



Preliminary Plan and Adequate Public Facilities Validity Extension, Preliminary Plan No. 11998004AB, Seneca Meadows Corporate Center

REVISED

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Completed: 7-13-18

Description

Preliminary Plan Validity Extension and Adequate Public Facilities Validity Extension, Preliminary Plan No. 11998004AB, Seneca Meadows Corporate Center:

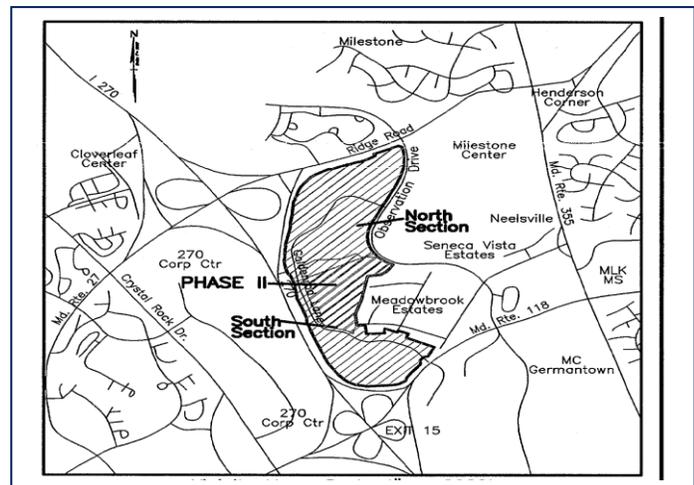
Request to extend the Preliminary Plan validity period by three years and the Adequate Public Facilities (APF) by 8 years for 12 lots and six parcels of land located on 156.60 acres located in the southeast quadrant of the intersection of MD 27 (Ridge Road) and Interstate 270 in the Germantown Employment Area Sector Plan, under the CR and EOF zones.

Recommendation – Approval with conditions

Applicant: Minkoff Development Corporation

Submittal Date: December 20, 2017

Review Basis: Chapter 50



Summary

- A Preliminary Plan validity period requires that all lots/parcel approved on a given preliminary plan must be recorded by record plat within the Plan validity period established in the Resolution/Opinion.
- An Adequate Public Facilities (APF) validity period requires that all building permits for buildings on the recorded lots must be secured within the APF validity period established in the Resolution/Opinion.
- The Applicant made a timely request to extend the validity period for both the Preliminary Plan and the APF for the development.
- The requests for extension meet one of more of the required findings necessary to grant such extensions.
- Staff recommends that the Preliminary Plan validity period be extended three years from the date of mailing of the Resolution for this application.
- Staff recommends that the APF validity period be extended eight years from the date of mailing of the Resolution of this application.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN NO. 119980040

Staff recommends that the Preliminary Plan validity period be extended three years from the Initiation Date of the Resolution for this application.

Staff recommends that the Adequate Public Facilities validity period be extended eight years from the Initiation Date of the Resolution of this application.

SECTION 2 – SITE LOCATION & DESCRIPTION

Site Location and Vicinity

The Seneca Meadows Corporate Center consists of 12 Lots and 6 Parcels on 156.50 acres of land located just east of I-270, in the southeast quadrant of intersection of Ridge Road and I-270 in Germantown (“Property” or “Subject Property”). The Property is zoned CR and EOF but was previously zoned TMX and I-3 under the Zoning Ordinance in effect until October 30, 2014. The Property is located in the Germantown Employment Area Section Plan, and more specifically in the Seneca Meadows/Milestone District of the Sector Plan.



Figure 1 – Vicinity

Site Analysis

The Property currently is developed with office, research & development, and commercial/retail/restaurant uses (including a Wegmans store). The existing development is located such that most of the retail area is concentrated in the northernmost portion of the Property and the office and research uses across the central and southern areas. The development areas are separated by small open spaces and a larger stream valley buffer that bisects the Property in half. The existing office buildings are a mix of one to three story tall buildings with surface parking.

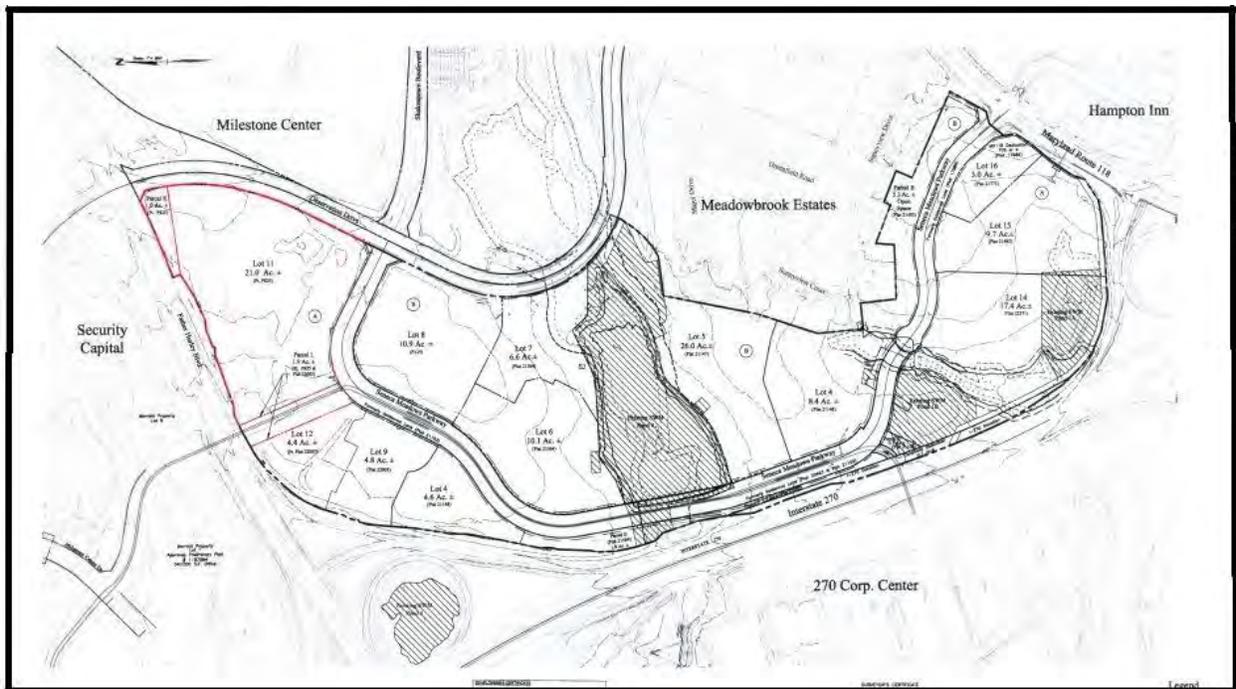


Figure 2 – Preliminary Plan

SECTION 3 – APPLICATIONS AND PROPOSAL

Previous Approvals

119980040

The original preliminary plan, Plan No. 19980040 (Seneca Meadows Corporate Center), was approved for up to 1,577,000 square feet of office and 83,000 square feet of retail use across the 156-acre property. The Date of Mailing of the Opinion (Attachment 1) for this application was December 22, 1997 and the Opinion provided a 12-year validity period (January 22, 2010 or 12 years from the Initiation Date) to allow

long term phasing of the project. In 2009 the County Council provided additional validity time to all approved and valid plans due to the “lingering effects of the 2008 economic downturn” (see Ord. 18-04 attachment 2). Therefore, the validity periods for this plan were granted an additional two years in March 2009, March 2011, March 2013 and March 2015 for a total of eight additional years for both the preliminary plan validity and the adequate public facilities test. This extended the preliminary plan validity period until January 22, 2018. Even though the Preliminary Plan validity period expired on January 22, 2018, a timely request to extend said validity period was submitted to the Planning Department.

