

April 19, 2023

Mr. Jeff Zyontz, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
2425 Reddie Drive
Wheaton, Maryland 20910

Re: 8008 Wisconsin Avenue; Request for Extension of Preliminary Plan No. 120160050
("Preliminary Plan")

Dear Chair Zyontz and Members of the Planning Board:

On behalf of our client, Toll MD X Limited Partnership ("Toll"), the owner of the property that is the subject of the above-referenced Preliminary Plan ("Property"), and pursuant to Section 50.4.2.H *et seq.* of the Montgomery County Code ("Code"), the purpose of this letter is to request an extension of the Preliminary Plan validity period by two (2) years to align with the plan's approved Adequate Public Facilities ("APF") validity period.

The Preliminary Plan, approved when the Property was zoned CBD-1, allows for redevelopment of the Property with up to 150,375 square feet of residential use, consisting of 106 dwelling units including 15% moderately priced dwelling units ("MPDUs"), and 5,793 square feet of commercial use ("Project"). The Preliminary Plan approval, evidenced by Planning Board Resolution No. 16-083 issued on September 16, 2016, provided for a 60 month preliminary plan validity period, prior to which the record plat must be recorded, and an 85 month APF validity period, prior to which building permits must be issued. Both of these validity periods were later automatically extended for an additional two years pursuant to Ordinance 19-12, making the expiration dates October 16, 2023 and October 16, 2025, respectively.

Pursuant to Section 50.4.2.H of the Code, an extension of a preliminary plan validity period requires a demonstration that 1) "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 2) "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 to validate the plan) would

result to the applicant if the plan were not extended.” In the case of the Project, the latter provision is the applicable one, as discussed more fully below.

At the time the Preliminary Plan was accepted for review, the Bethesda Downtown Plan (“Downtown Plan”) was beginning to take shape. In fact, that plan was adopted just seven months after the Preliminary Plan’s approval. The Downtown Plan not only recommended new zoning for the Property, but also introduced a host of new zoning provisions and mechanisms that significantly altered the development potential and framework for Bethesda properties. As such, Toll paused its redevelopment efforts after approval of the Preliminary Plan to assess the impacts of, and possibilities created by, that plan.

Just as Toll was completing its due diligence and assessment of the impacts of the Downtown Plan and new zoning, and recommitting to its original approvals, the COVID pandemic began to emerge. As the Board is aware, the impacts of this pandemic are still being felt. Added to this, the last year has seen significant market volatility, with inflation and rising interest rates impacting all aspects of industry, including land development. As such, in recent years Toll was again forced to pause on the perfection of its entitlements due to market conditions. In fact, as detailed above, almost the entirety of the Preliminary Plan’s validity period has run during times of significant change and unusual and unanticipated events entirely beyond Toll’s control. In light of current market conditions, Toll has now entered into a contract to sell the Property to a developer willing and able to proceed expeditiously to platting and construction. Toll therefore respectfully requests an extension of its Preliminary Plan validity period to allow the contract purchaser sufficient time to meet the prerequisites for platting and validate the Preliminary Plan through plat recordation.¹

Exceptional hardship would occur if the Preliminary Plan was not extended. Associated with the Preliminary Plan and related entitlements, Toll previously purchased 67,764 square feet of density from sending properties in the Bethesda CBD in order to achieve the level of density reflected in the existing approvals. This purchase was made pursuant to the zoning in effect prior to the adoption of the Downtown Plan and subsequent legislation that changed how density is purchased and transferred within Bethesda. Additionally, Toll has expended a significant amount of money and resources both in obtaining the Preliminary Plan and related approvals and in advancing them through certification. As noted above, Toll also recently entered into a Purchase and Sale Agreement with a buyer who has the means and ability to construct the Project. Failure to extend the validity period would therefore invalidate these efforts and prevent the impending sale and construction of the Project from occurring.

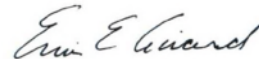
¹ Given the Preliminary Plan’s conditions of approval, which contain a number of prerequisites to platting, including various permit and bonding requirements and significant coordination with the Maryland State Highway Administration on a number of issues, Toll believes that the requested 25 month extension is the minimum additional amount of time needed. Additionally, this extension would align the Preliminary Plan validity period with the APF validity period, which has been a practice of the Board in a number of recent cases.

Finally, we believe the extension of the Preliminary Plan validity period is in the public interest. It is widely recognized that additional housing is needed in the County, particularly affordable housing. The Project is already entitled to add 106 new multi-family units, 16 of which are MPDUs, to the County's housing stock, and the contract purchaser is poised to proceed through platting and into permitting as expeditiously as possible. The requested extension to allow this to occur, and for the Project to proceed, will therefore advance the County's objectives of providing both more, and more affordable, housing.

Thank you for your consideration of this request. If you have any questions or would like any additional information, please feel free to contact me.

Sincerely,

Miles & Stockbridge, P.C.



Erin E. Girard

cc: Elza Hisel-McCoy
Stephanie Dickel
Addie Hargett
David Von Spreckelsen
Nicole Faux
Henry Waller