



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

CONSENT ITEM
MCPB 11.19.09

MEMORANDUM

DATE: November 9, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief *RK*
Robert Kronenberg, Supervisor *RK*
Development Review Division
FROM: Elza Hisel-McCoy, Assoc. AIA, LEED-AP *EH*
Coordinator
Development Review Division
(301) 495-2115
elza.hisel-mccoy@mncppc-mc.org

REVIEW TYPE: **Project Plan Review**
CASE #: **920070100**
PROJECT NAME: **8700 Georgia Avenue**

APPLYING FOR: Extension of the 90-day review period for a project plan for up to an additional one year, from November 21, 2009, to no later than November 21, 2010

REVIEW BASIS: Div. 59-D-3 of Montgomery County Zoning Ordinance

ZONE: CBD-2
LOCATION: The northwest quadrant of the intersection of Georgia Avenue and Cameron Street
MASTER PLAN: Silver Spring CBD Sector Plan

APPLICANT: 8700 Georgia Avenue, Inc.
FILING DATE: November 28, 2006
ACCEPTANCE: April 2, 2007
HEARING DATE: November 19, 2009

Section D-2.2 of the Zoning Ordinance provides that the Planning Board shall hold a public hearing no later than 90 days after the filing of a project plan, though the Board may extend this period. The building currently occupying the site was nominated for designation and protection as a Historic Building.

On August 15, 2007, the Historic Preservation Commission (HPC) voted to recommend the nomination to the Planning Board. On March 20, 2008, the Board voted not to recommend the site for designation, and on October 28, 2008, the County Council rejected a motion to schedule a public hearing for the petition. The 105-day window for the County Council to act on the nomination expired November 13, 2008.

Civic groups first appealed the Planning Board's and County Council's decisions to the Circuit Court of Montgomery County, appeals which that court denied, and have now appealed two of those decisions (as discussed in the attached memo) to the Maryland Court of Special Appeals.

The Applicant for this Project Plan, which was accepted in April 2007, received DRC comments in May 2007. As the Historic designation nomination followed shortly thereupon, staff has not received a response to those DRC comments. Upon conclusion of these appeals, the Applicant gives staff to understand they will re-engage the development review process.

Since the initial designation petition, the Applicant has requested, and the Planning Board has granted, several previous review period extensions, from June 21, 2007, to November 21, 2009. The Applicant has now requested, in a letter dated November 2, 2009, that the review period for the Project Plan again be extended for at least one additional year, from November 21, 2009, to November 21, 2010, to allow for the conclusion of the appeal process. The Applicant estimates it may take longer than one year for the Maryland Court of Special Appeals to hear these cases, but staff is recommending only one year, so as to provide some milestone for "checking in." Given that these delays have been imposed upon the Applicant by the legal appeal process, and not the Applicant's own actions, staff recommends **APPROVAL** of a one-year extension.

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November 2, 2009

BY ELECTRONIC MAIL

Mr. Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Planner Coordinator
Development Review Division
Maryland-National Capital Park and Planning
Commission
8787 Georgia Avenue
Silver Spring, MD 20914

Re: 8700 Georgia Avenue – Project Plan No. 920070100

Dear Mr. Hisel-McCoy:

On behalf of 8700 Georgia Avenue, Inc., the Applicant in the above-referenced case, we respectfully request that the Project Plan hearing date of November 21, 2009 be extended for one year until November 21, 2010, in order that the Court of Special Appeals may hear and rule upon the two appeals that have been filed by Montgomery Preservation Inc. (“Petitioners”) challenging the Planning Board’s and District Council’s “actions” with respect to the non-designation of the Property on the Master Plan for Historic Preservation.

As you may be aware, the three appeals to the Circuit Court of Montgomery County filed by the Petitioner were all denied. Subsequently, Petitioners appealed two of the three cases to the Court of Special Appeals as follows:

1. On July 20, 2009 Petitioners filed a Notice of Appeal to the Court of Special Appeals of Civil Action No. 305152. This case involved Petitioners request of judicial review/writ of mandamus against the Planning Board’s recommendation not to designate the 8700 Georgia Avenue building on the Master Plan for Historic Preservation.

Mr. Elza Hisel-McCoy, Assoc. AIA, LEED-AP

November 2, 2009

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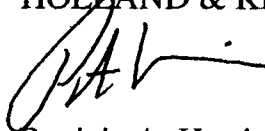
2. On July 31, 2009 Petitioners filed a Notice of Appeal to the Court of Special Appeals of Civil Action No. 305151v. This case involved Petitioners request for a Declaratory Judgment against the Montgomery County Council for its decision not to designate the 8700 Georgia Avenue building on the Master Plan for Historic Preservation.

We have been informed the County Attorney that the resolution of the two pending appeals at the Court of Special Appeals will take a minimum of one year, and very likely closer to two years, based on the current docket of the Court. For this reason, we respectfully request that the Project Plan be extended for at least one year, until November 21, 2010.

We appreciate your assistance in this matter.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'PAH', is written over the printed name of Patricia A. Harris.

Patricia A. Harris

cc: Mr. Bert Foer

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