



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

MCPB
ITEM #
10/11/07

DATE: September 28, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

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

SUBJECT: Request for reinstatement of an expired preliminary plan and an extension to the validity period – Preliminary Plan No. 120040200 – The Day Property

Recommendation: Extend validity period to February 6, 2008.

Discussion:

The subject preliminary plan was approved by the Planning Board on December 18, 2003 for eleven, one family attached (townhouse) units on 2.0 acres of land in the RT-8 zone. The property is on the west side of Greencastle Road, approximately 2500 feet south of the intersection with Robey Road. The Resolution reflecting the Planning Board's action was mailed on January 6, 2004. Pursuant to the conditions of approval, the preliminary plan remained valid for 37-months (until February 6, 2007) from the date of the mailing of the Resolution unless, prior to that date, the applicant either recorded by plat all land shown on the approved plan or submitted a request to extend the validity period. With the initial expiration date approaching, the applicant submitted a timely request for extension and based on the facts presented to them, the Planning Board, on February 15, 2007, granted a 6 month extension of the plan until August 6, 2007.

The record plat for the property was not recorded prior to August 6, 2007 and a timely request for extension was not received by staff prior to that date, therefore, the preliminary plan expired as of August 6, 2007. Attached, please find the applicant's request dated August 22, 2007, to reinstate the expired plan and grant an additional

extension period of 6 months or until February 6, 2008. The extension is requested to afford the applicant adequate time to record the plat.

This request is actually two part; one to reinstate the plan and the other to extend the validity period. Section 50-35(h)(3)(C) of the Subdivision Regulations, contains the following language regarding expired preliminary plans:

“If a preliminary plan has been allowed to expire due to an applicant’s failure to file a timely request for an extension, the Board on a case-by-case basis in unusual situations 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 the 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.”

Regarding the extension of validity periods, Section 50-53(h)(3)(D) of the Montgomery County Subdivision Regulations establishes the grounds upon which the Planning Board may grant an extension:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant’s ability to perform terms or 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 reinstatement of the preliminary plan based on practical difficulties experienced during the review of the record plat and the extension of the preliminary plan based on governmental delays in approval of the associated site plan. A discussion of the request follows:

Applicant’s Position

The applicant’s letter cites governmental delays that have caused the continued delay with the recordation of the plat. Subsequent to the Board’s first extension of the preliminary plan on February 15, 2007, the applicant completed their record plat review

with Park and Planning and the Board approved the plat on May 9, 2007. Three days later the record plat was submitted to MCDPS for final approval but was returned to the applicant, unsigned, on June 21, 2007, pending approval of Storm Drain and Paving (SDP) plans and posting of a bond. According to the applicant, the SDP plan had been in the hands of the DPS reviewers for several months, but did not receive approval in a timely manner because of confusion within the agency caused by the death of one of the review staff. The SDP was ultimately approved by another reviewer on August 3, 2007, but not in enough time to get the plat signed by the Director and recorded. The applicant cites to this governmental delay which was beyond their control as grounds for further extension of the validity period.

Staff Position

The request for reinstatement of the expired plan is based on practical difficulties experienced by the applicant in their efforts to get the plat recorded in a timely manner. The letter gives no explanation as to why an extension request letter was not submitted in a timely manner other than to express dismay and regret for the lapse in memory; staff does not believe it to be intentional.

The applicant has based their request for the extension on governmental delays that have precluded them from recording the plats prior to the expiration date. To confirm the facts of the applicant's letter, staff contacted the DPS, Right-of-Way Permitting and Plan Review section, to inquire about any review delays that may have been experienced during the last 6 months. Staff of DPS confirmed that the untimely death of one of the reviewers and the retirement of two other reviewers in the last 6 months have slowed the pace of reviews for SDP and other plans. Four of the eight plan review positions were at the time open and remain so to this date.


The record plat for this preliminary plan is on hold pending the outcome of this hearing and is otherwise ready to be recorded upon an approval recommendation of the requested six month extension period by the Board. A new APFO should not be required of this applicant since the original APFO findings are valid until February of 2009 and conditions in the local area have not changed significantly to warrant a new APFO review. It is staff's determination that the practical difficulty summarized above is reasonable justification upon which the Planning Board can base the reinstatement of the plan pursuant to Section 50-35(h)(3)(C) and that the unanticipated delay by DPS is sufficient grounds to extend the validity period for six months pursuant to Section 50-35(h)(3)(D) of the Subdivision Regulations. Therefore, staff recommends that the preliminary plan be extended to February 6, 2008, to allow time for the plats to be recorded.

Attachment:

Extension Request Letter dated August 22, 2007

MEMORANDUM

To Montgomery County Planning Board
Technical Staff, Development Review Division

From Site Solutions Inc. 
Alfred Blumberg, AICP

Re: Day Property Preliminary Plan Extension
1-04020

Date August 22, 2007

The property owner, D.R. Horton, hereby requests a 6-month extension for the implementation of the above referenced Preliminary Plan of Subdivision. We recently received notice of the 6-month extension granted by the Planning Board on February 15, 2007, which expired on August 6, 2007. To my chagrin, six months had flown by and the Record Plat has not yet been recorded in the Land Records of Montgomery County. At the Public Hearing on February 15, we testified that the Plat had already been filed and that six months should be more than enough time to complete recordation. Indeed, it would have been, but for the circumstances described below.

The Record Plat was originally submitted to the Development Review Division on August 1, 2005 (2-06015). As you know, a plat cannot be approved until the certified Site Plan is approved and signed. Since the Site Plan was being amended, the Certified Site Plan was not signed until February 16, 2007. Subsequently, the staff comments on the Record Plat were received on February 26, 2007. Revisions were made, it was resubmitted on April 12 and signed by Chairman Hanson on May 9, 2007. The plat was then resubmitted to MCDPS on May 15 for final review and approval. On June 21 it was returned to the surveyor unsigned, pending approval of the Storm Drain and Paving Plan, and posting of performance bond for same.

The Storm Drain and Paving plan had been filed months before, but final review and approval of that Plan had been delayed due to the untimely death of the assigned reviewer, Amit Basu. Following confusion caused by the death of Mr. Basu, the plan was finally approved by another reviewer on August 1, 2007 and the Permit and Bond were submitted to DPS on August 3, 2007. The DPS final sign off is imminent.

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Unfortunately, it did not take place within the allotted 6-month extension period for reasons beyond the applicant's control as described above.

We therefore request that the approval be extended for a second time. We request 6-months only because we do not want to have to come back and ask for the indulgence of the Board again. We thought that 6-months would be more than enough time last February.

Thank you for your consideration and assistance in this matter. Please be assured that this applicant continues to make a good faith effort to advance this project. We are embarrassed that this delay has occurred and we ask that this Plat be permitted to proceed to recordation following extension of the Preliminary Plan.