As part of the original approval of the plan the applicant was required to build Seneca Meadows Parkway, all public water and sewer infrastructure, private and public storm drains, stormwater management and install public service utilities. In addition, the applicant has completed forest conservation planting and protection requirements.

11998004A

Preliminary Plan Amendment No. 11998004A, approved a reduction in the amount of approved, but unbuilt, office space by 257,300 square feet and added 123,570 square feet of retail use, for a new total of 1,319,700 square feet of research & development office use and 206,570 square feet of retail use. This amendment was to accommodate the now constructed Germantown Wegmans. In connection with this Preliminary Plan Amendment, the Applicant submitted a transportation analysis to confirm that the conversion of office to retail uses would generate approximately the same amount of peak hour trips. As part of this approval, Resolution 10-56 (Attachment 2), mailed on January 13, 2011 conditioned that the APF review remained valid per the original plan approval until January 22, 2012. **With the County Council’s grant of additional validity period (Ord 18-04), the APF validity period was also extended for a total of 6 years (March 2011, March 2013, March 2015) until January 22, 2018. It too has expired, however a timely request for extension has been filed.**

Current Application & Proposal

On December 21, 2017, the Applicant, Minkoff Development Corporation (“Applicant”) submitted an application requesting extension of the Preliminary Plan and APF review period for Preliminary Plan No. 119980040, Seneca Meadows Corporate Center. The Applicant requests an extension of 3 years for the Preliminary Plan validity period and an extension of 12 years, but no less than 8 years for the APF review. The Applicant states that extending this validity period will enable them to utilize the built road capacity and other public facilities approved with the original Preliminary Plan. Extending the APF validity will also reduce the burden for perspective future office tenants that may need new buildings to be constructed. Without the extension of this validity period, the Applicant will not be able to receive any additional building permits from the Department of Permitting Services under the current approvals and will be required to perform a new APF test with possible additional roadway mitigation.

In their justification letter dated December 29, 2017 (Attachment 3), the Applicant advises that of the approved 1,319,700 square feet of Research and Development office space, 953,081 square feet have been constructed leaving 366,619 square feet remaining. All 206,570 square feet of retail allowed on the Property was utilized in the construction of the Wegmans development and no retail square footage remains to be built.

Of the 12 building lots approved with the original subdivision and as amended for the Wegmans amendment, eight lots have been platted and fully developed as approved under various site plan

applications. In addition, open space and stormwater management parcels have been graded, stabilized, and landscaped. Three of the four remaining approved lots have been recorded by record plat but remain undeveloped. An APF extension would be essential to allow these lots to secure building permits. One approved lot remains unplatted (Lot 8, Block B); extension of the Preliminary Plan validity and APF validity is essential for this lot so that site plans can be approved and building permits secured.

SECTION 4 – ANALYSIS AND FINDINGS

Preliminary Plan No. 11998004A Validity Extension

The original Preliminary Plan validity period was spelled out by condition No.3 in the December 22, 1997 Planning Board Opinion, establishing a four phased approval, with platting of the last phase (810,000 sq. ft. of density) extending out 12 years from the Initiation Date of the Opinion (January 22, 1998), keeping the plan valid until January 22, 2010. Because the original validity period for Phase 4 extended past the County Council’s first automatic extension date (March 2009), all four automatic extensions were applied to the plan validity, pushing the validity date forward eight years to January 22, 2018. The application to extend the Preliminary Plan validity was filed on December 20, 2017 therefore, the Board may consider the request to further extend the plan validity.

Grounds for Preliminary Plan Extension

Section 50.4.2 of the Subdivision Regulations allows the Board to consider the extension of Preliminary Plan validity. As part of an extension the Board may only grant an extension to a Preliminary Plan the minimum amount of time it deems necessary to validate the plan (record plats), and it must only grant an extension to a Preliminary Plan that has a valid APFO, unless further extensions of the APF validity are allowed or pending. Additionally, the Planning Board must find that:

- i. Delay by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or*
- ii. The occurrence of significant, unusual and unanticipated events, beyond the applicant’s control and not caused by the applicant, have substantially impaired the applicant’s ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order the validate the plan) would result to the applicant if the plan were not extended.*

There is no evidence submitted by the Applicant to demonstrate a delay by the government or some other party after the plan was approved. However, there is evidence that a significant and unanticipated event has occurred beyond the Applicant’s control that was not caused by the Applicant and has impaired their ability to validate the Plan. The Applicant argues that the economic downturn continues to plague the office market, even though the Applicant has continued to promote the project and remains confident that the remainder of the project can be completed within he requested extension time. With the completion of all the essential infrastructure needed to serve all of the approved square footage, the Applicant believes the remainder of the project is completely viable.

The Applicant suggests that if the extension(s) is not granted, they would experience exceptional and undue hardship and note the efforts undertaken to date to complete all roads, utilities, etc. in anticipation of completing the development. Extension of the Preliminary Plan validity period for no more than three years will give the Applicant sufficient time to find a user, specifically for Lot 8, Block B, and secure necessary Site Plan approvals prior to recordation of a plat.

Preliminary Plan No. 119980040 Adequate Public Facilities Validity Extension

The Applicant has submitted a request for extension of the APF validity period for up to 12 years but no less than eight years to allow building permits to be issued for the remaining undeveloped lots and unplatted parcel. The APF validity period was expressly conditioned in the approval of the Wegmans Preliminary Plan amendment to be held to the original validity date of January 22, 2012 (inclusive of the 2 years granted by Ord. 18-04 on March 2009). With the additional grants of extension time in 2011, 2013 and 2015, the APF validity period is now January 22, 2018 and the Applicant made a timely request for extension prior to this date.

Section 50.4.3.J.7.d.i of the Subdivision Regulations allows the Planning Board to extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed use development beyond the applicable validity period, pursuant to a series of findings. The extension allowed is generally limited to 2.5 years for any subdivision with an original validity period of seven years or less, and six years for a subdivision with an original validity period longer than seven years. The Applicant's request of an APF extension of up to 12 years is inconsistent with this language. However, the Subdivision Regulations under Section 50.4.3.J.7.e provide an opportunity for the Planning Board to grant an APF extension for up to 12 years if the Board can make the following three findings:

- i. *The preliminary plan for the development required a significant commitment of funds by the Applicant, amount to at least \$3 million as adjusted annually by the consumer price index, to comply with specified infrastructure conditions.*

The Preliminary Plan required the dedication of land area and construction of Seneca Meadows Parkway. The Applicant has expended a total of \$4,056,000 (in 1999 dollars) in hard costs to build Seneca Meadows Parkway and the related sidewalk improvements. Stormwater management and forest conservation work, while not infrastructure, have also been completed to serve the entire development. This does not include any soft costs associated with these infrastructure improvements or the value of the land dedicated to the County for the right-of-way.

- ii. *The Applicant has met or exceeded the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.*

All infrastructure required by the Preliminary Plan was constructed, inspected and bonds released well before the Preliminary Plan validity period expired on January 22, 2018.

- iii. *The Applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.*

The infrastructure provided by the Applicant provides a significant and necessary public benefit to the County. Much of the infrastructure is specifically called for in the Master Plan and is necessary for the functionality of the eastern portion of Germantown.

Based on the three findings above, Staff recommends the Board consider an APF extension under Section 50.4.3.J.7.e of the Subdivision Regulations. The Applicant has requested up to 12 years but no less than eight. There are no criteria upon which to make a determination of appropriate length of such an extension. In this instance, Staff believes that eight years is sufficient time for the applicant to receive Site Plan approval, record plats, and secure building permits for all remaining properties.

SECTION 5: CONCLUSION

Based on this analysis, the Applicant has qualified for an extension of the Preliminary Plan validity period and an Adequate Public Facilities validity period.

