



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM #
6/14/07

DATE: May 22, 2007

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. 1-03044E – Layhill

Recommendation: Do not extend validity period

Discussion:

The subject preliminary was approved by the Planning Board on February 20, 2003 for two one family residential lots located on the east side of Layhill Road, south of Bel Pre Road. The Opinion reflecting the Planning Board's action was mailed on April 8, 2003. Per the conditions of approval, the preliminary plan remained valid for 37-months (May 8, 2006) from the date of the mailing unless, prior to that date, the applicant either recorded by plat all land shown on the approved plans or submitted a request to extend the validity period. On September 7, 2006 the Planning Board considered the first extension request for the subject property. The Board approved a one-year extension for the plan until May 8, 2007, based on a finding that difficulty in obtaining the necessary WSSC permits limited the applicant's ability to comply with conditions of the Board's approval needed prior to recordation of the plat.

Attached, please find the applicant's timely request dated May 7, 2007, to further extend the validity period for Preliminary Plan 120030440, (formerly 1-03044), Layhill, for twelve months, until May 8, 2008. The extension is requested to afford the applicant additional time to resolve remaining issues which will allow the plat to be recorded.

Discussion:

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 (c 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’s letter seeks the extension based on delays that have prevented the plat from being recorded as discussed below.

Applicant’s Position

The applicant’s letter dated May 8, 2007, (Attachment A) indicates that while they have been working continuously on meeting the requirements of Planning Board in order that the lots may be platted, they have experienced delays beyond their control. The applicant’s former consultants were a significant cause of these delays. Subsequent to the previous extension approval, and at the applicant’s discretion, he decided to change engineering firms, citing difficulty in getting work done in a timely fashion by the original firm. The transfer of information from the old firm to the new firm was fraught with delays, however, the letter suggests that as of January 2007, the new firm had received all work done to date on the project. The new firm has been actively engaged in getting the correct preliminary plan in for staff signature, preparing a Tree Save Plan, submitting a sediment and erosion control plan to MCDPS, and submitting the record plat application. Despite their best efforts, the necessary approvals are still outstanding.

The letter also states that WSSC received payment from the applicant for the permits in October 2006, which allowed WSSC to move forward with hiring a contractor. The hiring process has been delayed by WSSC.

Staff Position

The applicant’s letter does provide a basis for a finding that delays to plating were caused by a government agency or other party, or the occurrence of significant, unusual and unanticipated events beyond the applicant’s control. Given the timeframe in which

information was submitted, there is no indication that any of the agency reviews have been untimely. Although WSSC approved the sewer design in September 2006, it was not until October 2006 that the applicant made payment to WSSC, which allowed them to proceed with selecting a contractor to install the required sewer lines.

The delays noted by the applicant appear to be the result of his own actions including changing engineering firms and the resulting confusion over who had the correct version of the plan. It should also be noted that despite the fact that action on the original extension request took four months, that did not prevent the applicant from proceeding with the necessary review, since staff considered the extension request to be timely and did not place any sort of hold on the plan.

A record plat application was made on April 21, 2007. The plat is moving through the review process pending action on the extension request, but could not be approved by the Planning Board and recorded if the extension were granted, until staff approves the Tree Save Plan.

Conclusion

Staff is not convinced by the letter dated May 7, 2007 that there were delay caused by a governmental agency or any occurrence of a significant, unusual and unanticipated event beyond the applicant's control that would warrant the extension of the validity period for the preliminary plan. Staff believes that ample time has been allowed for the plat to be recorded and that delays, specifically in the last calendar year, have been due to the actions of the applicant and not some outside influence. Therefore, staff recommends denial of the applicant's request.

Attachments:

Extension letter dated May 7, 2007.

