



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

MCPB
Item #
6/4/09



DATE: May 22, 2009

TO: Montgomery County Planning Board

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

FROM: Patrick Butler, Planner Coordinator (301) 495-4561 *PB*
Development Review Division

SUBJECT: Reinstatement of the Preliminary Plan, and second request for an extension to the validity period – Preliminary Plan No. 120040310 – North Westland Building

Recommendation: Reinstatement of the Preliminary Plan, and extend the validity period to January 19, 2010

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 North 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. A timely request was submitted on 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 was granted by the Planning Board, on March 20, 2008, to afford the applicant adequate time to revise drawings, submit an amendment to the Preliminary Plan, and record the plat. The applicant filed an amendment to the Preliminary Plan on November 14, 2008; however, the plan expired on January 19, 2009 while the amendment was being reviewed.

Because the applicant's request to extend the preliminary plan validity period was submitted on March 24, 2009 (per the applicant's letter dated March 10, 2009), after expiration of the preliminary plan, the current extension request also includes a request to reinstate the expired plan. Attached, please find the applicant's request to extend the validity period for Preliminary Plan 120040310, North Westland Building, for 18 months, until July 19, 2010. The extension is requested to afford the applicant more time to amend the preliminary plan and record the plat.

The applicant's letter seeks reinstatement of the preliminary plan, and an 18 month extension of the validity period based on staff response time, unanticipated delays in securing certain agreements with an adjoining property owner, and a misunderstanding of the subdivision regulations by the applicant as discussed below.

Pursuant to Section 50-35(h)(3)(c) of the Subdivision Regulations, the Planning Board may reinstate an expired plan and establish a new validity period where practical difficulty or undue hardship is demonstrated by the applicant. 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."

Reinstatement of the Preliminary Plan

Applicant's Position

According to the applicant's letter, the applicant did not make a timely request for a second extension because the applicant's consultant made the assumption that their application for an amendment to the preliminary plan would suffice because affirmative action by the Planning Board on the amendment would begin a new 36 month time frame to implement the amended Preliminary Plan. Staff did not identify the plan validity issue as part of their review of the amendment until after the expiration date had passed. If the applicant had received notification that the plan was bound by the original time frame, and that the application was about to expire, the applicant would have had a chance to file a timely request.

Staff's Position

The applicant did not inform staff that the validity period was going to expire, and failed to make a timely request of an extension to the validity period, because the applicant believed that filing the amendment had started a new clock. The amendment to the Preliminary Plan was filed on November 14, 2008, and the validity period expiration date was January 19, 2009. When staff comments were received in response to the proposed amendment, it was discovered by staff that the plan had expired while under review. If the applicant realized the plan was about to expire or received notification from staff that the plan was bound by the original time frame, the applicant would have had a chance to file a timely request. Furthermore, it is staff's determination that not reinstating the plan and requiring a new preliminary and site plan application and a new adequate public facilities (APF) test would constitute undue hardship for the applicant and would provide no benefit to the public. Therefore, staff recommends that the Preliminary Plan be reinstated as requested, and that the Board then consider the applicant's extension request.

Extension Request

Applicant's Position

Since approval of the original extension request on March 20, 2008, the applicant has been working towards filing an amendment to the Preliminary Plan and recording the plat. However, according to the applicant's letter of March 10, 2009, unexpected delays have arisen during negotiations for various agreements including an attempt to get a stormwater management maintenance agreement with the adjoining property owner, and additional engineering directly resulting from such failed negotiations. The applicant is requesting an eighteen (18) month extension of the preliminary plan validity period to allow for the review of the Preliminary Plan amendment, and review and recordation of the plat.

Staff's Position

While the applicant is requesting an eighteen (18) month extension of the validity period for the Preliminary Plan, until July 19, 2009, the Adequate Public Facilities (APF) approval for the plan expires on January 19, 2010. The amount of time that can be granted by the Planning Board is limited in that it cannot exceed the APF validity period. Therefore, the maximum amount of time the Board can grant the applicant for the extension request is twelve (12) months, from January 19, 2009 to January 19, 2010.

It is staff's determination that the unanticipated continuing 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 for twelve (12) months to January 19, 2010.

Attachment:

Reinstatement and Extension Request Letter dated March 10, 2009.

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

March 10, 2009

Dr. Royce Hanson, Chairman
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, Md. 20910

Re: North Westland Subdivision 12004031A

Dear Dr. Hanson:

Preliminary Plan 12004031 was approved by the Planning Board on January 19, 2005 for a 14,000 sq.ft. office building on North Westland Drive in Gaithersburg. Access was to be partially provided via an existing driveway that serves the abutting retail commercial development located in the City of Gaithersburg. Despite verbal agreement on that access, the applicant was unable to come to a final agreement with the abutting owner regarding shared use of that driveway.

Because of the extended, and in the end unsuccessful, negotiations the plat was not recorded within the prescribed 36 months. The applicant then applied for and received a one-year extension of the Preliminary Plan. As a result of the modified ingress and egress precipitated by the inability to reach an agreement with the neighboring retail development, the subject preliminary plan has been revised to reduce the size of the building to 12,700 sq.ft. and modify the access.

The revised Preliminary Plan was submitted on November 14, 2008, to reflect these changes. In accordance with staff directives, an application fee of \$4000 was paid, the property was posted with appropriate signage and notification was sent to all abutting property owners as well as civic associations and HOA's within one mile. Since the application was filed before the expiration of the extension, the applicant and his consultant made a logical assumption that the new application would start the clock over and that consideration and action by the Planning Board would begin a new 36 month time frame to implement the new Preliminary Plan.

On or about February 13, 2009, the applicant was informed by the Development Review Department staff that the extension period had expired and that, although we had submitted an amended plan, the application was still bound by the prior approval's time frame. So not only would a new extension be required, but because the prior extension had expired the application must first be reinstated before it can be extended again.

Dr. Royce Hanson
March 10, 2009
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Therefore, the applicant requests that application 120040310 be reinstated and that an extension be granted for another 12 months to allow adequate time for review of the proposed amendment, consideration by the Board and recordation of the plat. We ask for the Board's indulgence for this request because the delay was caused by an honest mistake on our part, i.e. that the submission of the amendment on November 14, 2008 would result in a new deadline for recordation, notwithstanding that the prior approval would expire on January 19, 2009. Indeed, that supposition was included in the January 8, 2008 memorandum from SSI requesting the prior extension, as follows:

"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 did not understand that the new plan would still be bound by the previously approved plan conditions.

Since the plan amendment must be processed by staff, a staff report written, a Planning Board hearing on the plan held, the resolution vetted by your legal staff and approved by the board, and the 14 week (minimum) review of the record plat by all public agencies involved, we request an 18-month extension of the plan in order to allow the new plan to be implemented by plat.

Thank you very much for your consideration of this request. We apologize for our misinterpretation of the rules and hope that we can make right this unfortunate situation.

Very truly yours,
Site Solutions, Inc. by



Alfred Blumberg, AICP

Standard Properties, Inc. by



Travers Daniel

cc: Catherine Conlon, Development Review Division