

**MEMORANDUM**

July 29, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief  
Development Review Division

Cathy Conlon, Supervisor *CC*  
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RAW*  
Development Review Division

SUBJECT: Request for an extension of the validity period – Preliminary Plan  
No. 1-01060 – Spencer Farm

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**STAFF RECOMMENDATION:** Approval of a one year extension of the validity period to March 25, 2006.

**BACKGROUND**

The preliminary plan for the Spencer Farm, preliminary plan No. 1-01060 was approved by the Planning Board at a regularly scheduled public hearing on December 6, 2001. The date of mailing of the Planning Board Opinion for the plan was February 19, 2002. As a condition of that approval the validity period of the preliminary plan was set at 37 months from the date of mailing of the Planning Board Opinion, or March 19, 2005. On February 25, 2005 staff received a request for an extension of the validity period for an additional six month period. (Attachment 1). The request was therefore, timely, as it was received prior to the date of expiration.

**REQUIRED FINDINGS FOR AN EXTENSION OF THE VALIDITY PERIOD**

Section 50-35 (h)(3)(d) of the Montgomery County Code, Subdivision Regulations, states that the Planning Board may grant extension of the validity period of a preliminary plan if persuaded that:

- (i) Delays, subsequent to the plan approval by the government or some other party, central to the applicant's ability to perform the terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or
- (ii) the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by the 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.

#### Applicant's Position

The applicant's letter of February 25, 2005 requests a six month extension and cites specific reasons why the applicant believes the extension is warranted. The applicant bases the justification on the occurrence of significant and unanticipated events, beyond the applicant's control and not facilitated or created by the applicant, that has substantially impaired the applicant's ability to validate its plan. The letters also cites undue hardship that would result if the plan expired.

The applicant outlines two main reasons why the plan should be extended. These reasons are:

- 1) The applicant, Spencerville Seventh Day Adventist Church, was not able to sign the plats until they had actually obtained title of the property. This did not occur until April 2004 when the deeds were actually recorded. It appears that once the deeds were recorded and the church did actually have title, the plats were "overlooked" by the church and did not get the plat submitted to the appropriate review agencies for signatures.
- 2) Public sewer service was always anticipated for this project. However, given the delays related to ICC alignments on the adjacent and unbuilt Peach Orchard Heights subdivision through which sewer service would be extended, the extension of that sewer system has also been delayed. The Church is unable to finance the sewer extension alone and has been working with MCDPS to design an interim septic system.

#### Staff's Position

Staff believes that the applicant has submitted sufficient grounds to justify the extension of the validity period for the subject preliminary plan. The state has purchased the developable portions of the Peach Orchard Heights project, thereby, radically changing the public sewer extension schedule for the immediate area. The church has proceeded with water table testing in anticipation of actual

percolation testing this summer. They are hopeful to have an approved interim system by year's end at which time the plats would be amended to reflect the septic easement area.

## **CONCLUSION**

Staff believes that a sufficient argument has been made regarding the request to extend the validity period for preliminary plan 1-01060, Spencer Farm, as prescribed in Section 50-35(h)(3)(d). The statements made by the applicant in their letter lead staff to believe that significant and or unanticipated events have materially prevented the applicant from validating the plan. Staff concludes that the argument provided by the applicant is valid and recommends extending the validity period for one year to March 25, 2006.

## **Attachments**

Attachment A – Extension Request Letter  
Attachment B - Approved Opinion  
Attachment C – Approved Preliminary Plan