VI

Allen Kent Anders
9414 Old Georgetown Road
Bethesda, MD 20814
Phone (301) 897-9430

May 7, 2007

Cathy Conlon
Development Review Division
MD-National Capital Park and Planning Commission

RE: Layhill 1-03044
Extension Request #2

Dear Ms. Conlon,

I hereby respectfully submit an extension request with required fee and accompanying documents for the above referenced plan. Although I have diligently pursued all phases of this project, there have been delays that are beyond my control.

As you may recall, I applied for Extension Request #1 one year ago, in May 2006. I waited for a response to that request for several months. Finally, in late summer I tried to contact Mr. Weaver for status. When I was unable to get in touch with him, you were kind enough to locate the file and expedite the request. However, the extension request was not approved until September 2006. Although I had requested an extension through May 2008, the extension was granted to May 8, 2007, only 7 months from the date of approval of the extension.

In the meantime, I continued to work to meet all of the requirements of the preliminary subdivision approval. I had originally hired Thomas Maddox as my surveyor, but by last September I decided to change companies because Mr. Maddox was not completing work in a timely fashion. I asked Mr. Maddox to forward his work to that date, including the most recent, revised mylar, to Haines Land Design, LLC. Several weeks passed and Haines Land Design had not received the documents. Mr. Maddox told us that he could not locate the mylar and thought he perhaps had submitted the revised mylar to your office. As it turned out, in December 2006, he admitted that he had not submitted the mylar and did finally forward it to Haines Land Design. Unfortunately, unbeknownst to me or to Haines Land Design at that time, Mr. Maddox gave them the wrong mylar. Instead of the revised, most recent version, he gave Haines Land Design the original mylar that had been previously submitted and rejected for revisions.

Haines Land Design discovered the error in January 2007 and obtained the correct, revised version from Mr. Maddox. Since this unfortunate delay, we have been making steady progress.

On January 24, 2007 the correct preliminary plat plan was submitted to your office. It was approved March 6, 2007.

The Tree Save Plan was submitted March 2, 2007 and is now in review with Josh Penn.

The Erosion and Sediment Control Plan along with the Water Quality Plan, has been reviewed by MCDPS and Haines Land Design was instructed to submit the mylars for approval.

The Record Plat was submitted and approved approximately 2 weeks ago. An address has been assigned to the newly created lot.

I understand that the time frame for Record Plat approval is 6-8 weeks. I also understand that the Record Plat cannot be approved until the Tree Save Plan has been approved.

Finally, this brings me to the issue of the installation of water and sewer lines by WSSC, and delays that have been maddening to me, but completely out of my control despite constant contact with the commission.

In October 2006, I paid WSSC in full all required permit/application fees. I was told that the job would take approximately 50 days to complete, and that my job was to be assigned per minority contracting regulations.

After several weeks passed and no work had begun I contacted WSSC. I was told that job had not been awarded to the first contractor because the contractor's cost estimate had been too far below the estimate by WSSC's engineering department. But WSSC assured me that a second contractor would be selected quickly and that work would begin in January 2007.

January passed and no work was done. Again, I contacted WSSC. They told me that a contract had been signed with a second contractor, but that the second contractor had recently asked to be released from the contract citing lack of proper equipment and a desire to be removed from the minority contract program. According to WSSC officials with whom I have spoken many times, there now must be a legal hearing before they can officially cancel the contract with this contractor. Although a third contractor has been selected and is reportedly ready to start the job, he cannot begin until the second contractor is legally released from his contract. WSSC is, so far, unable to give me an idea of how long this might take.

Therefore, because I obviously have no power to influence the WSSC process and have no idea how long it will take to finally resolve the WSSC contract issues and see the work completed, I have no choice but to request an extension of 12 months from this date. With the help of Haines Land Design, LLC, my obligations in this process have been met, and everything that is within my control has been paid for, completed, and submitted.

No one is sorrier than I that this process has taken so long. It has obviously been costly to me in additional fees and in costs associated with holding the property much longer than expected. It has always been, and is now, my intention to see this project to completion. I ask for your forbearance and understanding in granting this extension.

Sincerely,


Allen Kent Anders