



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

**MCPB**  
**ITEM #**  
**6/7/07**

**DATE:** May 25 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. 12002056E (formerly 1-02056E) – Burdoft Property

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**Recommendation**

**Extend validity period to February 7, 2008**

**Discussion**

The Planning Board approved the subject preliminary plan on February 13, 2003 and the Opinion reflecting that action was mailed on April 7, 2003 (Attachment 1). A subsequent Site Plan (No. 820050080) was approved by the Planning Board on April 21, 2005. Per the conditions of approval, the preliminary plan remained valid for 37-months from the date the opinion was mailed unless, prior to that date, the applicant either (1) recorded all plats among the land records of Montgomery County or (2) submitted a request to extend the validity period. On May 4, 2006 a timely request for extension of the preliminary plan validity was filed. In response to the request, a one-year extension was granted to the applicant on May 6, 2006 until May 7, 2007. In that time, the applicant has worked to resolve issues associated with Site Plan and the road

improvements to Vital Way. A Site Plan amendment (82005008A) was approved by the Planning Board on April 26, 2007 to reflect the roadway improvements.

Attached, please find the applicant's timely request for a second extension dated May 7, 2007. The applicant requests an additional twelve month validity period for Preliminary Plan 120020560, (formerly 1-02056), Burdoft Property, until May 7, 2008. 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's letter seeks the extension based on certain unanticipated delays by governmental agencies that continue to impact the project as discussed below.

#### Applicant's position

The applicant's letter (Attachment 2) cites discrepancies between the master plan vision of Vital Way and MCDPWT road design standards as the one significant issue that has precluded the timely recordation of the plat for the property. Only recently has MCDPWT issued their letter of approval for the project; the letter reflects the resolution of the road design issues. Once the applicant understood the changes required by MCDPWT, they revised their Site Plan and it was officially amended by action of the Planning Board on April 26 of this year. The MCDPWT letter advises that as part of their approval they will require a Grade Establishment Plan (GEP) be approved. The letter maintains that this will involve additional work that was not anticipated since it was not mentioned in any meetings on the Vital Way improvements. The applicant believes that preparation and approval of the GEP will take at least a few months and has asked for a 12 month extension to get the plats recorded.

## Staff Position

The request for extension is based on unanticipated delays, not caused by the applicant, that have prevented plat recordation. The approval of the original preliminary plan in 2003 was conditioned on the applicant securing MCDPWT approval after Planning Board action. This was accepted procedure at the time but is no longer acceptable under current review and approval procedures. What was not fully understood at the time of preliminary and site plan approval were the discrepancies between the master plan vision of Vital Way and MCDPWT road design standards. MNCPPC and MCDPWT staff have spent the better part of the last year working to arrive at a compromise road cross section. MCDPWT issued an approval letter on April 6, 2007 and the site plan was amended on April 26, 2007 to account for the roadway changes.

In their letter, MCDPWT requires that the applicant must obtain approval of a GEP prior to *submission* of a record plat application. What was unknown to MCDPWT was that a record plat application had already been received and forwarded to Montgomery County for their review. The requirement for a GEP prior to submission and recordation of plats is a new requirement by MCDPWT instituted mid year 2006; whereas, in years past, it was done after plat recordation. The applicant states that preparation and approval of a GEP may take at least a few months. Staff believes this to be an accurate timeline and advises that the plat will not be recorded until the GEP is approved.

As established by condition # 9 of the preliminary plan opinion, the Adequate Public Facilities (APF) review for this project remains valid until May 7, 2008. Prior to that date, building permits must be issued for the project. Building permits cannot be issued until the plats are recorded. As an impetus for completion of the plat process, staff does not support the full 12 month preliminary plan extension requested and believes that the plats should be recorded at least two months ahead of expiration of the APF review. A preliminary plan extension of nine (9) months will allow a three month window in which to secure building permit approval, rather than running the risk of the plat being recorded with no time before the APF expiration.. Should building permits not be issued prior to the APF expiration date, a new APF review would likely be needed.

## Conclusion

The unanticipated delays 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. The approval of the preliminary plan without MCDPWT final approval of the Vital Way cross section has resulted in delays to plat recordation. MNCPPC and MCDPWT staff have resolved the conflicts and it is now understood that a Grade Establishment Plan is needed before the plat can be recorded. The applicant will need additional time to get the GEP approval.. Staff recommends that the extension be limited to nine months, which is February 7, 2008. This will allow three months in which the applicant will be required to secure building permit approval.

Attachments:

Extension letter dated May 7, 2007.  
Planning Board Preliminary Plan Opinion



**Benning & Associates, Inc.**  
Land Planning Consultants

8933 Shady Grove Court  
Gaithersburg, Md. 20877  
(301) 948-0240

May 7, 2007

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. Subsequently, an extension of one year was granted in May of 2006. As such, the Preliminary Plan will expire today, May 7, 2007 without a second extension.

In addition to the above referenced Preliminary Plan, this project is also the subject of a Section 59-D-3 Site Plan (8-05008). The Site Plan was approved by the Planning Board in 2005. Following Site Plan approval, a Record Plat for the one-lot subdivision was prepared and submitted to M-NCPPC and Montgomery County for review. In our letter to you dated May 4, 2006 for the first extension of the Preliminary Plan, we outlined the reasons for delays in getting the Record Plat approved and recorded.

Since approval of the one-year extension, the issues preventing recordation of the lot have been resolved. However, until very recently, an official letter from the Montgomery County Department of Public Works & Transportation (DPWT) for this project was still not available. The letter was finally issued one month ago on April 6, 2007 (copy attached). During the time between May of 2006 and April of 2007, staff of M-NCPPC (Cherian Eapen and Robert Kronenberg) worked closely with Greg Leck of DPWT to resolve discrepancies between the Master Plan and DPWT design standards related to the improvements planned for Vital Way. The applicant for this project waited on the sidelines while this issue between the two agencies was resolved. Since improvements to Vital Way are required as part of the development of the subject site, we were not able to proceed with processing of the Record Plat until the matter was resolved and the DPWT letter was issued.

Just recently, on the 26<sup>th</sup> of last month, an application to amend the approved Site Plan was approved by the Planning Board for this site. The amendment primarily addressed the issue of changes to road and streetscape improvements planned for Vital Way. Now

that the DPWT letter has been issued with specifics on improvements to Vital Way, the Record Plat review and approval process can start again. However, one condition of approval stated in the DPWT letter will require some effort and time to complete. Condition number 4 requires a Grade Establishment Plan (GEP) for Vital Way. The new condition was not previously mentioned during any of the prior meetings or discussions with Mr. Leck or others from DPWT. Completion of this item will require an extensive amount of field survey work, preparation of the GEP, and submission of the plan to Montgomery County for approval. This will take a few months at least. Then the Plat can be approved and recorded. To make sure we have enough time to accomplish these tasks, we are requesting another 12 month extension of the Preliminary Plan.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'D. McKee', with a stylized flourish extending to the right.

David W. McKee



Date Mailed: April 7, 2003

Attachment "B"

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