ATTACHMENTS

Attachment 1- 119980040 Opinion

Attachment 2 – 11998004A Resolution

Attachment 3 – Applicant’s Justification and Application

Date Mailed: December 22, 1997



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation
Motion of Comm. Richardson, seconded
by Comm. Hussmann with a vote of 5-0;
Comms. Richardson, Hussmann, Baptiste,
Bryant and Holmes voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-98004
NAME OF PLAN: SENECA MEADOWS CORPORATE CTR

On 08-01-97, MINKOFF DEVELOPMENT CORP, submitted an application for the approval of a preliminary plan of subdivision of property in the I3 zone. The application proposed to create 13 lots on 156.50 ACRES of land. The application was designated Preliminary Plan 1-98004. On 12-18-97, Preliminary Plan 1-98004 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 1-98004 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-98004, subject to the following conditions:

- (1) Prior to record plat, revise previous adequate public facilities (APF) agreement with the Planning Board to limit development to a maximum of 1,577,000 square feet of office/R&D space and 83,000 square feet of retail space. Applicant to provide the necessary roadway improvements as identified in the revised transportation memorandum prepared by Park and Planning department staff on 12-18-97
- (2) As part of the first site plan application, applicant must submit a concept plan for overall circulation showing all proposed streets. The segment of proposed Goldenrod Lane between Observation Drive and the proposed light rail station, shown approximately 1,000 feet southwest of Observation Drive, must be evaluated with respect to the location of proposed median breaks and intersections and accommodation of turning movements. The right-of-way for the segment of Goldenrod Lane adjacent to the future transit station is to be approximately 150 feet in width, with final determination at site plan. For the proposed public street and transit way that will cross MD27, future driveway connections to this street must be located as far north of Goldenrod Lane as possible when the street is constructed across MD27.

- (3) Record plats for this large scale project may be recorded in stages that allow for a twelve year validity period for the preliminary plan based on the following phases:
- Phase 1: Record at least 200,000 square feet of development within 36 months of the mailing of the Planning Board's Opinion.
 - Phase 2: Record an additional 250,000 square feet of development within 36 months of the initiation of Phase 2. Phase 2 commences 36 months after the mailing of the Planning Board's Opinion, provided that Phase 1 is recorded on schedule.
 - Phase 3: Record an additional 400,000 square feet of development within 36 months of the initiation of Phase 3. Initiation of Phase 3 commences 36 months after the initiation of Phase 2, provided that Phase 2 is recorded on schedule.
 - Phase 4: Record the remaining square footage which could include up to 810,000 square feet of the project, within 36 months of the initiation of Phase 4. Phase 4 commences 36 months after the initiation of Phase 3, provided that Phase 3 is recorded on schedule.
- (4) Record plat to provide for dedication and future construction of internal public streets and the proposed 50 foot wide transit right-of-way, as shown on the revised preliminary plan and as may be revised at site plan. Parcel "D", located in the future MD27/Observation Drive interchange, must be revised at site plan to show dedication of the future urban diamond interchange. The remaining area of Parcel "D" is to be incorporated into the adjacent lots
- (5) Compliance with conditions of approval for the preliminary forest conservation plan. Applicant must meet all conditions prior to site plan approval, recording of plat(s) or MCDPS issuance of sediment and erosion control permit, as appropriate
- (6) Record plat(s) to reflect delineation of conservation easements encompassing stream buffer areas and for wetlands that may be located outside of a designated stream buffer
- (7) Compliance with conditions of MCDPS stormwater management approval dated 9-12-97
- (8) No direct access to I-270 or to MD118, except for Goldenrod Lane accessing to MD118 as shown on previously recorded record plat

- (9) Access and road improvements as required and approved by MCDPW&T and MDSHA
- (10) No clearing, grading or recording of lots prior to site plan approval
- (11) Final approval of the amount and types of commercial and R&D development, locations of buildings, parking, site circulation, sidewalks and bikepaths will be determined at site plan
- (12) No street connections between Greenfield Road and Sunnyview Drive to future Goldenrod Lane. Major Drive not to connect to subject property.
- (13) Special trip reduction guidelines of the I-3 Zone to be addressed at site plan
- (14) Record plat to reflect delineation of sewer line extension(s) and easement(s) to the adjacent Meadowbrook Estates Subdivision. At site plan, applicant to show location(s) of sewer easement(s) and proposal to extend sewer lines under the proposed berm/landscaping strip to be located adjacent to Meadowbrook Estates. With WSSC concurrence, site plan enforcement agreement to require applicant to construct sewer extension(s) under proposed berm/landscaping strip, as shown on site plan, prior to constructing berm or installing landscaping
- (15) The size of buildings, size and location of berms/landscaping and the amount of development adjacent to Meadowbrook Estates (south of the wetland area) to be carefully analyzed at site plan. Parcels A, B and C shown on the preliminary plan between Goldenrod Lane and Meadowbrook Estates to be relabeled as "open-space parcels"
- (16) Necessary easements.



MONTGOMERY COUNTY PLANNING BOARD

MCPB No. 10-156
Preliminary Plan No. 11998004A
Seneca Meadows Corporate Center
Date of Hearing: November 4, 2010

JAN 13 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on July 16, 2010, Minkoff Development Corporation ("Applicant"), filed an application for approval of a preliminary plan amendment to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, ("Property" or "Subject Property"), within the Germantown Employment Area Sector Plan ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11998004A, Seneca Meadows Corporate Center ("Preliminary Plan" or "Application"), and

WHEREAS, Staff issued a memorandum to the Planning Board, dated October 24, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, on November 4, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on November 4, 2010, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor, with Commissioner Presley abstaining and Commissioner Alandre absent.

Approved as to
Legal Sufficiency

Christina Jones 12/22/10

M-NGPPC Legal Department

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 11998004A to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, within the Sector Plan Area, subject to the following conditions:

- 1) Approval under this Preliminary Plan amendment is limited to 1,319,700 square feet of R&D office use and 206,570 square feet of retail use.
- 2) Applicant must address Forest Conservation encroachment issues outlined in the Staff Report as detailed in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.
- 3) The Applicant must submit a revised Final Forest Conservation Plan for Phase 4 to address Staff comments dated October 19, 2010.
- 4) The Category I Easement area on proposed Lot 11 must be recorded on a plat prior to release of any building permits.
- 5) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated October 13, 2010. These conditions may be amended by MCDPS, provided any modifications do not conflict with any other condition of the preliminary plan approval.
- 7) The record plat(s) for proposed Lots 11 and 12, and Parcel L, will note that these properties are subject to a covenant with Montgomery County regarding use of, and future access to, Parcel L by Lots 11 and 12. The text of the covenant to be recorded covering the properties will be in accordance with terms and conditions contained in an MCDOT letter dated October 5, 2010. The Liber and Folio of the recorded covenant must be placed on the record plat(s).
- 8) Site Plan # 820100140 must be approved by the Board and certified by the Development Review Division prior to the approval of the record plat.
- 9) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Phase 4 Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices on Lot 11.
- 10) All previous conditions of Preliminary Plan No. 119980040 remain in full force and effect unless specifically amended by this approval.
- 11) The Adequate Public Facility (APF) review for the Preliminary Plan remains valid per the original plan approval until January 22, 2012.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property is located in the Seneca Meadows/Milestone District of the Sector Plan. The original Preliminary Plan covered approximately a third of the Seneca Meadows/Milestone District and was approved in December 1997 prior to the adoption of the Sector Plan in September 2009. The Preliminary Plan Amendment, by necessity covers the same area that was originally approved in the 1997 Preliminary Plan, but the lot that is undergoing development is only a fraction of that area and the Seneca Meadows/Milestone District. Although the Preliminary Plan covers this large area, the Planning Board focused its review on the new development of Lot 11 that affects the current composition of the Seneca Meadows/Milestone District for this finding. Based on its review, the Planning Board finds that the development of Lot 11 substantially conforms to the Sector Plan and begins the transition for the Preliminary Plan to ultimately fulfill the Sector Plan recommendations for the Seneca Meadows/Milestone District. The Sector Plan makes the following recommendations for the Subject Property:

“Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary.”

