue and Manor Road, and it is currently developed with a

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shopping center anchored by a grocery store, a retail lumber yard (TW Perry) and surface parking (the "Existing Improvements"). The Lake East Property is currently classified in the C-1, C-2, R-30 and I-1 zones. The Land Company also owns the property located on the parcel immediately south of the Lake East Property (improved with an existing gas station) and owns and operates the retail shopping center located across Connecticut Avenue to the west which is known as Lake West Shopping Center.

Adjoining the Lake East Property to the south is the existing 100-foot wide right-of-way easement that has been preserved for the proposed Purple Line, which right-of-way extends from Bethesda to Silver Spring and is also known as the Georgetown Branch Transitway and Capital Crescent Trail system. The right-of-way adjacent to the Lake East Property (and elsewhere) is owned by the Land Company with the easement in favor of the County having been acquired by the County from CSX several years ago in order to preserve the Georgetown Branch for transit (and hiker/biker) use as recommended by all applicable County master plans since the mid-1970s. The strategic importance of the Lake East Property relative to the Purple Line is discussed in detail below.

II. Project Description and Approval History

The Existing Improvements were originally constructed on the Lake East Property in the 1950s, and several renovations of the shopping center have occurred over time. Given the age and increasing obsolescence of the Existing Improvements and the resulting need to redevelop this important parcel with modern higher and better uses, the Land Company pursued and received Preliminary Plan and Adequate Public Facilities Ordinance approval for the Lake East Property by Opinion mailed November 22, 2002 (attached hereto as Attachment "2"). The Preliminary Plan approval granted at that time was for 222,724 sq. ft. of commercial retail and office uses with 2-story retail and 3-story office and retail buildings with underground and surface parking. That Preliminary Plan approval withheld final approval of 25,648 sq. ft. of office space because there was insufficient transportation capacity available at that time to support jobs that the additional office space would generate in the Bethesda-Chevy Chase Policy Area (pursuant to the then existing staging ceiling capacity created through the FY2003 Annual Growth Policy); however, the entire 248,372 sq. ft. of proposed commercial retail and office uses (including the above-mentioned 25,648 sq. ft. of office use) was reviewed and approved under the local area transportation review (LATR) standards then in existence.

On July 5, 2005, the Land Company submitted an application for the approval of the Preliminary Plan Amendment for the Lake East Property to gain the approval of the remaining 25,648 sq. ft. of office space (as staging ceiling capacity limitations for additional jobs was no longer a problem). By Opinion approved September 29, 2005 and mailed February 21, 2006

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(Attachment "3" hereto), the Preliminary Plan Amendment was approved for the entire 248,372 sq. ft. of commercial retail and office uses – the Proposed Uses. At that same time, the APFO Validity Period for the Proposed Improvements, set to expire on December 22, 2007, was granted an extension until November 22, 2014, this being the maximum validity period allowed. Because the Opinion mailed on February 21, 2006 erroneously referenced the APFO Validity Period (December 22, 2008), the corrected Opinion was issued on April 14, 2007, to correctly reflect the APFO Validity Period as November 22, 2014.

III. Preliminary Plan Validity Period Extension

As was recognized by the Planning Board in extending the APFO Validity Period for the Proposed Improvements to November 22, 2014, implementing the Preliminary Plan Amendment for the Proposed Improvements is complicated tremendously by the ongoing processes relating to the Purple Line and the strategic importance of the Lake East Property for the Purple Line. As this Planning Board is quite familiar with the ongoing processes relating to the Purple Line and the details relating to the proposed transit operations, we will not spend a great deal of time in this letter detailing the significance of the Lake East Property as it relates to the Purple Line. It is important to note, however, that the major transit station between Bethesda and Silver Spring is proposed at the location of the Lake East Property, with the Lake East Property being integral to the future operations of the transit station from a functional and a land use perspective. Functionally, ingress and egress, bus circulation, Kiss 'N Ride operations, and the actual physical location of the transit station are all dependent upon the cooperative integration of the Lake East Property. From a land use perspective, the Proposed Improvements are not consistent with, nor would they allow for, this essential integration of the Lake East Property into the design and operation of the transit station (primarily because the Purple Line was not actively being pursued at the time of the original Preliminary Plan approval for the Lake East Property). Furthermore, the Proposed Improvements are in response to the existing zoning of the Property and do not contemplate the existence of a transit station adjacent to and integrated with the Lake East Property, and by no means can the Proposed Improvements be characterized as "transit-oriented development" that will not only be appropriate but mandatory for the Lake East Property to support the location and funding of the Purple Line transit station at this location (with this being a major element of the overall Purple Line operations and funding).

