



DATE: August 25, 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. 1-03044 – Layhill

Recommendation: Extend validity period to May 8, 2007

Discussion:

The subject preliminary was approved by the Planning Board on February 20, 2003 for two single 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. Attached, please find the applicant's timely request dated May 4, 2006, to extend the validity period for Preliminary Plan 120030440, (formerly 1-03044), Layhill, for twelve months, until May 8, 2007. The extension is requested to afford the applicant adequate time to resolve remaining issues which will allow the 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 (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 certain unanticipated delays by governmental agencies that have resulted in significant delays to the project as discussed below.

Applicant's Position

The applicant's letter, dated May 8, 2006, cites difficulty obtaining the necessary engineering study approvals from the Washington Suburban Sanitary Commission (WSSC) as the most significant impediment to plat recordation. In the letter, the applicant explains that the required application for WSSC's review of the engineering study was submitted soon after Planning Board approval of the preliminary plan in April, 2003. According to the applicant, the WSSC seems to have mishandled the application and eventually lost it. The problem appears to have been resolved after threat of legal intervention. The study was ultimately approved on January 8, 2006. The applicant argues that without the necessary WSSC approval, other issues pertaining to the conditions of approval could not be resolved and plat recordation could not be accomplished. The letter also notes that the applicant has suffered health problems which have further hindered progress of the plan.

Staff Position

The request for extension is based on unanticipated delays by a governmental agency that has prevented timely recordation of the plat. In this case, the process has taken an extraordinary amount of time despite what appears to be a diligent attempt on the part of the applicant. It is staff's determination that the unanticipated delay outlined in the applicant's letter and summarized above is 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 8, 2007, to allow adequate time for all issues to be addressed prior to plat recordation.

Attachments:

Extension letter dated May 8, 2006.

**Allen Kent Anders
9414 Old Georgetown Road
Bethesda, MD 20814**

May 8, 2006

Montgomery County Department of Park & Planning
8787 Georgia Ave.
Silver Spring, MD 20910

RE: Name of Plan: Layhill
Subdivision File Number: 1-03044
Number of Lots: 2
Number/Type of Proposed Units: 2 single family detached dwelling units (1 existing)
Current Zoning: R-200 Acres: 1
Location: On the east side of Layhill Road (MD 182), approximately 1500 feet south
of Bel Pre Road
Master Plan Area: Aspen Hill, PA-27

To Whom It May Concern:

This letter is to request an extension to the preliminary plan referenced above which was approved by a 5-0 vote and mailed on April 8, 2003.

Upon receipt of the preliminary plan approval in early April, I contacted WSSC to determine the financial feasibility of installing public sewer service to both sites as required by the preliminary plan approval. On June 3, 2003 I submitted to WSSC all applications and associated fees for engineering studies, environmental research, etc. to begin the process of obtaining approval for public sewer installation.

After several months without a response from WSSC, I began to call them regarding the status of my application. Each time I called I spoke to a different person who told me they would look into the case and call back, although I did not receive return calls. After months of calling, I was told that they could not locate my application. I then submitted copies of my canceled checks for application fees and copies of the completed applications. When I got no response to this submission I threatened legal action. From that point on, a supervisor at WSSC took over my case and kept in close contact with me until the application was approved on January 8, 2006.

It is worth noting that during this time I was also struggling with a health problem that, despite many visits to doctors, went undiagnosed for more than a year and left me with unable to work for days, and sometimes weeks at a time. In fact, given my health and the trouble I was having with WSSC I considered selling the property. I listed it for sale briefly in 2005 and had two parties who showed interest but did not finalize offers to purchase.

Of course, there are conditions of the preliminary plan that could not be satisfied without first obtaining WSSC approval. I believe that I can easily satisfy these conditions within one year. Therefore, I hereby respectfully request that the preliminary plan approval be extended until May 8, 2008.

Thank you for your consideration of this matter. If you have questions or require additional information please do not hesitate to contact me.

Sincerely,


Allen Kent Anders