



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

**MCPB**  
**ITEM # 10**  
**5/8/08**

**DATE:** April 25, 2008

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief  
Catherine Conlon, Subdivision Supervisor *CAC*  
Development Review Division

**FROM:** *NB*  
Neil Braunstein, Planner Coordinator (301) 495-4532  
Development Review Division

**SUBJECT:** Request for an extension to the validity period of the Adequate Public Facilities approval – Preliminary Plan No. 119970220 – Traville

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**Recommendation:** Extend Adequate Public Facilities validity period to October 12, 2015

**Discussion:**

The subject preliminary plan was approved by the Planning Board on September 11, 1997, for six lots to contain a total of 750 multiple-family dwelling units and 750,000 square feet of mixed retail, office, and research and development uses, on 192.1 acres of land located in the southeast quadrant of the intersection of Darnestown Road (MD 28) and Travillah Road. The resolution reflecting the Planning Board's action was mailed on September 12, 1997. The applicant submitted an application to amend the plan in 2000. The amended preliminary plan was approved by the Planning Board on March 8, 2001, for ten lots to contain a total of 750 multiple-family dwelling units and 1,322,500 square feet of retail, office, and research and development uses. The Adequate Public Facilities (APF) finding was made as part of the original approval and remains valid until October 12, 2009. Attached, please find the applicant's timely request dated January 24, 2008 and March 20, 2008 (Attachment 1) to extend the APF validity period for Preliminary Plan 119970220, (formerly 1-97022), Traville, for 72 months, until October 12, 2015.

Pursuant to Section 50-20(c)(5) of the Subdivision Regulations, the Planning Board may approve one or more additional extensions of a determination of adequate public facilities, up to six years, if:

(A) at least 40% of the approved development has been built, is under construction, or building permits have been issued;

(B) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and

(C) occupancy permits have been issued for at least 5 percent of the project within the 4 years before an extension request is filed.

This application qualifies for approval of the extension because, as the attached Traville Development Status Summary (Attachment 2) shows, approximately 1,440,000 square feet (70%) of the total density approved pursuant to the preliminary plan (2,072,500 square feet), have been built, and use and occupancy permits for approximately 672,000 square feet (32%) of the total were issued in the last four years. Finally, as shown in the attached Traville Infrastructure Improvements memorandum (Attachment 3) and verified by staff, all of the infrastructure requirements of the preliminary plan have been satisfied.

The applicant proposes the following phasing schedule, in compliance with Section 50-20(c)(7)(A) of the Subdivision Regulations:

- Phase I – building permits for 100,000 square feet of the remaining density to be issued on or before October 13, 2011.
- Phase II – building permits for the next 200,000 square feet of the remaining density to be issued on or before October 12, 2013.
- Phase III – building permits for the balance (230,000 square feet) of the remaining density to be issued on or before October 12, 2015.

### **Applicant's Position**

The applicant is seeking the extension of the APF validity period to allow for the thoughtful and well-planned development of this important site in the I-270 Corridor. The property is part of the Gaithersburg West Master Plan update, which is currently being prepared by staff. It is expected that the master plan update will consider the entire planning area for development of a large scale, comprehensively planned applied technology/life sciences community. The implementation of such a recommendation in the master plan would likely require significant changes to existing land uses and infrastructure improvements for many properties in the planning area, including the subject property. In the event that significant land use changes are recommended for the subject property, the applicant would likely not be able to develop the property

accordingly before the current APF validity period expires. The APF validity extension requested by the applicant will allow the applicant to more fully participate in the long-term goals of the master plan update without the short-term concern of the expiration of its APF validity. Participation by the applicant will advance both the County's planning and economic objectives and the applicant's ability to successfully develop the property as a significant component of the County's life sciences industry.

