



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of May 16, 2009**

DATE: May 14, 2009

SUBJECT: SP #307 SITE PLAN AMENDMENT to extend the term of the site plan; premises known as 333, 355 Old Jefferson Davis Hwy. (RPC #34-023-001 and -002)

Applicant:

MR Boundary Channel, L.L.C. (Owner)
1700 K Street, N.W.
Washington, D.C. 20006

By:

Martin Walsh
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
2200 Clarendon Boulevard, 13th Floor
Arlington, VA 22201-3359

C.M. RECOMMENDATION:

Extend the term of the site plan approval for thirty (30) days from May 31, 2009 to June 30, 2009, subject to previous conditions and amended Condition #1.

ISSUES: This request to extend the term of the site plan from the current expiration date of May 31, 2009 to June 30, 2009 on the former "Twin Bridges" site is to facilitate the July 16, 2007 exchange agreement between the County and Monument Realty.

More time is needed to complete the land exchange agreement because release of liens on the Monument Realty owned site has been delayed due to the Lehman Brothers Chapter 11 bankruptcy filing on September 15, 2008.

SUMMARY: The exchange agreement provides the transfer of the 7.1 acre subject property to the County for inclusion in the *North Tract Area Plan* for the Long Bridge Park development in exchange for a County-owned 4.84 acre site that is the subject of the County Board's June 24,

County Manager: _____

County Attorney: _____

Staff: Neil Thompson, Planning Division, DCPHD

PLA- 5258

2008 Site Plan #400 – Monument View approval.

This site plan (SP #307), for a mix of office and hotel, contained the termination contingency that the approval would become null and void if either: the approved plan is not under construction by May 31, 2009; or the Applicant acquires properties located between South Clark Street, 6th Street, South, South Ball Street and 10th Street; or the County acquires 333 and 355 Old Jefferson Davis Highway. Neither the applicant nor the County want the site developed as approved in 1994. The applicant and the County would like to terminate the site plan as provided for in approval Condition #1. An unanticipated delay in the applicant's ability to close on the property exchange has occurred because of the Chapter 11 bankruptcy of Lehman Brothers, which holds a lien on the Twin Bridges property.

BACKGROUND: The approved site plan includes two 7-story office buildings containing a total of 345,432 square feet of commercial/office gross floor area and a 10-story hotel containing 198 rooms. The site has been vacant since the Marriott Twin Bridges hotel was demolished in 1990. The site plan approval has previously been extended four times by the County Board, with the last extension to May 31, 2009.

Since the County Board originally approved this site plan, there have not been any serious efforts to construct the development. During that same period, the County Board approved the Phased Development Site Plan (PDSP) for the Potomac Yard site and subsequent final site plans within that PDSP. A "*Master Plan for the North Tract Park and Recreational Facilities and Surrounding Area*", the *North Tract Area Plan*, and new Note 20 on the General Land Use Plan, proposing that any future development in the North Tract area be generally consistent with the vision and goals listed in the Master and Area plans, was recently approved by the County Board. In addition, there have been major urban design changes in the Crystal City area as well as approved changes to the vehicular circulation system on Crystal Drive.

The County Board denied a General Land Use Plan and Site Plan amendment request in June 2004 for a high security, all office site plan on the Twin Bridges site. The new owners of the site, Monument Realty, filed suit over the County's denial of the site plan (*MR Boundary Channel LLC v. County Board of Arlington County, Virginia (in Chancery No. 04-426 Circuit Court of Arlington County)*). In July 2007, the County and Monument Realty entered into a negotiated exchange agreement pursuant to which the applicant would convey the subject site to the County, which would convey 4.84 acres of land owned by Arlington County and a portion of former Clark Street, and would vacate an adjacent median. This agreement allows the County to acquire the 7.1 acre Twin Bridges site for indoor aquatics, sports and fitness facilities within a signature building creating an architectural landmark befitting the site. The applicant received County Board approval for Site Plan #400 on the County parcel for a mixed use development of 352 dwelling units, 3,512 sq ft retail, and 323,229 sq ft office in June 2008. The pending lawsuit was subsequently dismissed.

DISCUSSION: The Applicant's and County's mutual interests are expressed in the July 16, 2007 Exchange Agreement. Extending the term of this site plan facilitates settlement of the exchange agreement. Both the applicant and the County have taken steps to complete the

agreement but the applicant's ability to close has been delayed by the Lehman Brothers Chapter 11 bankruptcy filing.

An amendment to the Virginia Code that will be effective as of July 1, 2009, would automatically extend this site plan approval until July 1, 2014. Therefore the current extension is recommended and will not extend this site plan to that date.

CONCLUSION: More time is needed to complete the land exchange agreement. Therefore, staff recommends that the term of the site plan be extended for thirty (30) days to June 30, 2009, subject to all previously agreed conditions, and the revised condition as follows:

