

August 1, 2005

Catherine Conlon, Supervisor
Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Extension of Validity of Preliminary Plan No. 1-00065

Dear Ms Conlon:

We represent Bells Mill, LLC, successor applicant to John and Mary Ann Panagos in Preliminary Plan No.1- 00065. Enclosed herewith is an Application for Extension of the validity period of the above-referenced Preliminary Plan, which is set to expire on September 30, 2005. In support of our request, we offer the following justification:

The Planning Board, following a public hearing on July 27, 2000, approved Preliminary Plan No. 1-00065, subject to conditions. The Opinion approving the Preliminary Plan approval was mailed and became effective on December 21, 2000. 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. That court upheld the action of the Planning Board following a court hearing on July 31, 2001. The date on which the applicable appeal period expired was August 31, 2001.

While the administrative appeal case was pending, the then applicants, John and Mary Ann Panagos were precluded from initiating the process to record final plats by a law suit counter-claim filed by a defaulting contract purchaser, Normandy Homes and Robert Keeler ("Normandy Homes"). Normandy Homes was contractually responsible for securing approval of final record plats and their failure to do so was an essential element of the then pending litigation. Mr. and Mrs. Panagos were essentially held hostage by a frivolous claim in a lawsuit. Ultimately the Circuit Court ruled in favor of the Panagos family and dismissed Keeler and Normandy's claims. Mr. Keeler and Normandy Homes then appealed that decision to the Maryland Court of Special Appeals. Unfortunately, during the course of this litigation, Mr. Panagos passed away.

The Court of Special Appeals issued its Opinion affirming the decision of the Circuit Court in favor of Mrs. Panagos on August 11, 2004. While we were still awaiting the Mandate of that Court, which released the *lis pendens* that had precluded the applicants from proceeding, we filed a Request for Extension of the Preliminary Plan Validity Period on September 2, 2004 seeking a two-year extension to provide an adequate period of time for the Court of Special Appeals' Mandate to issue and a then anticipated Petition for a *Writ of Certiorari* to the Court of Appeals to be decided thereby restoring property control to the Applicant who would then be legally entitled to submit a record plat application.

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On September 23, 2004, after the first Preliminary Plan extension was requested, Normandy filed a Petition for a *Writ of Certiorari* to the Maryland Court of Appeals, again depriving the Panagos family of property control. Finally, on December 10, 2004, the Court of Appeals issued its final order and denied the *Writ of Certiorari*. On that date the *lis pendens* was lifted and property control returned to the Panagos family.

On September 30, 2004, prior to the denial of the *Writ of Certiorari* by the Court of Appeals, the Planning Board approved a one-year Extension of the Preliminary Plan Validity Period to September 30, 2005.

On December 21, 2004, Mrs. Panagos sold the property Bells Mill, LLC, the successor applicant for this Extension Request. Since its purchase of the property, Bells Mill, LLC has worked diligently to overcome obstacles to the recordation of final plats of subdivision for this property. A brief chronology of those efforts follows.

The Subject Property is located within the Potomac Planning Area, for which the District Council approved a revised Area Master Plan on March 2, 2002, after the Planning Board had approved the subject Preliminary Plan. That revised Master Plan included significant new recommendations that directly affected the Subject Property. Because they did not have property control, the Applicant was precluded from seeking to implement the Master Plan recommendations until after the litigation was terminated by the Court of Appeals in December 2004. The most significant and, at the time, controversial, Master Plan revision was the elimination of the requirement that Willowbrook Road extend through the Subject Property to intersect with Bells Mill Road. The approved Preliminary Plan extended Willowbrook Road as required by the prior Master Plan even though a more appropriate site design with a cul-de-sac was preferred.

In order to accomplish the objective of the revised Master Plan, a revised site design had to be prepared to eliminate the cut-through and redesign the layout along Bells Mill Road. The timing of that redesign was complicated by the need to respond to a requirement imposed by the Department of Public Works and Transportation ("DPWT") for a sidewalk along the Property's Bells Mill Road frontage. Constructing that sidewalk would have resulted in the removal of a mature stand of trees, which, while not technically a forest, provided both canopy and buffering from Bells Mill Road.

