



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

**MCPB**  
**ITEM #** 7  
**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:** Westfield Montgomery  
**CASE #:** 120050180 and 12005018A

**ZONE:** C-2 zone

**LOCATION:** At the northeast quadrant of the intersection of Democracy Boulevard and Westlake Drive

**MASTER PLAN:** Potomac

**APPLICANT:** Montgomery Mall, LLC and Westfield, Inc.

**ATTORNEY:** Furey, Doolan & Abell, LLP

**FILING DATE:** March 24, 2008

**STAFF RECOMMENDATION:** Grant a one-year extension of the Preliminary Plan validity period until May 28, 2009.

## **BACKGROUND**

The subject Preliminary Plan and a concurrent Site Plan were approved by the Planning Board on January 27, 2005, and subsequently amended on September 20, 2007, for development of up to 1,767,177 square feet gross leasable area of general retail uses to permit expansion and improvement to the existing Westfield Montgomery Mall. The property is located in the northeast quadrant of the intersection of Democracy Boulevard and Westlake Drive in the Potomac Master Plan area. An Opinion reflecting the Board's action on the original preliminary plan was mailed on April 28, 2005 and the preliminary plan validity period was set at 37 months from the mailing date, or May 28, 2008. The subsequent resolution for the preliminary plan amendment did not modify the May 28, 2008, validity date. 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 March 24, 2008, to extend the validity period for one year, until May 28, 2009. The extension is requested to afford the Applicant adequate time to resolve remaining issues and allow the pending plat to be recorded.

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**

The original preliminary plan was approved in January, 2005 and subsequently amended in September, 2007. At the time of the amendment, the applicant believed that it would be able to promptly obtain other necessary approvals and proceed to record the subdivision plat prior to the May 28, 2008 preliminary plan expiration date. Unfortunately, delays occurred in resolving the complex issues related to some of these approvals that prevented record plat submittal. These delays included negotiations with the various landowners within the mall property which took longer than anticipated, and extended discussions with the Montgomery County Department of Public Works and

Transportation (DPWT) regarding easements for the County's new transit center and commuter parking and the cross-section for Westlake Drive. These issues have been resolved and a record plat was submitted for review on February 26, 2008. The applicant is requesting an additional year to obtain all the agency approvals of this plat, post the bonds for public improvements, and circulate the plat for the necessary signatures of the several landowners.

The request for extension is based on delays not caused by the applicant that have prevented perfecting the plat recordation. It is staff's determination that the delays outlined in the applicant's letter and summarized above provide 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. The timeframe requested is the minimum necessary to validate the plan. Therefore, staff recommends that the preliminary plan be extended to May 28, 2009, to allow adequate time for the plat to be recorded.

ATTACHMENTS:

A- March 24, 2008 letter



LAW OFFICES

FUREY, DOOLAN & ABELL, LLP

SUITE 1100

8401 CONNECTICUT AVENUE

CHEVY CHASE, MARYLAND 20815-5819

(301) 652-6880

FAX: (301) 652-8972

www.fdalaw.com

DEVIN JOHN DOOLAN  
W. SHEPHERDSON ABELL  
ELSIE L. REID  
PHILIP L. O'DONOGHUE  
MARIANNE RENJILIAN LOMAN  
JULIA L. O'BRIEN  
MICHAEL A. DYMSKY\*  
JAMES G. NOLAN  
ROBERT L. BROWNELL  
PATRICK F. GREANEY  
LILLIAM L. MACHADO  
ROBERT E. GRANT

CHARLES S. ABELL  
MICHAEL F. X. DOLAN, JR.