The Sector Plan recommends concentrated mixed-use development at the proposed transit station with an average density of 1.0 FAR for the Seneca Meadows property north of the Crystal Rock tributary (“northern Seneca Meadows property”). The higher density is to be located at the proposed transit station, which has a proposed location to the west of the Subject Property and is adjacent to two undeveloped lots. Although the Subject Property has a 0.26 FAR, it achieves a higher density than what currently exists in the northern Seneca Meadows property. Further, it is expected that the average FAR of the northern Seneca Meadows property will increase significantly when the proposed transit station is built and full development build out is achieved. The Application also increases the mix of uses with Lot 11 providing a mixed use development of retail and office. It is expected that the mix of uses will continue to increase on the lots closer to the proposed transit station. The Planning Board finds that the Application is a mixed use development that increases the density of what currently exists on the northern Seneca Meadows property and provides a solid transition for this part of the Seneca Meadows/Milestone District to fulfill the Sector Plan recommendations.

"To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include limited street level retail and a maximum of 30 percent residential uses."

The Application proposes 206,570 SF of commercial/retail space, which is a small amount of the total possible development for the northern Seneca Meadows property. Although Lot 11 that will contain a Wegman's store will have a high percentage of retail, it represents a small amount of the overall development of the northern Seneca Meadows property. The mix of uses as proposed for Lot 11 will include office, retail, and service, which is in conformance with the Sector Plan's land use designation for the Subject Property of "Commercial Mixed Use" (office, retail, service, housing). The Planning Board finds that 206,570 SF of commercial/retail space is in conformance with the Sector Plan's recommendation of limited retail use and that all of the proposed uses generate employment. It is also important to note that Wegman's is not a typical grocery store in terms of employment. Wegman's is considered a high employment retailer with a wide array of employment opportunities at both entry and advanced levels. Further, the mix of uses in the northern Seneca Meadows property will continue to be refined by further phases, which should include residential and other commercial uses.

"Concentrate a limited amount of street retail near the transit station. Big Box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing Seneca Meadows Parkway and Observation Drive"

The proposed retail on Lot 11 is a few blocks east of the proposed transit station. The Planning Board finds that the location of retail on Lot 11 substantially conforms to the Sector Plan's recommendation for retail "near the transit station". The Planning Board applied the Sector Plan's recommendation for "Big Box retailers" to the Wegman's grocery store. It is important to understand that the land use recommendations in master plans do not, and cannot specify all development possibilities, particularly commitment to a particular design detail until the physical limitations of a site are understood. There are many site specific reasons why locating the retail uses on Seneca Meadows Parkway and Observation Drive was not feasible for this Property. First, development of this site under the new Environmental Site Design features of the new Stormwater Management Regulations requires the Applicant to essentially use every green area to take in water. This site drains naturally to the intersection of Seneca Meadows Parkway and Observation Drive. One of the low points for this site happens to be at the corner of Seneca Meadows Parkway and Observation Drive where the Sector Plan has called for retail frontage. Second, the grades at that intersection make it difficult to front buildings there, and in order to accommodate the topographical limitations of the site, these retail buildings have been fronted on an interior street.

The orientation of buildings and layout of the internal street network were heavily considered in this Application. The Applicant did front retail buildings on Seneca Meadows Parkway and Observation Drive per the Sector Plan's recommendations where the topography is flat enough. The Applicant sited two buildings as an entrance to the development on Observation Drive that act as a gateway into the site. Likewise a separate building has been fronted on Seneca Meadows Parkway at the opposite entrance point to the site. For the rest of the development, the Applicant ultimately established a network of internal streets with smaller blocks that are pedestrian oriented as envisioned by the Sector Plan. Views and pedestrian relationships along each frontage street have been designed to begin the transformation of this environment to the urban form recommended in the Sector Plan. Due to the constraints of the Subject Property, the Planning Board finds that the retail's frontage on an internal network of streets relatively near the proposed transit station substantially conforms to the Sector Plan.

"Street level retail must conform to the Plan's urban design guidance."

The Sector Plan also calls for street level retail to conform to its design guidance. The urban design recommendations of the Sector Plan include the call for street-oriented development, public amenities including plazas and gathering places, and the creation of vibrant pedestrian spaces. The Application consists of a street network of smaller internal streets that will fulfill the Sector Plan's recommendation for urban form better than fronting retail along Seneca Meadows Parkway and Observation Drive at this location. Grading, drainage, and existing conditions do not currently promote the location of retail fronts on Seneca Meadows Parkway and Observation Drive. Future development phases that will occur to the west of the Subject Property will be better able to utilize Seneca Meadows Parkway itself for street activation. However, locating retail on Observation Drive and Seneca Meadows Parkway at this point in the development in this area will not likely translate into viable retail.

In keeping with the urban design recommendations, the Application focuses the entry of the Wegman's to Seneca Meadows Parkway as much as possible. The open space where a café and clock tower are located have been pulled close to Seneca Meadows Parkway. The placement of the structure, along with the primary entrance and outdoor seating courtyard allows for direct pedestrian access from the Parkway, the internal street, and parking areas. In addition, unlike most development of this density and in this context, much of the parking will be structured which serves to decrease the impermeable footprint that is typically created by a standard big box store and gives the development more of the urban form that the Sector Plan calls for.

Several plazas and open spaces have been built in along the interior streets of this Application. Rather than one large open space area or plaza that would work well

with an office development, numerous smaller areas have been programmed throughout the development to connect the retail spaces. The smaller plazas and open spaces work better for the smaller buildings and smaller street frontages. The plazas and open space provide pedestrian friendly public amenities throughout the Subject Property.

The Application provides for pedestrian crossings and streets that are very pedestrian oriented. The Applicant used the guidance on street-level retail design in the Sector Plan to create a more urban atmosphere within the site rather than at its edges. In this case, the proposed retail uses are organized along an internal primary street and on secondary drives between buildings and parking. The Applicant has also provided streetscape improvements on Observation Drive and Seneca Meadows Parkway. The Application creates a streetscape for a smaller street on the internal street rather than concentrating seating, street trees, and amenities on Observation Drive. The street activation is better focused internally to create a vibrant, pedestrian friendly, urban atmosphere.

The Planning Board finds that the Application substantially conforms to the recommendations of the Sector Plan for urban design and that this Application will transition the Seneca Meadows/Milestone District towards implementing the Sector Plan's vision. Later phases will build on this development and allow Seneca Meadows Parkway and other streets to take on the desired character of a more urban, walkable place.

- 2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Adequate vehicular access to the site is provided by a full-movement driveway connection to Seneca Meadows Parkway and Observation Drive. A separate loading and unloading full-movement driveway is provided for trucks from Seneca Meadows Parkway near the west side of the Subject Property. The general traffic access point already exists on Seneca Meadows Parkway as does a 5-foot wide sidewalk on Seneca Meadows Parkway. Observation Drive has an existing 8-foot wide sidewalk. The internal vehicular facilities have not yet been constructed. Primary pedestrian access is provided via 8-foot wide sidewalks, which connect to the existing sidewalks along the street frontage, and will provide pedestrian access throughout the entire site.

Adequate Public Facility (APF) Analysis

An APF analysis, which was conducted at the time of the original preliminary plan for 1,577,000 SF of office and 83,000 SF of retail, concluded that the project would

meet the transportation APF requirements after providing specific roadway improvements. These improvements have been provided, and the previous APF approval remains valid. Up to this point, 701,332 square feet of office and none of the retail have been constructed.

