



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

MCPB
ITEM #
2/15/07

MEMORANDUM

DATE: February 4, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301) 495-4542
Development Review Division *CC*

SUBJECT: Request for an extension to the validity period – Preliminary Plan No. 120040200, Day Property

STAFF RECOMMENDATION: Grant six-month extension of the preliminary plan validity period until August 6, 2007

BACKGROUND

The preliminary and site plans for the Day Property (Plan No. 120040200) were approved by the Planning Board on December 18, 2003. Planning Board Opinions for these actions were mailed on January 6, 2004 for the preliminary plan, and January 16, 2004 for the site plan. As a condition of the preliminary plan approval, the validity period for the plans was set at 37 months from the preliminary plan opinion mailing date, or February 6, 2007.

After these approvals were granted, the property was sold, and the new owner decided to pursue a site plan amendment. That amendment was filed in November, 2005 and approved by the Planning Board in September, 2006. The Board's resolution for the approval was issued on November 16, 2006, and the applicant filed their Certified Site Plan for staff approval on January, 19, 2007. A record plat for the property has also been submitted.

Attached, please find the applicant's timely request, dated January 23, 2007, for a twelve-month extension of the plan validity period. The extension is requested to give staff and the applicant adequate time to resolve remaining issues and allow the pending plat to be recorded.

DISCUSSION OF THE EXTENSION

Pursuant to Section 50-35 (h)(3)(d) of the Subdivision Regulations, "the Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant's ability to perform terms of conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created by the applicant; or
- ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended."

The applicant's memorandum seeks the extension based on delays associated with the submittal, review, and approval of the subsequent site plan amendment which have prevented the pending record plat from being recorded.

Applicant's position

The applicant's letter generally cites the length of time it has taken to complete the site plan amendment process as grounds for the extension of the plan validity period. As noted in the submitted time line, it took more than two years from the point that the applicant initiated discussions about the amendment to the issuance of the Planning Board's resolution on the amendment.

Staff Position

Staff acknowledges that delay did occur during the amendment of this site plan due to the fact that new rules as regards to amendments were being instituted, and the site plan section was experiencing severe staffing constraints. The institution of the new procedures for amendments delayed staff's decision about the type of amendment that needed to be submitted in this case for a year. Once the submittal was made the review and approval took longer than usual because of staffing constraints. Staff supports an extension of the validity period for the subject plan based upon these delays, however, we believe that twelve months is excessive. Instead, staff recommends six months. In staff's opinion, six months will provide ample time for final review of the certified site plan and recordation of the plat, while keeping the project moving forward at

a pace that will hopefully reduce the risk that its adequate public facilities validity will be in jeopardy of expiring¹.

CONCLUSION

It is staff's determination that delays which occurred during the site plan amendment review are reasonable justification upon which the Planning Board can base the approval of a limited extension of the current validity period pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. Staff therefore recommends that the preliminary plan be extended to August 6, 2007, to allow adequate time for all issues to be addressed prior to plat recordation.

Attachments:

Preliminary Plan Opinion
Extension request dated January 23, 2007

¹ Per the preliminary plan approval, the adequate public facilities review is valid for sixty-one (61) months from the date of mailing of the Planning Board opinion, or January 6, 2009.



Date Mailed: January 6, 2004

Action: Approved Staff Recommendation

Motion of Comm. Perdue, seconded by
Comm. Robinson with a vote of 4-0;

Comms. Berlage, Perdue, Robinson and
Wellington voting in favor
Comm. Bryant temporarily absent

Attachment A

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04020

NAME OF PLAN: DAY PROPERTY

On 9/15/03, SPIRE WOODS, LLC submitted an application for the approval of a preliminary plan of subdivision of property in the RT-8 zone. The application proposed to create 1 lot on 2 acres of land. The application was designated Preliminary Plan 1-04020. On 12/18/03, Preliminary Plan 1-04020 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 1-04020 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-04020.