### **Staff Position**

The approval of this preliminary plan by the Planning Board was subject to several conditions requiring traffic improvements, which are outline in Attachment 3. Each of the improvements required by the conditions of the 1997 Planning Board approval has been completed or has received the developer's share of funding. As such, the developer's obligations have been met, and no additional improvements are required to construct the remaining buildings on the site. As noted above, the completed development represents 70% of the total development of the site, 32% of which was completed within the past four years, and the extension, therefore, is permitted by Section 50-20(c)(5) of the Subdivision Regulations. For these reasons, staff recommends that the Planning Board extend the Adequate Public Facilities validity period for 72 months, until October 12, 2015.

### **Conclusion**

Staff recommends that the Planning Board approve the requested six-year APF validity period extension, to October 12, 2015.

### **Attachments:**

1. Extension Request Letters dated January 24, 2008 and March 20, 2008 (without attachments)
2. Traville Development Status Summary
3. Traville Infrastructure Improvements memo

January 24, 2008

Scott C. Wallace  
301.961.5124  
swallace@linowes-law.com

**VIA HAND DELIVERY**

Ms. Cathy Conlon  
Maryland-National Capital Park and Planning Commission  
Development Review  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Re: BioMed Realty Trust - Human Genome Sciences Headquarters Site (the "Property") - Preliminary Plan No. 1-97022 (the "Preliminary Plan") and Site Plan No. 8-01012 (the "Site Plan") – Application to Extend Adequate Public Facilities ("APF") Approval Validity Period (the "Application")

Dear Ms. Conlon:

This office represents BioMed Realty Trust ("BioMed"), the developer of the referenced Property in the Traville mixed-use development located in the Shady Grove area.<sup>1</sup> The Property, which BioMed acquired in 2006, is currently improved with the headquarters of Human Genome Sciences ("HGS"), which contains approximately 500,000 square feet ("SF"). The Property is approved pursuant to the Preliminary Plan and the Site Plan for an additional approximately 530,000 SF of Research and Development uses in multiple buildings (the "Remaining Density"). The APF Approval Validity Period for the Remaining Density will expire on or about October 12, 2009. As discussed in detail below, the purpose of this Application is to request, pursuant to Section 50-20(c)(4) of the Subdivision Regulations, an extension of the APF Approval Validity Period for the Remaining Density for six years until October 12, 2015.

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<sup>1</sup> The Property is owned by BMR-Shady Grove Road HQ LLC, an entity controlled by BioMed. BioMed is a real estate investment trust focused on providing real estate to the Life Science Industry. BioMed's tenants primarily include biotechnology and pharmaceutical companies, scientific research institutions, government agencies and other entities involved in the life science industry. BioMed owns or has interests in approximately 8.5 million rentable square feet, as well as approximately 1.6 million square feet of development in progress. These properties are located predominantly in the major U. S. life science markets of Boston, San Diego, San Francisco, Seattle, Maryland, Pennsylvania and New York/New Jersey.

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### **Background**

The referenced Preliminary Plan for Traville, including the Property, was originally approved for 750 dwelling units and 750,000 SF of non-residential development on multiple lots by Planning Board Opinion dated September 12, 1997 (the "Preliminary Plan Opinion") (Attachment "1"). Pursuant to Section 50-20(c)(3), the APF Approval Validity Period for the development approved under the Preliminary Plan is valid for 12 years, or until October 12, 2009. By Planning Board Opinion dated April 23, 2001, an additional 572,500 SF of commercial development was approved for Traville under the provisions for the Expedited Development Approval Excise Tax (Pay/Go), for a total approved non-residential density of 1,322,500 SF.

The Property is approved for 1,030,000 SF of R&D uses in multiple buildings pursuant to the Site Plan, which was approved by the Planning Board by Opinion dated May 31, 2001. In 2003 the HGS Headquarters building, which contains approximately 500,000 SF, was constructed. Accordingly, approximately 530,000 SF of remaining non-residential density is permitted to be developed on the Property under the Preliminary Plan (previously defined herein as the "Remaining Density").