Under this Application, the Applicant proposes a reduction of 257,300 square feet of the approved but un-built office use, and an addition of 123,570 square feet of new retail. This will result in a total of 1,319,700 SF of approved R&D office use and a total of 206,570 SF of retail use over the entire Preliminary Plan area. All of the new retail would be constructed as part of the site plan on proposed Lot 11. Based on the traffic statement submitted by the Applicant and reviewed by Staff, the 257,300 square feet of previously approved office development would generate approximately the same amount of peak hour trips as will be generated by the 123,570 square-feet of proposed retail development. Therefore, a reduction of 257,300 square feet of office space will accommodate the proposed addition of 123,570 square feet of retail space. It should be noted that in estimating trips for the proposed retail development, actual surveyed trips generated by existing Wegman's stores in other locations have been used. Therefore, in order for the Applicant to meet the requirements of the APF approval in place, the Applicant is required to reduce 257,300 square feet of office space from the originally approved preliminary plan to accommodate the proposed total of 206,570 square feet of retail use.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy resolution currently in effect. Electrical, gas, and telecommunications services are available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the TMX-2 zone as specified in the Zoning Ordinance. The proposed lots meet the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended

approval of the Preliminary Plan. Therefore, the Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the Subject Property (Lot 11 only) and was approved by Environmental Planning staff in November of 1997. As previously stated, with the exception of approximately 3.6 acres of forest, there are no regulated environmental features onsite such as streams, wetlands, 100-year floodplain, environmental buffers, steep slopes, or highly erodible soils. Therefore, the Application complies with the Montgomery County Environmental Guidelines.

Forest Conservation

The proposed development is the 4th and final phase of the Forest Conservation Plan for the entire Preliminary Plan area, which covers approximately 156 acres. The site is located within a *use class IV/ IV-P* portion of Little Seneca Creek watershed. The site is not within a Special Protection Area.

The current Application and site plan address forest conservation requirements and tree save issues for the development of the proposed uses and the associated parking lots and infrastructure. Lot 10 and Parcel P125 are also included under the current phase.

The current phase has approximately 3.6 acres of existing forest which contains a number of significant and specimen trees. No other environmentally sensitive features occur on-site for this phase. Approximately 2.2 acres of forest clearing is proposed, which was conceptually approved during the earlier phases. An onsite buffer strip of forest retention/planting area is proposed within a new Category I easement on proposed Lot 11 along Ridge Road. The new easement area will buffer Ridge Road and the confronting residents from the proposed grocery store and parking structure. Compared to the previously approved concept, some portions of the proposed buffer have been widened while other areas have been narrowed. The easement area is less than 50' wide in some sections, but meets the overall intent of the previously proposed easement since the total area placed in easement is approximately equal in size.

The overall site contains existing recorded Category I and Category II Forest Conservation Easement areas which satisfied earlier phases of the projects (the

easements are also connected with the current proposal). A number of encroachment issues and concerns with the existing easement areas surfaced during the review of the current Application. These encroachments will be address by the Applicant as outlined in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires mitigation for any impacts to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. This project did have a Preliminary Forest Conservation Plan prior to the October 1, 2009 effective date. However the approved plan showed an LOD that resulted in only minor impact to the subject tree. The current proposal shifts the LOD approximately 20' feet closer to the subject tree, creating new impacts (which would also necessitate removal of the tree). The newly proposed impacts to this greater than 30" DBH tree trigger the variance requirement.

Other trees on site which are 30" or greater were either previously approved for removal or will actually experience lesser impacts than previously approved (due to LOD changes). The additional impacts subject to the variance requirements are limited to the one tree.

In accordance with Section 22A-21(e), the Planning Board must find that the Applicant has met all criteria required to grant the variance. The Board finds the Applicant has satisfied the requirements for a Forest Conservation Variance for the following reasons:

- a) The variance will not confer on the Applicant a special privilege that would be denied to other applicants.

The Subject Property is located in the Sector Plan and the property is zoned TMX-2. The location of the proposed development is strategic in that it is easily accessible from I-270, several State roads (MD-27, MD-355, MD-118), and the future Corridor Cities Transitway (CCT). Granting the variance will allow the Sector Plan for this property to be implemented (which would be an expected outcome for other applicants and therefore not a special privilege).

- b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The Applicant has utilized structured parking and integrated Stormwater Management (SWM) facilities into the surface parking areas. These measures have reduced the overall footprint of the development to the maximum extent practical, and enabled additional forest save measures in other areas when compared with the preliminary forest conservation plan. The impact to T62 is necessary and unavoidable to implement the Application as proposed. Staff believes the variance can be granted under this condition if mitigation for the 31" DBH tree is provided. Staff recommends that 31 four to six foot tall holly trees be planted within the proposed easement area, as mitigation for the resource removed. The evergreen plantings will enhance the ultimate effectiveness of the buffer screen (from which the subject tree is proposed for removal). Final locations of the plantings will be determined by the forest conservation inspector.

- c) The need for the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

- d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The site is the subject of Stormwater Management and Sediment Control Plans affiliated with development applications 11998004A and 820100140. The Department of Permitting Services is satisfied that the Application meets sediment control and water quality requirements. The location of the subject tree is not directly associated with a stream, floodplain, or wetland. State water quality standards would not be violated by the impact or removal of the 31" tree, and no measurable degradation of water quality would occur.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance to remove one tree associated with the site.

Therefore, the Board finds that the Application satisfies the Forest Conservation Law and the Environmental Guidelines.

5. *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*



Montgomery County Planning Department
Maryland-National Capital Park and Planning Commission

Received
 M-NCPPC
 DEC 21 2017
 Montgomery County
 Planning Department

8787 Georgia Avenue
 Silver Spring, Maryland 20910-3780

www.montgomeryplanning.org

Effective: June 1, 2012

Phone 301.495.4550
 Fax 301.495.1308

EXTENSION REQUEST

Request #1 Request #2 Request #3

M-NCPPC Staff Use Only			
File Number	<u>11998004A</u>	Fee (attach worksheet)	<u>\$2390</u>
Date Application Received	<u>12/21/17</u>	Fee Received by	<u>12/21/17</u>
		MCPB Hearing Date	<u>5/10/18</u>

An application will not be accepted for review unless all required information and fees are provided. If an item requires more space, attach a separate sheet.

Plan Name: Seneca Meadows Corporate Center **Plan No.** 11998004A

This is a request for extension of: Preliminary Plan (including any associated Site Plan) Project Plan APF Validity
 Plan will expire on: January 22, 2018, requesting extension for 144 months until JAN. 22, 2030

Applicant Owner, Owner's Representative, or Contract Purchaser – check applicable, written verification required if not the owner)

Seneca Meadows Corporate Center I, II, III, IV, V, VI, VII, VIII, IX and X Bradley Chod
Name **Contact Person**
20457 Seneca Meadows Parkway
Street Address
Germantown Maryland 20878
City **State** **Zip Code**
240-912-0200 240-912-0181 bchod@minkoffdev.com
Telephone Number ext. **Fax Number** **E-mail**

Attorney

Lerch, Early and Brewer, Chtd. Steven Robins
Name **Contact Person**
7600 Wisconsin Avenue, Suite 700
Street Address
Beltsada Maryland 20814
City **State** **Zip Code**
301-857-0747 301-347-1778 sarobins@lerchearty.com
Telephone Number ext. **Fax Number** **E-mail**

Applicant hereby certifies that he/she is the sole owner of the subject property, is otherwise legally authorized to represent the owner(s) (written verification provided), or is a contract purchaser authorized to submit this application by the property owner (written verification provided).