Approval, Subject to the Following Conditions:

- 1) Limit the development to eleven (11) single-family attached housing units
- 2) Satisfy the Policy Area Transportation Review components of the Adequate Public Facilities test by entering a Traffic Mitigation Agreement with the Montgomery County Planning Board and Department of Public Works and Transportation, to make a one-time lump sum payment of \$21,600 to support transit use within the Policy Area.
- 3) Consistent with the 1997 Approve and Adopted Fairland Master Plan, dedicate additional right-of-way along Greencastle Road to provide 40 feet of right-of-way from its centerline.
- 4) Coordinate the DPWT's CIP Project No. 500100, Greencastle Road, to provide roadway improvements and the proposed Class I bikeway along the entire property frontage.
- 5) Coordinate with DPWT/Department of Permitting Services on design requirements for the proposed site access driveway as well as on-site parking.
- 6) Compliance with conditions of MCDPWT letter dated, December 5, 2003 unless otherwise amended
- 7) Compliance with MCDPS stormwater management approval dated September 2, 2003.
- 8) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- 9) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- 10) Other necessary easements

20410 Observation Drive, Suite 205
Germantown, Maryland 20876-4000
301-540-7990 • FAX: 301-540-7991

MEMORANDUM

To: Montgomery County Planning Board
Technical Staff, DRD

From: Site Solutions Inc. *AB*
Alfred Blumberg AICP

Re: Day Property Preliminary Plan Extension
1-04020

Date: January 23, 2007

The Property Owner, D.R. Horton, hereby requests a 12-month extension for the implementation of the above cited Preliminary Plan of Subdivision. The Record Plat has been filed and is being reviewed, but has not yet been approved and recorded. The final recordation should be completed well before 12 months, but that length of time is requested out of an abundance of caution, due to the extensive time required for various reviews and approvals.

In September, 2003 the then applicant, Spire Woods, LLC, submitted both the Preliminary Plan of Subdivision and Site Plan (8-04006) for the subject property. The Planning Board approved the Preliminary Plan and the Opinion was mailed on January 6, 2004. The Preliminary Plan was to remain valid for 37 months from that date, or February 6, 2007. The delay has been caused primarily by a change in ownership and the fact that the new owners, D.R. Horton, required a change in the size of the townhomes on the property which required an amendment to the site plan. The initial thinking on the part of both staff and the applicant was that the amendment could be handled administratively, as a minor amendment. Then Clarksburg happened.

Following is a time line of activity since the approval of the Preliminary Plan:

1. January 6, 2004 – Preliminary Plan Opinion mailed
2. June 5, 2004 – Preliminary Plan drawing signed by Subdivision staff
3. January 16, 2004 – Site Plan Opinion issued
4. July 1, 2004 – Signature Set of Site Plans submitted for final approval.
5. September 13, 2004 – Signature Set signed by Park & Planning
6. Spring, 2004 - Property purchased by D.R. Horton.

SITE SOLUTIONS INCORPORATED

7. August 2004 – initiate discussion with Technical Staff to amend Site Plan Administratively as Minor Amendment
8. September 2005 – determination by Staff that Administrative amendment would not be permitted.
9. November 14, 2005 – Site Plan Amendment filed (820040060)
10. December 19, 2005 - DRC meeting
11. June 12, 2006 – submit revised Site Plan drawings to staff addressing all comments raised at DRC.
12. June 30, 2006 – final Fire Marshal approval of the Site Plan.
13. September 21, 2006 – Planning Board hearing on Site Plan Amendment
14. November 16, 2006 – Resolution of Approval for Site Plan Amendment
15. December 28, 2006 – Final Forest Conservation Plan approved
16. January 19, 2007 – Signature Set (Certified) site plan submitted to technical Staff for review.

The above chronology was prepared to show that while almost 37 months have transpired, it has not been for lack of effort on the part of the applicant. The Record Plat cannot be recorded until the Certified Site Plan and Final Forest Conservation Plan are completed and approved. The requested extension is needed in order to permit adequate time for the Certified Site Plan to be reviewed and signed, and the record plat to be recorded.