1. The developer (as used in these conditions, the term developer includes the owner, the applicant, and their successors and assigns) agrees to comply with the standard conditions set forth in Administrative Regulation 4.1 and the plans dated June 8, 1994, the Illustrative Landscape Plan and Phase I Landscape Plan dated August 2, 1994, the Proposed Road Improvements Plan dated August 15, 1994, the Ground Floor Plan, Building Sections, Typical Floor Plan and Building Elevations plans dated June 8, 1994, as revised September 20, 1994, and reviewed and approved by the County Board and made a part of the public record on October 1, 1994, together with any modifications proposed by the developer and accepted by the County Board or vice versa. The developer agrees to coordinate with County staff and obtain approval from the County Manager or his designee on reasonable revisions to the Illustrative Landscape Plan and Phase I Landscape Plan dated August 24, 1994, and the Proposed Road Improvements Plan dated August 15, 1994, that may be necessary to accomplish the County's goals for development of the North Tract, so long as said revisions do not delay the developer's ability to pursue construction of the site plan beyond the typical review time for revisions of this nature, as approved on February 8, 2003. The developer agrees to prepare and submit such revised plans within 90 days after request for such revisions by the County Manager. The developer further agrees to obtain the County Manager's approval of all revisions before proceeding with development. In the event the developer is ready to proceed with development before a request for revisions is received from the County Manager, the developer agrees to incorporate revisions necessary to accomplish the County goals for development of the North Tract (as such goals are determined by the County Manager) into all plans submitted for approval in the process of development. This site plan approval expires automatically and without the need for any further action by the County Board if either: the approved plan is not under construction by ~~May 31~~ June 30, 2009; or the Applicant acquires real properties located between South Clark Street, 6th Street, South, South Ball Street, and 10th Street, South (RPC#'s 34-025-001, 34-025-003, 35-025-004, and 35-025-005); or the County acquires 333 and 355 Old Jefferson Davis Highway (RPC#'s 34-023-001 and 34-023-002). Acquisition shall be deemed to have occurred upon execution of a deed conveying fee ownership to the referenced parties. The developer agrees to work diligently to secure the release of the Lehman Brothers lien on the property and to provide a written report to the Arlington County Real Estate Supervisor detailing progress by Monument Realty to secure the release of the Lehman Brothers lien on the property to be conveyed to the County; the names, titles, and telephone numbers of the Trustee in bankruptcy and the Lehman

Brothers staff that Monument Realty is working with to obtain release of the Lehman lien; remaining steps to be completed by the Trustee, Lehman Brothers and Monument Realty; and efforts by Monument Realty to obtain alternative refinancing to obtain the release of the lien. Extension of this approval shall be at the sole discretion of the County Board. The developer agrees that this discretion shall include a review of this site plan and its conditions for compliance with then current County policies for land use, zoning, and special exception uses. Extension of the site plan is subject to, among other things, inclusion of amended or additional site plan conditions necessary to bring the plan into compliance with then current County policies and standards together with any modifications proposed by the developer and accepted by the County Board or vice versa.

PREVIOUS COUNTY BOARD ACTIONS:

May 18, 1955	Approved rezoning Z-1189-55-1 from “CM” to “C-3”.
August 12, 1961	Subject area designated “General Business” with an “M” overlay on the General Land Use Plan.
February 9, 1974	Approved General Land use Plan Amendment from “General Commercial” to “High Medium” Residential.
October 3, 1978	Approved rezoning from “C-3” to “RA4.8”.
May 5, 1982	Approved rezoning from “RA-4.8” to “C-O-1.5”.
September 10, 1983	Approved site plan for the renovation of the existing Exxon service station subject to a review in one year.
September 8, 1984	Continued site plan for Exxon service station with a review in three years.
September 9, 1988	Continued site plan for the Exxon service station subject to all previous conditions and with no further review.
March 10, 1990	Deferred site plan (SP #282) and General Land Use Plan Amendment request (G-215-90-1) from “High Medium” Residential to “Low” Office Apartment Hotel to the May 19, 1990 County Board meeting.
May 19, 1990	Defer site plan and General Land Use Plan Amendment requests to the July 7, 1990 County Board meeting.
July 10, 1990	Defer site plan and General Land Use Plan Amendment requests to the September 8, 1990 County Board meeting.
September 8, 1990	Defer site plan and General Land Use Plan Amendment requests to the November 17, 1990 County Board meeting.
November 17, 1990	Defer site plan and General Land Use Plan Amendment requests to the April 6, 1991 County Board meeting.
April 6, 1991	Defer site plan and General Land Use Plan Amendment requests to the May 11, 1991 County Board meeting.
May 11, 1991	Defer site plan and General Land Use Plan Amendment requests to the July 14, 1991 County Board meeting.

July 14, 1991	Defer site plan and General Land Use Plan Amendment requests to the September 14, 1991 County Board meeting.
September 14, 1991	Denied site plan and General Land Use Plan Amendment requests.
September 10, 1994	Defer site plan and General Land Use Plan Amendment requests to the October 1, 1994 County Board meeting.
October 1, 1994	Approved General Land Use Plan Amendment and Site Plan approval requests subject to conditions.
August 14, 1999	Extended the term of site plan approval for three additional years from October 1, 1999 to October 2, 2002.
September 14, 2002	Extended the term of site plan approval from October 2, 2002 to October 21, 2002.
October 19, 2002	Extended the term of site plan approval from October 21, 2002 to January 31, 2003.
January 17, 2003	Extended the term of site plan approval from January 31, 2003 to February 28, 2003.
February 8, 2003	Extended the term of the site plan approval to February 28, 2006, subject to the previous conditions; amended Conditions #1, 7, 8b(1), 8h, 11, 22, 52, 53 and 56; and new Conditions #58, 59 and 60.
June 12, 2004	Denied a General Land Use Plan Amendment from "Low" Office-Apartment-Hotel and Low-Medium Residential to "Low" Office-Apartment-Hotel and Site Plan amendment request for an approximately 463,000 square foot office building.
October 15, 2005	Extended the term of the site plan approval to February 28, 2009, subject to previous conditions and amended Condition #1.
January 24, 2009	Extended the term of the site plan approval to May 31, 2009, subject to previous conditions and amended Condition #1.