



DATE: June 23, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

Catherine Conlon, Supervisor *CC*
Development Review Division

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

SUBJECT: Request for an extension to the validity period – Preliminary Plan No. 120020560 (formerly 1-02056) – Burdoft Property

Recommendation: Extend validity period to May 7, 2007

Discussion:

The subject preliminary was approved by the Planning Board on February 13, 2003 and the Opinion was mailed on April 7, 2003. The validity period for the preliminary plan was set at 37 months from the date of mailing of the Opinion, or May 7, 2006. A subsequent Site Plan was approved by the Planning Board on April 21, 2005. Attached, please find the applicant's timely request for extension dated May 4, 2006, to extend the validity period for Preliminary Plan 12002056, (formerly 1-02056), Burdoft Property for twelve months, May 7, 2007. The extension is requested to afford the applicant adequate time to resolve remaining issues which will allow the pending plat to be recorded.

Pursuant to Section 50-35 (h)(3)(d) of the Subdivision Regulations, "the Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant's ability to perform terms of conditions of

the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created by the applicant; or

- ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by 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."

The applicant seeks letter seeks the extension based on certain unanticipated delays by governmental agencies which continue to impact the project and discussed below.

Applicant's position

The applicant's letter cites a number of delays that are related to the inability to record a final record plat in a timely manner. The initial delay was caused the change in stormwater management regulations that occurred around the time the Site Plan was to be submitted. The Site plan application was appropriately put on hold while a new stormwater management concept was submitted to address the County's new regulations. That approval took approximately six months to secure. After the eventual approval of the Site Plan a record plat application was submitted, and it too was held pending Site Plan signature set approval. Work has progressed on the Site Plan signature set, however, as a condition of Site Plan approval there is a requirement to gain approval from the County's Sign Review Board of the details of the signage for the site. After several exchanges with the Department of Permitting Services it was determined that review by the Board was probably not warranted and a request to have the sign location reviewed at the staff level has been pending for approximately 3 months and has yet to be resolved. This issue is preventing final approval of the site plan signature set.

Additional to this delay, the MCDPWT has not yet finalized their approval letter for the project and will not release their hold on the record plat. While the comments made at the Development Review Committee appeared clear, DPWT must determine the exact extent of road improvements prior to release of the plat. The applicant has been working with the MCDPWT for approximately 8 months to secure this approval letter and this has caused significant delay in moving the record plat through the process. The applicant advises that in the event of a requirement to permit and bond the road project, the plat could be delayed even further, hence the request for a 12 month extension.

Staff Position

The request for extension is based on unanticipated delays not caused by the applicant that have prevented perfecting the plat recordation. With regard to the

MCDPWT approval letter, a condition of approval, which was typical of that era, required the applicant to secure MCDPWT approval prior to recordation of the plat. That condition requires coordination by the applicant with MCDPWT after approval of the preliminary plan. The applicant is now in a position to work out the street improvements with MCDPWT prior to their release of the plat, and for unknown reasons this has now reached 8 months to accomplish. The applicant insists that they have been diligently pursuing the approval letter knowing that the plats cannot be released until the letter is secured and permit and bonding issues have been finalized.

It is staff's opinion that while MCDPWT response times on current plans are improving greatly through the hiring of new staff, some older projects being reviewed retroactively may take more time to resolve given staffing changes. Further, under the new staff procedures for Planning Board packets, no plans can be schedule for Planning Board action until all agency approval letters are in the file.

With respect to the issue of the sign approval by MCDPS, the delay is unfortunate but appears to be genuine. The delay in obtaining the sign approval is being addressed and a resolution is soon anticipated.

It is staff's determination that the unanticipated delay outlined in the applicant's letter and summarized above are reasonable justification upon which the Planning Board can base the approval of the current extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. Therefore, staff recommends that the preliminary plan be extended to May 7, 2007, to allow adequate time for all issues to be addressed prior to plat recordation.

Attachments:

Planning Board Opinion
Extension letter dated May 4, 2007.