TANYA CALVELLI BERNSTEIN  
JEANNETTE OWEN ROEGGE  
REBECCA L. BIXLER  
BRENDAN D. DELANY  
L. LAUREL LEA\*

EGBERT R. FERGUSON, JR.  
SAMUEL S. D. MARSH  
HAL WITT  
RALPH J. MOORE, JR.\*  
VINCENT C. BURKE, III  
OF COUNSEL

\*ALSO ADMITTED IN VA  
+ADMITTED IN MD, D.C. AND CA

March 24, 2008

VIA FEDERAL EXPRESS

Catherine A. Conlon  
Supervisor, Subdivision Review  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Extension of Validity Period of Preliminary Plan No. 1-05018, as amended by  
Plan No. 2005018A, Westfield Montgomery

Dear Ms. Conlon:

On behalf of the applicant, Montgomery Mall, LLC, and Westfield, Inc. ("Westfield"), we write to request an extension of the validity period of the preliminary plan approval for the expansion and redevelopment of Westfield Montgomery Mall. The applicant requires additional time to record a record plat pursuant to the Board's Resolution of April 28, 2005, approving a preliminary plan of subdivision for Westfield Montgomery Mall, a regional shopping center formerly, and still popularly, known as Montgomery Mall. This request is submitted pursuant to Sec. 50-35(h) (3) of the Subdivision Ordinance of Montgomery County, MD.

As you may recall, this preliminary plan (Plan No. 1-05018) was amended, by a Resolution of the Planning Board dated December 11, 2007, to permit the incorporation of an additional contiguous parcel of land (the land comprising the Westlake Crossing Shopping Center) within the area to be re-platted (Plan No. 1-2005018A). Westfield believed that it would be able promptly to obtain the certification of its site plan approvals for the project at Westfield Montgomery, also being amended at the same time as the preliminary plan, and proceed to record the subdivision plat well before May 28, 2008, the expiration date on its preliminary plan approval. In fact, Westfield had hoped to begin construction by July, 2008.

Events have conspired to make achieving those dates with any certainty a difficult goal. In order to record the plat, a number of approvals, both from government agencies and from the various landowners within the mall complex, are needed. While negotiations with the various landowners within the mall property are ongoing, easements for the County's new transit center and commuter parking have just now been finalized with DPWT. In addition, some of the recent

plan amendments, particularly those affecting the cross-section for Westlake Drive, have been under review by DPWT in cooperation with the applicant and the interested civic communities around the mall. Working through all these issues has delayed submission for approval of a final plat.

Westfield's engineers formally filed the proposed record plat with MNCPPC on Feb. 26, 2008, thus beginning the formal process of governmental review. Yet, it is likely this application will not be fully processed in time to meet the May 28 expiration date of the validity period for the preliminary plan. While the applicant is committed to pursuing all the governmental approvals needed as a condition to recording the plat as soon as possible. Westfield is concerned that it may take six to twelve months longer to obtain all the agency approvals, post the bonds for public improvements, and circulate the plat for the necessary signatures of the several landowners.

The Adequate Public Facility (APF) approvals for this project, as originally approved, are valid for 12 years, *i.e.*, 144 months from the Spring of 2005. Accordingly, an extension of time to record the plat for an additional one year period, until May 28, 2009 should pose no public interest concerns from a traffic capacity view point.

Without question the applicant has been diligently pursuing the project. Westfield expects to invest many millions of dollars in this major commercial effort, one that is highly desirable for Montgomery County.

Accordingly, we respectfully ask your approval of a one year extension of the validity period for the preliminary plan approvals. This is the minimum time necessary to accomplish the recording of a plat conforming to the preliminary plan approvals as amended.

Westfield and our office will be happy to furnish any additional information you or the Planning Board may request. Thank you.

Sincerely,

  
Devin John Doolan

  
Elsie L. Reid

ELR/jts

cc: John A. Pattillo, Sr. Vice President - Development, Westfield Corporation, Inc.  
Jim Agliata, Vice President - Development, Westfield Corporation, Inc.  
Paul Janyska, Director, Development, Westfield, LLC  
Robert A. Kronenbeg, Chief, Site Plan Review, Planning Board, MNCPPC  
MMCAP Representative, Peter Downes, President