



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

**MCPB**  
**ITEM #**  
**3/20/08**

**DATE:** March 7, 2008

**TO:** Montgomery County Planning Board

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

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

**SUBJECT:** Request for an extension to the validity period – Preliminary Plan No.  
120040310 – North Westland Building

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**Recommendation:** Extend validity period to January 19, 2009

**Discussion:**

The subject preliminary plan was approved by the Planning Board on October 28, 2004 for one commercial lot for the construction of a three-story, 14,000 square-foot office building, located on the north side of Westland Drive, approximately 300 feet east of Frederick Road (MD 355). The resolution reflecting the Planning Board's action was mailed on January 19, 2005. Pursuant to the conditions of approval, the preliminary plan remained valid for 36-months (until January 19, 2008) from the date of the mailing unless, prior to that date, the applicant either recorded by plat all land shown on the approved plans or submitted a request to extend the validity period. Attached, please find the applicant's timely request dated January 8, 2008 to extend the validity period for Preliminary Plan 120040310, (formerly 1-04031), North Westland Building, for 12 months, until January 19, 2009. The extension is requested to afford the applicant adequate time to record the plat.

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 or 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 letter seeks extension based on certain unanticipated delays in securing vehicular access to the site via an off-site driveway, as proposed on the approved preliminary plan, that resulted in significant delays to the project, as discussed below.

#### **Applicant's Position**

Since approval of the preliminary plan on October 28, 2004, the applicant has been taking the steps necessary to record the plat. According to the applicant's letter of January 8, 2008, however, an unexpected delay has arisen regarding vehicular access to the site. According to the approved preliminary plan, vehicular access is to be provided via an off-site driveway, which is not in the applicant's control. The driveway also provides access to a shopping center located behind (to the north of) the subject property. Although the applicant had a verbal agreement with the off-site property owner to allow use of the driveway, the applicant has not been able to reach an acceptable written agreement. The applicant has, therefore, decided to redesign the plan to eliminate the need for the shared, off-site driveway. The applicant is requesting a one-year extension of the preliminary plan validity period to allow for the submission and review of a revised plan.

#### **Staff Position**

The request for extension is based on unanticipated delays by an off-site property owner in reaching an agreement for an off-site driveway. It is staff's determination that the unanticipated delay outlined in the applicant's letter and summarized above is reasonable justification upon which the Planning Board can base the approval of the current extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. Therefore, staff recommends that the preliminary plan be extended to January 19, 2009, to allow adequate time for revised plans and documents to be completed prior to plat recordation.

#### **Attachment:**

Extension Request Letter dated January 8, 2008.

MEMORANDUM

To: Montgomery County Planning Board  
Technical Staff, Development Review Division

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

Re: North Westland Building Preliminary Plan Extension  
1-04031

Date: January 8, 2008

The property owner, Kingfisher LLC (formerly Cushing Daniel et al), hereby requests a one year extension for the above referenced Preliminary Plan of Subdivision. The applicant received approval of the Preliminary Plan by Montgomery County Planning Board Opinion mailed January 19, 2005. The Preliminary Plan remains valid for 36 months from its initiation date, which is the date of mailing, or until January 19, 2008.

The Preliminary Plan was approved by the Planning Board in late 2004 with access partially provided via an existing driveway onto North Westland Drive. This driveway serves the existing shopping center behind, to the north, known as "Brown Commercial Property". Although the applicant had a verbal agreement to utilize that driveway, the applicant unfortunately has been unable to reach an acceptable written agreement or arrangement with the owners of that driveway. While it was hoped that an agreement would be forthcoming, the applicant has recently decided to redesign the plan to eliminate the shared driveway concept. An amended plan is being prepared, but is not yet ready for submission.

A one-year extension will allow the submission and consideration of a revised plan, and it is hoped that a new Resolution or Opinion will allow adequate time for recordation following approval of the new plan. We therefore request that the current approval be extended for one year in order to allow adequate time for consideration of a revised plan.

Thank you for your consideration and assistance in this matter. Please be assured that this applicant has made a good faith effort to advance this project but his efforts have been thwarted. The new plan will eliminate the off-site agreement that was necessary to implement the earlier plan and permit it to proceed to recordation unimpeded.