Also during the same time period the Washington Gas Light Company ("WGL") informed the Panagos family that it required an easement to construct additional natural gas facilities along Willowbrook Road. The proposed location of that WGL facility impacted the Category I forest that the applicant had agreed to preserve, and considerable time and effort was expended in working out the details with WGL in a way that minimized environmental impacts to the property and preserved the easement area.

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The delays incurred by the extended litigation and the redesign to eliminate the intersection of Bells Mill Road and Willowbrook Road also affected the storm water management system that had been designed for the property requiring redesign and re-approval.

Because the sidewalk that DPWT required posed environmental challenges as well as the logistical challenge of responding to a significant grade differential at the sidewalk's terminus, a waiver of that sidewalk requirement was requested from the Department of Permitting Services.

The sidewalk waiver request was discussed with Environmental Planning Staff and the Department of Permitting Services ("DPS") in April 2005 and ADTEK Engineers submitted the formal Waiver Request to DPS on April 28, 2005 offering to pay a fee in lieu so that a more appropriate contiguous sidewalk could be constructed elsewhere along Bells Mill Road. The Waiver Request remains pending as of the date of this letter. However, on several occasions, subsequent to the waiver hearing before DPS, we were informed verbally that the waiver would be approved. Recently we were advised that, after several requests from DPS staff to DPWT staff, DPWT responded to an email that indicated that in the absence of a response DPS would approve the waiver.

Although we have not yet received formal notification of the decision, we understand from a phone message from Sara Navid that DPWT recommended against the waiver because it does not have in place a process for accepting a fee in lieu of sidewalk construction. We further understand that it is the position of DPS that the sidewalk should not be constructed at this location. We have nothing in writing as of this date. A final decision on the sidewalk waiver has a direct effect on the submission of both the final plat for those lots that will not be altered by the revision of the Preliminary Plan required by the redesign of Willowbrook Road, and those that must be realigned.

In addition to the sidewalk issue, both DPS and DPWT are currently reviewing the reconfiguration of Willowbrook Road into a cul-de-sac as recommended by the current Potomac Subregion Master Plan. We anticipate submitting a revision to the approved Preliminary Plan that will reflect the recommended Willowbrook Road right of way in the Potomac Master Plan before the validity period expires in September. We also anticipate submitting a Final Record Plat for the remainder of the approved subdivision in the next week to ten days, but given the usual summer recess of the Planning Board and out of an abundance of caution, we are requesting a one year extension of the validity period to allow for the processing of the plans and revisions which both this applicant and its predecessor have been working toward completing.

But for the loss of property control that occurred during the extended litigation, all of the engineering work and departmental reviews would have been completed during the typical validity period for a single-phase subdivision. The practical affect of the litigation was to narrow

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that two-year period of time to the seven months from December 21, 2004 to the date of this letter. While much has been accomplished in that time period, the time required by both DPS and DPWT to review and work through issues with the Applicant has substantially impaired the Applicant's ability to complete the required government approval processes that are conditions precedent to recordation of a final plat. The delay caused initially by the *lis pendens* preventing property control in order to move forward with securing these approvals was beyond the control of the Applicant.

The Successor Applicant is continuing to diligently pursue all of the necessary approvals and to make the required revisions to the Preliminary Plan and to record the plat for the remainder of the subdivision. These efforts will have been for naught if the underlying Preliminary Plan expires on September 30, 2005.

We are hopeful to have specific written guidance regarding the sidewalk waiver in a matter of weeks so we can complete both the final plat application and the revised preliminary plan so that both can be submitted and processed within the requested extension period.

Accordingly, we respectfully request that the Planning Board grant an Extension of the Validity Period of Preliminary Plan No. 1-00065 to September 30, 2006.

Should you require any further information to process this request, please let me know. I appreciate your consideration of and attention to this matter.

Very truly yours,

DUFOUR & ORENS, CHTD.

By: 

Stephen J. Orens

cc: Angela Brown, DRD
Richard Weaver, DRD
Michele Rosenfeld, Associate General Counsel
Norman Haines
Ken Ellis
Dan Demeria