Further, as detailed below, pursuant to other Site Plans approved by the Planning Board, approximately 700,000 SF of the approved non-residential density has been constructed or is under construction and all of the approved dwelling units (750) have been constructed and are occupied. Besides the Remaining Density on the Property, the only remaining unbuilt development at Traville consists of approximately 90,000 SF of R&D uses approved for a portion of Traville owned by the University of Maryland and a 12,000 SF daycare center.

### **The Extension Request**

In this Application, BioMed seeks an extension of the APF Approval Validity Period for the Remaining Density for 6 years, from October 12, 2009 to October 12, 2015, pursuant to Section 50-20(c)(5)(A-C) of the Subdivision Regulations, which provides:

The Planning Board may extend a determination of adequate public facilities for a preliminary plan of subdivision that allows non-residential development beyond the otherwise applicable validity period if:

- (A) At least 40% of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative amount of development will meet or exceed 40%;

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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 its construction have been made; and

(C) The development is an "active" project, meaning that either occupancy permits have been issued or a final building permit inspection has been passed for at least 10 percent of the project within the 4 years before an extension request is filed, or occupancy permits have been issued for at least 5 percent of the project within the 4 years before an extension request is filed if 60 percent of the project has been built or is under construction. If occupancy permits are not typically issued for the type of development for which an extension is requested, a part of the development can be treated as complete when its final inspection has been approved. The Board may treat a building as complete even if occupancy permits have been issued for only part of the building.

The Application qualifies for an extension under this Section 50-20(c)(5) because (1) approximately 72 % of the development approved pursuant to the Preliminary Plan for Traville has been built and occupied, is under construction or has building permits issued<sup>2</sup> (calculated as approximately 2900 trips of the total number of trips [(4054)] projected for Traville),<sup>3</sup> (2) all of the requirements for infrastructure improvements under the conditions of the Preliminary Plan have been satisfied (See Attachment "4", "Traville Infrastructure Improvements Memorandum" prepared by Loiederman Soltesz Associates dated January 21, 2008); and (3) the development is "active" with U&O Permits for 13 % of the development approved at Traville (calculated as approximately 540 trips [consisting of approximately 55,000 SF of office uses and 416 multi-family units] of the total number of trips [(4054)] projected for Traville) having been issued in the last 4 years (since January 1, 2004).<sup>4</sup>

In addition to meeting the technical requirements of Section 50-20(c)(5), the Application furthers the purpose of the extension provision to allow large non-residential projects that are moving toward full build-out a reasonable amount of time to be properly marketed and developed. In this regard, to date Traville has been successfully developed with a complementary mix of retail, residential and employment uses. With HGS, Traville has attracted one of the most important

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<sup>2</sup> See Development Summary Memorandum prepared by Loiederman Soltesz Associates dated January 21, 2008, attached as Attachment "2".

<sup>3</sup> Based on Trip Generation Table 3, Montgomery County Planning Board Staff Report for Preliminary Plan No. 1-97022R dated March 5, 2001 (Revised), attached as Attachment "3".

<sup>4</sup> See Attachment "2", Development Status Summary Memorandum.

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bio-science companies in the world, which provides a significant incentive for other bio-science companies to locate at the Property. Further, HGS itself is a catalyst for "spin-off" companies with local ties. However, the timeline for development of facilities for the bio-science industry in the County is particularly lengthy because the industry is still in its nascent stages in the County when compared to such areas as Boston and San Francisco. BioMed believes the County can develop a competitive advantage by providing space that is more cost effective than other more established locations. Therefore, in order to maximize the potential for the Property to attract a critical mass of bio-science companies, it is essential that the Remaining Density be developed in a thoughtful and deliberate manner.

In this regard, to enhance the attractiveness of the Property to bio-science companies, BioMed is in the process of developing a new Site Plan for the Remaining Density that will break up the "campus" design that is currently approved for the Property. BioMed believes that redesigning the project to accommodate tenants that do not want to locate on an integrated campus is essential to the successful development of the project. This planning and site design process is likely to require at least 2 years to complete, including the time for review and approval of a Site Plan amendment. Even after approval of such an amendment, BioMed will require adequate time to market the Property to attract the type of significant employers that can commit to leasing large blocks of space, which is a prerequisite for the initiation of development of the Remaining Density. In summary, the APF Approval extension for the Property requested in the Application is necessary both to allow for the successful completion of the Traville community and to foster the growth of the Property as a key component of the County's bio-science industry.