Date Mailed: April 7, 2003

**Action: Approved Staff Recommendation
Motion of Comm. Wellington, seconded by
Comm. Robinson with a vote of 4-0;**

**Comms. Berlage, Bryant, Robinson
and Wellington voting in favor
with Comm. Perdue absent**

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-02056

NAME OF PLAN: BURDOFT PROPERTY

On 11/15/01, THOMAS J. REUGG submitted an application for the approval of a preliminary plan of subdivision of property in the C-1 zone. The application proposed to create 1 lot on 24,049 acres of land. The application was designated Preliminary Plan 1-02056. On 02/13/03, Preliminary Plan 1-02056 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-02056 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02056.

Approval, Subject to the Following Conditions:

- 1) Approval under this preliminary plan is limited to 10,192 square feet of commercial office/retail uses
- 2) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Fairland White Oak Master Plan unless otherwise designated on the preliminary plan
- 3) Compliance with the conditions of approval of the MCDPS stormwater management approval dated November 29, 2001
- 4) Access and improvements as required to be approved by MCDPWT prior to recordation of plat
- 5) No clearing, grading or recording of plats prior to site plan enforcement agreement approval
- 6) Final approval of the location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan
- 7) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff
- 8) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed

- 9) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- 10) Other necessary easements



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May 4, 2006

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Burdoft Property (1-02056)

Dear Ms. Conlon,

Attached herewith is an application for an Extension Request for the subject Preliminary Plan. The project was approved by the Planning Board at a meeting on 2/13/03 and the Opinion was issued on April 7, 2003. The approval of the Preliminary Plan will expire on 5/7/06.

There have been delays in getting the necessary approvals needed for approval of the Record Plat and recording of the lot. The property is subject to Site Plan submission requirements of Section 59-D-3 of the Montgomery County Zoning Ordinance. After a pause in the project after Preliminary Plan approval, a Site Plan submission was filed on 8/18/04 but processing of the application was put on hold due to a change in stormwater management regulations. A new Stormwater Management Concept Plan was required to meet the new requirements. A new Concept was subsequently submitted to the Department of Permitting Services and approval was granted on 2/15/05. The Site Plan submission proceeded forward with a Development Review Committee meeting held on 3/28/05 and subsequent Planning Board approval of the Site Plan.

The Record Plat for the project was prepared after Site Plan approval and submitted to MNCPPC and the Department of Permitting Services for review. The Plat is fairly straightforward given that the project consists of just one proposed lot of slightly more than one-half acre of land. However, there are additional items that must be dealt with and approved before the Plat can be recorded. These items include work necessary to obtain Site Plan Signature Set approval (a requirement of Record Plat approval by MNCPPC), and permitting work necessary for public roadway improvements as proposed on plans for the property and required by The Department of Public Works & Transportation.

Since approval of the Site Plan by the Planning Board, the Signature Set package has been submitted twice for review and comments have been addressed. One of the conditions of Site Plan approval requires the applicant to obtain sign approval by the

Sign Review Board. After several exchanges with the Department of Permitting Services on this requirement during which it was determined that a review by the Sign Review Board is highly unusual and probably not necessary, a request for review was submitted the DPS for final determination. The request was submitted on 3/1/06 and a response is still pending. The sign review item is currently preventing MNCPPC from providing us with a final Signature Set approval.

Although this project received Planning Board approval of both the Preliminary Plan and Site Plan, it appears that a letter from the Department of Public Works & Transportation has never formally been issued. A representative from DPWT was present at both Development Review Committee meetings and an informal handout was given to us at the meeting on 3/28/05 but Greg Leck of DPWT has confirmed that the final letter was never sent. The letter is needed to determine specifically the extent of public roadway improvements required for the project. Upon learning that the DPWT letter was not available, we began contacting the department about 6 months ago to request issuance of the letter. Just recently, Mr. Leck requested some new information for the project which we provided to him on 4/24/06. Since the DPWT letter is still pending, the Department of Permitting Services will not process the Record Plat any further.

We expect resolution of the items noted above very soon. As early as possible, the Record Plat will be processed and the lot recorded in accordance with the approved Preliminary Plan. This will most likely occur within the next couple of months but as a safeguard we have requested a 12 month extension.

Please let us know if any further information is needed at this time.

Very sincerely,



David W. McKee