Signature of Applicant (Owner, Owner's Representative or Contract Purchaser)

Signature
BRADLEY CHOD
Name (Type or Print)

12/18/17
Date

Checklist

General Information

1. Complete application form and checklist.....
2. Complete fee schedule and worksheet and fee.....
3. Copies of Approved plan.....
4. Notice List prepared in conformance with the Manual of Development Review Procedures on printer labels and paper copy of labels.....
5. Current valid Planning Board Opinion(s).....
6. Letter justifying request.....
7. Prior Extension Approvals, if applicable.....

No. Copies	Engineer/ Surveyor	M-NCPPC Staff
	Submitted or Waived By	Accepted or Not Accepted
1		
1	X	
3	X	
2 sets of Labels & 1 paper copy	X	
2	X	
3	X	
2	N/A	



Steven A. Robins
Attorney
301-657-0747
sarobins@lerchearly.com

February 20, 2018

By Electronic Mail

Mr. Richard Weaver, Chief
Mr. Ryan Sigworth, Senior Planner
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20901

Re: Supplemental Filing – Seneca Meadows Corporate Center ("SMCC")
Request for Extension of Adequate Public Facilities Determination

Dear Mssrs. Weaver and Sigworth:

We are writing this letter on behalf of Minkoff Development Corporation ("Minkoff"), the Master Developer of a project better known as Seneca Meadows Corporate Center. The purpose of this letter is to respond to your e-mail request, dated February 12, 2018, for additional documentation to support our request for an extension of the Adequate Public Facilities Approval (the "APFO Approval") for the Seneca Meadows Corporate Center, Preliminary Plan No. 11998004A (the "Preliminary Plan").

As explained in our letter dated December 21, 2018, the Applicant is not proposing any new development above that approved by the Preliminary Plan. Thus, pursuant to either Sections 50.4.3.J.7.d.i -iii or 50.4.3.J.7.e of the Subdivision Regulations, the Applicant is requesting approval from the Montgomery County Planning Board for an extension of the APFO Validity Period. Minkoff is requesting an additional APFO Approval validity determination of 12 years, but in no case less than 8 years based on the reasoning set forth below. Minkoff is proposing the following development schedule to fully implement the SMCC project:

- o SMCC VI Lot 8
 1. 2019 site plan and recordation of Lot.
 2. 2020-2021 construction.
- o SMCC VIII Lot 12
 1. 2020 site plan.
 2. 2021-2022 construction.

- o SMCC V Lot 7 (Building 10)
 1. 2023 site plan revision.
 2. 2024-2025 construction.

Because Minkoff is requesting an additional APFO Approval validity determination of no less than 8 years, section 50.4.3.J.7.e is the most applicable. However, as discussed in detail below, Minkoff actually qualifies for an extension of its APFO approval under both sections of the Subdivision Regulations.

1. Section 50.4.3.J.7.d.i -iii of the Subdivision Regulations states that the Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

(a) The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area of the project;

As show in the chart below, building permits have been issued for a total of 940,153 square feet of development, which comprises approximately 61% of the total approved gross floor area of the Project (or 1,526,270 square feet).

Lot	Owner	Buildings	Size (sf)	Year Building Permit Pulled	Record Plat Approval	Site Plan Approval
15	SMCC I	2 and 3	92,720 14,962	2005	Plat 21483	Yes
16	SMCC IX	11	29,604	2001	Plat 21773	Yes
14	SMCC III	1	124,820	1999	Plat 22571	Yes
4	SMCC II	4 and 5	31,676 62,720	2002	Plat 21148	Yes
5	SMCC III	6 and 7	50,013 53,809	1999	Plat 21147	Yes
6	SMCC IV	8 and 9	105,102 88,979	2000	Plat 21564	Yes
9	Johns Hopkins		73,000 (Rights to build 7k more)	2001	Plat 22003	Yes
11	SMCC VII	The Shops at Seneca Meadows	212,748 (206,570 sf retail 6,178 sf office)	2012	Plat 22003	Yes

(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

The Applicant has completed construction on all infrastructure improvements required by the Preliminary Plan, including construction of Seneca Meadows Parkway and related sidewalks, stormwater management, and forest conservation.

(c) The Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

- (1) Structures that compromise at least 10% of the total gross floor area approved for the project within the 4 years before an extension request is filed; or*
- (2) Structures that comprise at least 5% of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60% of the total gross floor area approved for the project have been built or are under construction.*

As illustrated on the attached chart, Minkoff has obtained U&O inspections for a total of 165,313 square feet of building area since December 21, 2013 (*i.e.* the immediately preceding four years before the extension request was submitted), which exceeds the requisite 5% (*i.e.* 76,314 square feet) and 10% (*i.e.* 152,627 square feet) of the total approved gross floor area. (See Attachment "A").

2. Section 50.4.3.J.7.e of the Subdivision Regulations also provides the Planning Board the authority to extend a determination of adequate public facilities once *for up to 12 more years* beyond the otherwise applicable validity period if the Board finds that:
 - i. *The preliminary plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million as adjusted annually by the consumer price index, to comply with specified infrastructure conditions.*

The Preliminary Plan required the dedication of land area and construction of Seneca Meadows Parkway. As demonstrated on Attachment B, the Applicant has expended a total of \$4,056,000 (in 1999 dollars) in hard costs to build Seneca Meadows Parkway and the related sidewalk improvements, stormwater management, and forest conservation work. This does not include any soft costs associated with these infrastructure improvements or the value of the land dedicated to the County for the right-of-way.

- ii. *The applicant has met or exceeded the required infrastructure conditions during the original validity period; and*

All infrastructure required by the Preliminary Plan was constructed, inspected and bonds released well before the Preliminary Plan validity period expired on January 22, 2018.

- iii. *The applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.*

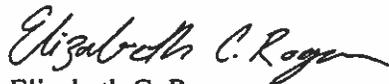
The infrastructure provided by the Applicant provides a significant and necessary public benefit to the County. Much of the infrastructure is specifically called for in the Master Plan and is necessary for the functionality of the eastern portion of Germantown.

We trust that this information is helpful in your review of our request for an extension of the APFO approval. We look forward to working with Staff to obtain this approval and thank you in advance for your consideration regarding this request. Please do not hesitate to contact us if you have any questions or require additional information.

Sincerely,



Steven A. Robins



Elizabeth C. Rogers

Cc: Sandra Pereira
Benjamin Berbert
Bradley Chod
Gary Unterberg

Attachment "A"

2014-2017 SMCC Deliveries

Entity	Address	Tenant	Date	SF
SMCC VII	20630 Seneca Meadows Parkway, E-1	La Tagliatella	1/4/2014	
SMCC VII	20630 Seneca Meadows Parkway, E-2	Little Seneca Animal Hospital	4/26/2014	
SMCC VII	20680 Seneca Meadows Parkway, Suite 210	Advanced Spine Center	1/26/2014	
SMCC VII	20680 Seneca Meadows Parkway, Suite 212	Family Dental Associates	9/1/2014	
SMCC III	20459 Seneca Meadows Parkway	Ormazabal Current	1/1/2014	5,873
SMCC II	20411 Seneca Meadows Parkway	SGS Life Sciences	6/1/2014	6,209
			2014 TXNS	12,082

SMCC VII	20680 Seneca Meadows Parkway Suites 218, 220 , 222	Total Dental - office	10/1/2015	
SMCC VII	20680 Seneca Meadows Parkway, Suite 217	Healthy Synergy Group	9/1/2015	
SMCC VII	20650 Seneca Meadows Parkway C-2	Sally Beauty	11/9/2015	
SMCC VII	20680 Seneca Meadows Parkway Suites 216	Digital Dental Lab	12/1/2015	
SMCC I	20320-20324 Seneca Meadows Parkway	IBM	7/1/2015	18,766
SMCC IX	20300 Seneca Meadows Parkway, Suite 202	Kay Management	12/15/2015	2,594
			2015 TXNS	21,360

