

MEMORANDUM

September 9, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
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. 12000650 (1-00065) – Panagos Property

STAFF RECOMMENDATION: Approval of a one year extension of the validity period to September 29, 2006.

BACKGROUND – (See attachment 1), A letter from DuFour and Orens dated August 1, 2005 provides a detailed account of Court actions on the subject property.

The preliminary plan for the Panagos Property, Preliminary Plan No. 200100065 (1-00065) was approved by the Planning Board at a regularly scheduled public hearing on July 27, 2000. The date of mailing of the Planning Board Opinion for the plan was December 21, 2000. 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 January 21, 2004. However, on January 19, 2001 an administrative appeal seeking judicial review of the action of the Planning Board was filed in the Circuit Court for Montgomery County, Maryland by neighboring property owners. This, as explained by the applicant's attorney, restricted the ability to plat the property. The expiration date of the appeal period for this Court decision was July 31, 2004. Pursuant to Section 50-35(h)(1), the expiration date of the preliminary plan was adjusted to August 31, 2004.

Subsequent to the expiration of the appeal period for the Circuit Court in August 2001, an appeal was filed to the Maryland Court of Special Appeals by Normandy Homes which again restricted the ability of the property owners to proceed with record plats for the property. On September 30, 2004, the Planning Board approved a one year extension of the validity period which at the time seemed to coincide with a decision of the Court and allow the platting process to proceed. However, it was not until December 10, 2004 that the court case was resolved, in favor of the property owners, and control was returned to the property owners.

Since the original approval of the preliminary plan, there have been significant revisions to the Potomac Master Plan, most notably, the removal of the Willowbrook Drive extension which impacts the western portion of the property. Additionally, one of the original property owners, Mr. John Panagos, has passed away, and the property has been sold. The Panagos family had intended to remain on the property in a very large home located in the north central portion of the site. Keeping the home and accommodating the Willowbrook Drive extension had been a challenge in the original design of subdivision. At this time, staff anticipates a revision to the preliminary plan with an improved layout.

The letter from DuFour and Orens cites other examples of setbacks faced by the development team including:

- Changes to the stormwater management design for Willowbrook Drive.
- Securing a sidewalk waiver from DPWT for Bells Mill Road frontage.
- Re-design of the terminus of Willowbrook Drive as a cul-de-sac.

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.

DISCUSSION

Applicant's Position

The applicant's letter of August 1, 2005 requests a one year extension and cites specific reasons why the applicant believes the extension is warranted. The applicant bases the justification on the 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 that have materially prevented the applicant from validating the plan. The applicant believes that such delays were not created or facilitated by the applicant.

The lengthy Court process created restrictions on the ability to proceed with the platting process. Those restrictions were lifted in December of 2004, giving the new owners only eight months to respond to the new Potomac Master Plan by redesigning the westernmost portions of the site along the Willowbrook Drive extension and also redesigning the layout of the property without the existing house. The easternmost half of the property, which is not encumbered with the existing house and Willowbrook Drive, has proceeded to the point of final record plat but to date remains unrecorded pending resolution of the sidewalk waiver issues.

The applicant has advised that the westernmost half of the property will be submitted as a future preliminary plan revision to properly terminate Willowbrook Drive as a cul-de-sac and to revise the layout to utilize the area where the existing house is located. It will take approximately one year to work through the plan revision and plat recordation process.

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 Court actions on this property have created significant impediments to the plat process. Staff does not believe that it will be possible to plat the property in a timely manner prior to expiration without this extension, and that the applicant has been working diligently towards that end.

Staff anticipates that the westernmost portions of the property will be the subject of a preliminary plan revision to show Willowbrook Drive as a cul-de-sac and a new lot layout resulting from the planned removal of the existing home on the site. Staff believes that a better layout than presently approved can be accomplished.

CONCLUSION

Staff believes that a sufficient argument has been made regarding the request to extend the validity period for preliminary plan No. 12000650 (1-00065), Panagos Property, as prescribed in Section 50-35(h)(3)(d). Staff has determined by review of the statements made in the applicant's letter that 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. Staff concludes that the argument provided by the applicant is valid and recommends extending the validity period for one year to September 29, 2006.

Attachments

Attachment 1 – Extension Request Letter

Attachment 2 – Approved Opinion