

# ITEM #3

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

MCPB  
ITEM #  
2/2/06

### MEMORANDUM

January 20, 2006

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  
Development Review Division *RAW*

SUBJECT: Request for reinstatement of an expired preliminary and an extension of the validity period – Preliminary Plan 120020950 (1-02017), Cloverleaf Center

---

**STAFF RECOMMENDATION:** Approval of the request to reinstate the expired preliminary plan and to extend the preliminary plan validity period.

### **DISCUSSION**

The preliminary plan for Cloverleaf Center 120020950 (1-02017) was approved by the Planning Board at a regularly scheduled public hearing on July 25, 2002. The date of mailing of the Planning Board Opinion for the plan was August 14, 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, September 14, 2005. On March 17, 2005, the Planning Board approved a site plan for the project. On October 9, 2003, the Planning Board conditionally approved a record plat application for the subject property and the plat was forwarded to the appropriate review agencies.

In the early stages of the plat review process, an issue was raised by MCDPWT, asserting that the plat would be required to dedicate an existing parking lot on the subject property needed to accommodate parking and a transit station for the Corridor Cities Transitway (CCT). The

# ITEM #3

applicant's letter (attachment 3) suggests that there was confusion as to whether the issue had been finally resolved, which ultimately delayed the recordation of the plat. Although it appears that DPWT staff was comfortable with recording the reserved area by deed, MNCPPC staff determined at a relatively late date in the review, that the required reservation was not correctly shown on the plat. The issue was resolved by placing a note on the plat that identified the area required to be dedicated and MCDPS released the plat, with a signature, on September 15, 2005, one day after the preliminary plan expired.

The applicant's letter requests reinstatement and extension of the expired preliminary plan pursuant to Section 50-35(h)(3)(c)(2) of the Montgomery County Subdivision Regulations which states:

*"In instances where a preliminary plan has been allowed to expire due to applicant's failure to file a timely request for an extension, the Board on a case-by-case basis in unusual circumstances may require submission and approval of a new plan, including a new APFO review; or, where practical difficulty or undue hardship is demonstrated by the applicant, may reinstate an expired plan and establish a new validity period for the plan. The Board, when considering a request to extend an otherwise expired plan, may require applicant to secure a new APFO review and approval by the Board, as a prerequisite or condition of its action to validate and extend the expired plan. Only the Planning Board is authorized to extend the validity period."*

## Applicant's Position

The applicant's letter requests reinstatement and extension of the expired preliminary plan based on hardship that would be suffered if the preliminary plan were not reinstated. The applicant cites the loss and waste of time, energy and resources that have been applied by both the staff and applicant to this project. The letter cautions that the required dedication of Century Boulevard, the transitway reservation and the forest conservation easements may be lost if the plat is not recorded. The letter further cites that the denial of this request would be especially harsh because the applicant, MEPT, had a reasonable belief that the issues had been resolved and the deadline for recordation had been met.

The applicant believes that the plat recordation process was prolonged due to staff issues surrounding the Clarksburg controversy. The three to four week process of getting the correct notations on the plat became a "six month ordeal." While there appears to have been concurrence by DPWT that the issues of the parking lot reservation had been resolved, Park and Planning staff did not agree with the way that the necessary parking lot was to be protected for the CCT. The additional time required to satisfy the Park and Planning request and get the note on the plat, pushed completion of the plat and signature sign-off by DPS beyond the expiration date of the preliminary plan. The applicant believed that by resolving the issue in August, 2005 and getting the final signature on the plat, on September 15, 2005, they were in substantial compliance with meeting the expiration date of September 14, 2005.

# ITEM #3

## Staff's Position

Staff believes that the applicant has adequately justified grounds to reinstate and extend the validity period for the expired preliminary plan. The recordation of the plat was delayed due, in part, to a government action. The applicant believed that the issue regarding the CCT parking lot had been resolved with DPWT; it was not until Park and Planning received the mylar of the plat (a later stage of the process) for signature that staff discovered additional language needed to be shown on the plat to effect the reservation. This resulted in a delay of plat recordation that was unanticipated; however, the applicant believed that the plat was substantially approved and that the expiration of the plan was not an issue. The plat issue was finally resolved on August 29, 2005, but the plat was not signed by MCDPS until September 15, 2005, one day after the expiration date. This is an additional delay although it is not clear in the applicant's letter if this was due to DPS.

## **CONCLUSION:**

Staff concludes that justification exists to re-instate the expired plan and to extend the validity period for a period to not exceed one month from the date of the Planning Hearing in order for the now fully executed record plat to be recorded.

## **Attachments**

Attachment 1 – Extension Request Letter