SMCC III	20374-20376 Seneca Meadows Parkway	Intrexon	1/1/16 and 5/1/16	16,416
SMCC III	20443-20445 Seneca Meadows Parkway	Senseonics	5/1/2016	11,889
SMCC I	20328 Seneca Meadows Parkway	Herrick	8/1/2016	4,911
SMCC II	20407-20409 Seneca Meadows Parkway	Celebree	8/23/2016	8,930
SMCC IX	20300 Seneca Meadows Parkway	IBM	2/1/2016	837
SMCC IX	20300 Seneca Meadows Parkway #305	Nexstar/MFHAG	6/1/2016	1,203
SMCC IX	20300 Seneca Meadows Parkway Suite 200	Orma-Transatlantic	1/1/2017	1,445
			2016 TXNS	45,631

SMCC VII	20680 Seneca Meadows Parkway #217	Healthy Synergy	9/1/2017	
SMCC I	20310 B Seneca Meadows Parkway	Rehab2Perform	10/1/2017	3,809
SMCC II	20401 Seneca Meadows Parkway	Terracon	11/1/2017	7,926
			2017 TXNS	11,735

TOTAL	90,808
-------	--------

SMCC VII Deliveries		Last U&O
Building A	20680 Seneca Meadows Parkway	5/23/2014
Building B		
Building C		
Building D	20680 Seneca Meadows Parkway	1/10/2014
Building E	20680 Seneca Meadows Parkway	5/2/2014
Building F		
Building G	20680 Seneca Meadows Parkway	2/19/2015
Total SMCC VII Deliveries		

Therefore in total we obtained U&O inspections for 165,313 sf in the past 4 years prior to the extension request.
5% of the approved APF would have technically required us to deliver 76,314 sf.
10% of the approved APF would have technically required us to deliver 152,627 sf.

Attachment "B"

SENECA MEADOWS CORPORATE CENTER

Land & Infrastructure

COST ESTIMATE

LAND:

100	Land	\$ 11,793,000
112	Land Purchase Price	11,500,000
121	Title Insurance	15,000
122	State & County R. E. Taxes	100,000
123	Recordation Charges	26,000
124	County Transfer Tax	58,000
125	State Transfer Tax	29,000
126	Legal Fees	45,000
141	Phase 1 Environmental Study	2,000
150	Engineering Studies	10,000
171	Interest Carry	8,000
TOTAL LAND COSTS:		<u>\$ 11,793,000</u>

SOFT COSTS:

200	Civil Engineering Services		1,450,000
		<u>Prelim. Plan</u>	<u>Des./Dev.</u>
201	Planning Studies	24,000	70,000
211	Site Plan	62,000	240,000
221	Record Plat & Easements	1,000	85,000
231	Rough Grading, Sed. Control	3,000	175,000
241	Stormwater Management	4,000	35,000
251	Water & Sewer - WSSC	0	120,000
256	Water & Sewer - MOU	0	15,000
261	Storm Drain & Paving (Public)	0	200,000
271	Forest Conservation	11,000	30,000
276	Landscape Design (Public)	0	5,000
281	Field Survey	0	135,000
291	Direct Costs	2,000	15,000
<u>SOFT COSTS: (continued)</u>			

	311	On-Site Storm Drain	0	10,000	
	331	Site Landscape Design	0	15,000	
	341	Support Engineering	7,000	50,000	
	361	Consulting & Management	<u>+ 11,000</u>	<u>+ 125,000</u>	
			125,000	1,325,000	
400		Architectural Services			25,000
	450	Planning Studies	0	25,000	
700		Traffic Engineering Services			50,000
	701	Traffic Engineering	15,000	35,000	
800		General & Admin. Expenses			1,077,000
	810	Marketing	50,000		
	821	Accounting Fees	10,000		
	830	Legal Fees	105,000		
	841	Const. Loan Fees	30,000		
	842	Const. Loan Interest	340,000		
	847	Const. Loan Closing Costs	60,000		
	851	Appraisals	5,000		
	856	Real Estate Taxes	350,000		
	871	Development Fee	120,000		
	881	Travel & Entertainment	2,000		
	890	Miscellaneous	5,000		
900		Permits			670,000
	911	Sediment Control	165,000		
	912	Grading	85,000		
	920	Public Right of Way	225,000		
	930	WSSC	90,000		
	940	MNCP&PC	65,000		
	950	Bond & LOC Fees	30,000		
	980	Miscellaneous	10,000		
1000		General Conditions			188,000
	1199	Supervision	100,000		
	1201	Reprographics	15,000		
	1400	Quality Control	5,000		
	1500	Const. Facilities & Controls	40,000		
	1600	Misc. Labor	10,000		
	1800	Insurance	8,000		
	1900	Cleanup & Trash Removal	10,000		
TOTAL SOFT COSTS:					<u>\$ 3,460,000</u>

HARD COSTS:

2000	Sitework		4,056,000
2010	Geo-Technical Engineering	85,000	
2101	Site Clearing	105,000	
2141	Dewatering	10,000	
2205	Sediment Controls & Basins	220,000	
2210	Excavation & Grading	615,000	
2301	Site Stabilization	110,000	
2505	Fine Grade	27,000	
2510	Stone Base	234,000	
2515	Curb & Gutter	260,000	
2520	Sidewalk	145,000	
2530	Paving	564,000	
2535	Striping	15,000	
2601	Utility Piping	20,000	
2661	Water Distribution (by WSSC)	0	
2681	Gas System	5,000	
2721	Storm Drain	367,000	
2731	Sanitary Sewer	98,000	
2771	Stormwater Management	50,000	
2781	Electric	200,000	
2784	Telephone	80,000	
2791	Street Lighting	20,000	
2820	Traffic Signals	75,000	
2825	Off-Site Traffic Improvements	25,000	
2840	Road Appurtenances	26,000	
2850	Signage	100,000	
2900	Landscaping	600,000	

TOTAL HARD COSTS: \$ 4,056,000

<u>SUMMARY:</u>		
LAND COST:		\$ 11,793,000
INFRASTRUCTURE COST:		7,891,000
SOFT COSTS	3,460,000	
HARD COSTS	4,056,000	
CONTINGENCY @ 5%	375,000	
		+ _____
<u>TOTAL LAND & INFRASTRUCTURE COST</u>		<u>\$ 19,684,000</u>

09/16/99



Steven A. Robins
Attorney
301-657-0747
sarobins@lerchearly.com



December 20, 2017

By Electronic Mail

The Honorable Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Extension of Preliminary Plan Validity Period and Adequate Public Facilities Determination for Seneca Meadows Corporate Center – Preliminary Plan No. 11998004A (the “Preliminary Plan”)

Dear Chairman Anderson and Members of the Board:

Our firm represents Minkoff Development Corporation (“Minkoff”), the Master Developer of a project better known as Seneca Meadows Corporate Center. Pursuant to Sections 50.4.2.H and 50.4.3.J.7 of the Montgomery County Subdivision Regulations, we are requesting an extension of the Preliminary Plan Validity Period (the “Preliminary Plan Validity Period”) and the Adequate Public Facilities Approval (the “APFO Approval”) for the above-referenced Preliminary Plan. Pursuant to the approvals granted by the Planning Board (as well as the automatic extensions approved by the Montgomery County Council), the APFO Approval (*see* Condition 11 of Preliminary Plan No. 11998004A) and the Preliminary Plan Validity Period (*see* Condition #3 of Preliminary Plan No. 119980040, which provided a 12 year recording schedule) will expire on January 22, 2018, if the requested extensions are not granted.