The Land Company must protect and preserve the Preliminary Plan Amendment Approval and the APFO Approval to allow for the highest and best use of the Lake East Property under existing zoning, and to do this, the Land Company must record a record plat by December 22, 2008 or gain approval of the Preliminary Plan Validity Period Extension. The costs incurred in platting the Property are justified only if the Land Company thereafter implements the Proposed

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Improvements. This result will run counter to the ongoing efforts of the County to see the Purple Line come to fruition.

On the other hand, granting the Preliminary Plan Validity Period Extension will allow the Land Company to refrain from implementing the Proposed Improvements in order to allow the Lake East Property to remain an integral piece of the Purple Line, while maintaining the ability to implement the Proposed Improvements in the event the Purple Line is not sufficiently progressing over the next several years. It is thus prudent, necessary and in the public interest to grant the Preliminary Plan Validity Period Extension to preserve the integration of the Lake East Property with the Purple Line.

In extending the APFO Validity Period until November 22, 2014, the Planning Board recognized in 2005 the importance of allowing approvals relating to the Proposed Improvements to remain valid (with appropriate conditions) in order to permit the Purple Line approval process to continue with the inclusion of the Lake East Property while preserving the Land Company's ability to implement the Proposed Improvements should the Purple Line not progress to the point of being reasonably imminent in the foreseeable future in the year 2014 timeframe. With the Preliminary Plan Validity Period now approaching the December 22, 2008 expiration date established by the Subdivision Regulations, the extension is warranted for the exact same reasons as those underlying the APFO Validity Period Extension. The Subdivision Regulations do not restrict the extension period permitted to be granted by the Planning Board, but rather require the Board to establish the "minimal time it determines to be necessary for the Applicant to validate its plan." Pursuant to Section 50-35(h)(3)(d)(ii), "the Board will not grant an extension to a preliminary plan which has the effect of carrying the plans validity period beyond any established APFO validity period, unless otherwise allowed by law." The current timeframe for critical decisions pertaining to the Purple Line is roughly equivalent to the timeframe of the APFO Validity Period. As such, having the Preliminary Plan Validity Period similarly track the Purple Line timeframe and the APFO Validity Period is consistent, logical and necessary.

The Land Company's desire and intention is to remain a strong advocate for the Purple Line and a willing participant in the Purple Line decision-making process, including participating in the design of the Purple Line transit station that incorporates the Lake East Property and the master plan and zoning processes which will become necessary to allow the use of the Lake East Property for transit-oriented development that will support the chances of allowing the Purple Line to be approved, funded and constructed. Should this not occur, however, the Land Company does intend to construct the Proposed Improvements pursuant to existing zoning and the Preliminary Plan Amendment Approval.

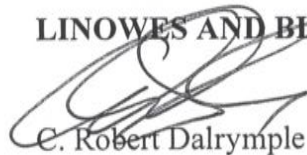
The Honorable Royce Hanson
April 23, 2008
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For all of the reasons discussed herein, the Land Company respectfully requests that the Planning Board grant the Preliminary Plan Validity Period Extension until November 22, 2014. In order to allow a sufficient period of time to permit the platting of the Lake East Property by December 22, 2008 pursuant to the Preliminary Plan Amendment Approval, should this extension request not be granted, we ask that this request be acted upon at the soonest available meeting of the Planning Board. We will be present at that Planning Board session to answer any questions relative to this request and/or the intentions of the Land Company pertaining to the Lake East Property and/or the Purple Line.

Thank you for your consideration of this request, and please do not hesitate to contact us if you need further information to process this request.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple

Enclosure

cc: Planning Board Members
Ms. Rose Krasnow
Ms. Catherine Conlon
Mr. Richard Weaver
Mr. Shahriar Etemadi
Mr. Thomas Autrey
Dr. Glen Orlin
Mr. Edward Hall Asher
Ms. Michele Horwitz Cornwell
Mr. David M. Smith
Mr. Charles A. Irish, Jr.
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