For the reasons stated above, we request an extension of the APF approval validity period for 6 years or until September 11, 2015 as allowed by Section 50-20(c)(8) of the Subdivision Regulations. Enclosed with this letter is an Extension Request Application with all required supporting materials, an Adjoining and Confronting Property owners list with a set of mailing labels, and the required application fee.

If you have any questions regarding this matter, please do not hesitate to call. Thank you for your assistance.

Very truly yours,

**LINOWES AND BLOCHER LLP**



Scott C. Wallace

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Attachment

cc: Stephen Marshall, Esq.  
Erin Shea  
Ed Wallington  
Wes Guckert



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

March 20, 2008

Scott C. Wallace  
301.961.5124  
swallace@linowes-law.com

**VIA HAND DELIVERY**

Ms. Cathy Conlon  
Maryland-National Capital Park and Planning Commission  
Development Review  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Re: BioMed Realty Trust - Human Genome Sciences Headquarters Site (the "Property") - Preliminary Plan No. 1-97022 (the "Preliminary Plan") and Site Plan No. 8-01012 (the "Site Plan") – Application to Extend Adequate Public Facilities ("APF") Approval Validity Period (the "Application")

Dear Ms. Conlon:

As you are aware, this office represents BioMed Realty Trust ("BioMed"), the developer of the referenced Property in the Traville mixed-use development located in the Shady Grove area. On January 24, 2008, we submitted the referenced Application pursuant to Section 50-20(c)(5) of the Subdivision Regulations requesting an extension of the APF Approval Validity Period for the remaining approved, unbuilt density on the Property of approximately 530,000 square feet ("SF") (the "Remaining Density") for six years until October 12, 2015. The purpose of this letter is to provide you additional information in support of the Application.<sup>1</sup>

Initially, we note that for purposes of determining that the Application met the threshold requirements for an extension as set forth in Section 50-20(c)(5) of the Subdivision Regulations, the January 24, 2008 submission included an analysis of the development at Traville based on the trip generation of the existing development in proportion to the trip generation projected for the build-out of the full amount of density approved for Traville pursuant to the Preliminary Plan. This analysis showed that the Traville project was an "active" project for purposes of meeting the threshold requirements of the Subdivision Regulations for an APF extension. Pursuant to your request, we have also reviewed the existing development at Traville in terms of square footage constructed. In this regard, the Loiederman Development Status Memo dated

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<sup>1</sup> On March 10, 2008 a Traffic Study prepared by The Traffic Group in support of the Application was sent to Transportation Planning Staff.

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January 21, 2008, which was submitted with the Application, shows that of the total density approved at Traville pursuant to the Preliminary Plan (2,072,500 SF, which includes 750,000 SF for the 750 multifamily units at 1000 SF per unit), approximately 1,440,000 SF (approximately 70% of the total approved density) has been constructed, with Use and Occupancy permits for approximately 672,000 SF (approximately 32%) of the total approved density issued in the last 4 years.<sup>2</sup> Accordingly, reviewing the development at Traville in terms of square footage constructed and occupied, the Application qualifies for an extension under Section 50-20(c)(5) Subdivision Regulations.

Further, in compliance with the requirements of Section 50-20(c)(7)(A) of the Subdivision Regulations, we request the following Phasing Schedule for the Remaining Density:

- Phase I – Building Permits for 100,000 SF of the Remaining Density to be issued on or before October 13, 2011.
- Phase II – Building Permits for the next 200,000 SF of the Remaining Density to be issued on or before October 12, 2013.
- Phase III – Building Permits for the balance of the Remaining Density to be issued on or before October 12, 2015.