Site Description and Approvals

The Seneca Meadows Corporate Center consists of 12 Lots and 6 Parcels on 156.50 acres of land located just east of Interstate 270, in the southeast quadrant of intersection of Ridge Road and I-270 in Germantown, Maryland (the “Property”). The Property currently is developed with office, R & D, and commercial/retail/restaurant uses (including a Wegmans store) and other various uses. The Property is zoned CR and EOF but was previously zoned TMX and I-3. The Property is located in the Germantown Employment Area Sector Plan, and more specifically in the Seneca Meadows/Milestone District of the Sector Plan. The Property is limited to 1,319,700 square feet of R & D office use and 206,570 square feet of retail use. The original APF analysis

for the property, conducted at the time of the original Preliminary Plan approval, was for 1,577,000 square feet of office and 83,000 square feet of retail use. Specific roadway improvements were provided to satisfy the Applicant's APFO requirements. The Preliminary Plan Amendment thereafter modified the development mix by reducing the approved but unbuilt office by 257,300 square feet and adding 123,570 square feet of retail use. In connection with this Amendment, the Applicant submitted a transportation analysis to confirm that the conversion of office to retail uses would generate approximately the same amount of peak hour trips.

To date, the follow portions of the project have been constructed:

1. Lots 9, 11, 14, 15, & 16 Block A (all construction completed).
2. Lots 4, 5 & 6 Block B (all construction completed).
3. Parcels B, E, F, G, L & K (all grading, stabilization and landscaping completed).
4. Dedication and construction of Seneca Meadows Parkway (from Observation Drive to MD. Route 118).

To date, the entire infrastructure for the Seneca Meadows Corporate Center has been constructed including:

1. Seneca Meadows Parkway (from Observation Drive to MD. Route 118).
2. Public water and sewer mains, and building service connections.
3. All private and public storm drain has been installed for all constructed buildings and parking facilities.
4. All utilities (phone, TV, natural gas) serving constructed buildings are complete.
5. Final grading completed for all lots, except lots 4 & 12 "A", and lots 7 & 8 "B".
6. All MCDPS approved on-site SWM facilities, and MCDPS and MDSA approved off-site SWM facility (pond #3).
7. Forest conservation, per approved plans by M-NCP&PC is completed for the overall site.

As a result, the only remaining lots/parcels left for development include:

Lot 4 Block A: 4.6 ac.
Lot 12 Block A: 4.4 ac.
Lot 7 Block B: 6.6 ac. (Building 10)
Lot 8 Block B: 10.9 ac. (the only unrecorded lot)

The entire development is recorded except for Lot 8 Block B. At least 2/3 of the approved development already has been constructed. An extension of the Preliminary Plan Validity Period is needed so that Lot 8 can be recorded immediately after Minkoff obtains Site Plan approval for that lot. And, it follows that the APFO Approval also needs to be extended to complete the remainder of the project.

The requested extensions will allow Minkoff to seek Site Plan approval for Lot 8, Block B (and thereafter, expeditiously record the plat among the Land Records) and complete the development on the remaining recorded lots. Minkoff currently is marketing the Property and is poised to move forward with this next phase of the project. Importantly, granting these extensions will not, in any way, cause harm to others. Rather, these extensions will facilitate desired additional development and the continued success of this office complex in the County.

Basis for the Extensions

A. Preliminary Plan Validity Period Extension

The Board may grant a request to extend the validity period of a preliminary plan pursuant to Section 50.4.2.H of the Subdivision Regulations if the Board finds that:

- i. *Delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant;*

Or

- ii. *The occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order the validate the plan) would result to the applicant if the plan were not extended.*

Any delays in validating the Preliminary Plan have not been caused by Minkoff. Minkoff has diligently pursued its approval, has constructed the entire infrastructure associated with the approval, and has constructed as much of the project that is financially viable at this point in time. Since the original approval, the Washington-Metropolitan Area has experienced a significant downturn in the economy (especially in the office market) and recovery has taken a great deal of time and arguably is not complete. Even so, Minkoff has continued to market and promote the project and is very confident that the remainder of the project can be constructed within the requested extension time frame.

The Board considers whether the project is viable and capable of being financed, constructed, and marketed within a reasonable period of time. Minkoff is actively planning for and marketing the remainder of the project and certainly intends to begin construction within a reasonable period of time based on market conditions. Over 953,081 square feet already has been constructed and the remainder is necessary to complete the project. Clearly, this project is viable and should be completed.

Minkoff undoubtedly will experience exceptional and undue hardship if the requested extensions are not granted, as evidenced, in part, by all of the efforts undertaken to-date to implement the terms and conditions of the plan approval, in order to validate the plan (including but not limited to the construction of all required infrastructure improvements). Minkoff is committed to validating the remainder of the preliminary plan in the shortest amount of time possible but certainly within the time frame associated with this extension request.

Accordingly, Minkoff respectfully requests that the Planning Board grant an additional three year period in which to record the final plats for the Property. During that time, Minkoff will diligently pursue site plan approval for Lot 8 and thereafter record its Record Plat.

B. Adequate Public Facilities Approval Extension

The Planning Board has the authority to extend the validity period for a determination of adequate public facilities. For the approval of an extension, the Applicant must not propose any additional development above the amount approved in the original determination. The Applicant is not proposing any new development above that approved by the Preliminary Plan. The Subdivision Regulations set forth the criteria for the granting of an extension. The Applicant qualifies for the granting of an extension under several of the enumerated criteria, as illustrated below.

1. Section 50.4.3.J.7.d.i -iii of the Subdivision Regulations states that the Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:
 - (a) The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area of the project (*Satisfied*);
 - (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 (*Satisfied*); and
 - (c) The Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:
 - (1) Structures that comprise at least 10% of the total gross floor area approved for the project within the 4 years before an extension request is filed (*Satisfied*); or
 - (2) Structures that comprise at least 5% of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60% of the total gross floor area approved for the project have been built or are under construction (*Satisfied*).

Under the above provision, the Board is authorized to grant a 6 year extension under this section of the Subdivision Regulations since the original validity period was longer than 7 years.

2. Section 50.4.3.J.7.e of the Subdivision Regulations also provides the Planning Board the authority to extend a determination of adequate public facilities once *for up to 12 more years* beyond the otherwise applicable validity period if the Board finds that:
 - i. The preliminary plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million as adjusted annually by the consumer price index, to comply with specified infrastructure conditions (*Satisfied – Infrastructure costs exceed this figure*).
 - ii. The applicant has met or exceeded the required infrastructure conditions during the original validity period (*Satisfied*); and
 - iii. The applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan (*Satisfied – the infrastructure provided by the Applicant provides a significant and necessary public benefit to the County. Much of the infrastructure is specifically called for in the Master Plan and is necessary for the functionality of the eastern portion of Germantown*).

Minkoff actually qualifies for an extension of its APFO approval under both sections of the Subdivision Regulations. For all of the reasons set forth herein, Minkoff respectfully requests an additional APFO Approval validity determination of 12 years (as allowed under Section 50.4.3.J.7.e of the Subdivision Regulations), and in no case less than 6 to 10 years based on the reasoning set forth in this correspondence.

We thank the Planning Board for its consideration of these extension requests. We believe this project satisfies the provisions of the Subdivision Regulations for extensions and is deserving of a favorable review. Seneca Meadows truly is a landmark development in the Germantown area and this extension will allow Minkoff to complete it in a reasonable period of time. For all of the reasons articulated herein, we respectfully request the Planning Board to approve both extensions for the Seneca Meadows project.

Sincerely,



Steven A. Robins

Cc: Gwen Wright
Richard Weaver
Sandra Pereira
Benjamin Berbert
Bradley Chod
Gary Unterberg
Elizabeth Rogers