Finally, as discussed in our January 24, 2007 submission, BioMed is seeking the extension of the APF Validity Period to allow for the thoughtful and well-planned development of this important site in the I-270 Corridor. In this regard, we note that the Property is part of the Gaithersburg West Master Plan update, which is currently being prepared by Community Based Planning Staff. It is expected that the Master Plan update will consider the entire planning area for development of a large scale, comprehensively planned applied technology/life sciences community. The implementation of such a recommendation in the Master Plan update would likely require significant changes to existing land uses and infrastructure improvements for many properties in the planning area, including the Property. In the event that significant land use changes are recommended for the Property, BioMed would likely not be able to develop the

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<sup>2</sup> See Development Summary Memorandum prepared by Loiederman Soltesz Associates (“LSA”) dated January 21, 2008, attached as Attachment “1”. Included with the attached Memorandum are the Use and Occupancy Permits and Building Permits, as applicable, for the development referenced in the Development Summary Memorandum. The Permits are sorted to correspond to the development/developer categories in the Development Summary Memorandum.

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Property in furtherance of such recommendations before the current APF Validity Period expires. Accordingly, the APF extension requested in the Application will allow BioMed to more fully participate in the long-term goals of the Master Plan update without the short-term concern of the expiration of its APF Validity Period. We believe that such participation by BioMed will advance both the County's planning and economic objectives and BioMed's ability to successfully develop the Property as a significant component of the County's life sciences industry.

We hope this information is helpful to you for your review of the Application. If you have any questions regarding this information, please do not hesitate to call. Thank you for your continued assistance on this matter.

Very truly yours,

**LINOWES AND BLOCHER LLP**



Scott C. Wallace

Attachment

cc: Stephen Marshall, Esq.  
Erin Shea  
Ed Wallington  
Wes Guckert



Loiederman  
Soltesz Associates, Inc.

## Memorandum

**TO:** Steve Marshall, BioMed  
Erin Shea, BioMed

**FROM:** Ed Wallington, LSA *EW*

**DATE:** January 21, 2008

**CC:** Scott Wallace, Linowes and Blocher

**SUBJECT:** Traville – Development Status Summary

**LSA No:** 1666-01-00

Our office is in the process of obtaining information on when the occupancy permits were issued for Traville. We have contacted the property owners and Montgomery County requesting documentation confirming when the occupancy permits for the Traville Subdivision (Preliminary Plan No. 1-97022) were issued. Also, since we are the engineer of record, we have information in our files which can be helpful in this analysis. Our preliminary assessment is as follows:

Property Owner	Land Use	Parcel Reference	Square feet Number of Units <sup>1</sup>	Date of Occupancy
1. BioMed (HGS Site)	R & D	Parcel A Block A	Estimated 500,000 sf	Fall 2003
2. Beatty	Retail	Parcels B&C Block A	99,229 sf	2003
3. Wilco	Office	Parcel J Block A	60,554 sf	2007
		Parcel I Block A	29,455 sf	2007 <sup>2</sup>
4. University of Maryland	Institutional	Not Recorded	Estimated 90,000 sf	Not occupied
5. BioMed	R&D	Parcel A Block A	Estimated 530,000 sf	Not occupied
6. Shangri-La, L.P.	Day Care	Parcel L	12,000 sf	Not occupied

Property Owner	Land Use	Parcel Reference	Square feet Number of Units <sup>1</sup>	Date of Occupancy
7. First Centrum	Senior Apartments	Parcel E Block E	64 Units 44 Units	10/13/2003 1/9/2004
		Parcel D Block E	67 Units 55 Units	2/26/2004 5/7/2004
		Parcel A Block B	104 Units	On or before 12/31/2003
8. Avalon Bay	Apartments	Parcel A Block B	96 Units	On or after 1/1/2004
		Parcel B Block B	320 Units	On or after 1/1/2004

**Notes:**

1. Information taken from available Site Plan records.
2. It is our understanding the occupancy permit has been issued for the building on Parcel I, we are in the process of trying to obtain a copy.