



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

MCPB
ITEM #
03/12/09



DATE: February 26, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *R&K*
Development Review Division

FROM: Catherine Conlon, Supervisor (301-495-4542) *CC*
Development Review Division

SUBJECT: Request for an extension to the preliminary plan validity period

PROJECT NAME: W. Drew Stabler

CASE #: 120050830

ZONE: RDT

LOCATION: Located on both sides of Laytonsville Road (MD 108)
approximately 1,000 feet north of Brink Road

MASTER PLAN: Agricultural and Rural Open Space

APPLICANT: Robert N. and Betsy A. Stabler

ATTORNEY: Miller, Miller & Canby

FILING DATE: January 27, 2009

STAFF RECOMMENDATION: Grant a six-month extension of the Preliminary Plan validity period until August 25, 2009.

BACKGROUND

The Preliminary Plan, filed by Heritage Development LLC (“Applicant”) acting as agent for the property owners Robert and Betsy Stabler (“Owners”), was approved by the Planning Board on June 2, 2005, to create 4 lots for 4 one-family detached residential dwelling units. The property is located on both sides of Laytonsville Road (MD 108) approximately 1,000 feet north of Brink Road and the Town of Laytonsville. An Opinion reflecting the Board’s action on the Preliminary Plan was mailed on January 25, 2006 (Attachment A) and the preliminary plan validity period was set at 37 months from the mailing date, or February 25, 2009. Prior to that date, the Applicant or Owners either had to (1) record all plats among the land records of Montgomery County or (2) submit a request to extend the validity period.

Attached please find the letter from Mr. Jody Kline of the law firm Miller, Miller and Canby, dated January 23, 2009, presenting the Owner’s timely request to extend the validity period for six months, until August 25, 2009 (Attachment B). The extension is requested to afford adequate time to resolve remaining issues related to the plat review and allow the pending plat to be approved and 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.”

DISCUSSION

The request for extension is based upon unanticipated events that have substantially impaired the Owner’s ability to record the plat and validate the plan. The approval of the Preliminary Plan occurred in June, 2005. At that time, the Applicant was working with Mr. Gary Fowler of Fowler Engineering who was hired to prepare the plan and subsequent record plat. Mr. Fowler unfortunately passed away shortly after the preliminary plan was approved. According to the Owner’s representative, this unanticipated event created a delay that has substantially impaired the Applicant’s or Owner’s ability to record the plat and validate the plan.

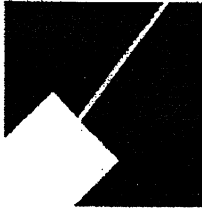
Mr. Fowler was the principal employee of the Fowler Engineering firm and exclusively responsible for the processing of the plans associated with this property. Because of the nature of the firm he was the also the only person who was in a position to pursue recordation of the plat. After his passing, it took until the summer of 2008 for the sale of the assets and ongoing work of the firm. During that time, the property owners did not want to transfer to another firm for completion and recordation of the subdivision plat both because of a contractual relationship with Fowler Engineering, and because they wanted to help them through the transition period by leaving their work with the firm until the assets were sold. That process was completed in the summer of 2008 when Site Solutions acquired the assets and ongoing work. Although Site Solutions made the plat application and is pursuing recordation of the plat, they were not able to complete the process prior to the end of the validity period.

It is staff's determination that the delays associated with the unanticipated death of the Owner's engineering consultant have significantly impaired their ability to record the subdivision plat and validate the preliminary plan, and that requiring them to file another plan would constitute an exceptional undue hardship in this instance. A record plat has been filed and is close to being ready for approval, and, in staff's opinion, the six-month requested timeframe is the minimum necessary to validate the plan. Therefore, staff recommends that the preliminary plan be extended to August 25, 2009, to allow adequate time for the plat to be recorded.

ATTACHMENTS:

- A- January 25, 2006 Opinion
- B- January 23, 2009 Extension Request

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: JAN 25 2006

Action: Approved Staff
Recommendation.

Motion of Commissioner Robinson,
seconded by Commissioner Bryant,
with a vote of 4-1.

Chairman Berlage and Commissioners
Bryant, Perdue, and Robinson voting in
favor. Commissioner Wellington voting
against.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05083
NAME OF PLAN: W. Drew Stabler

The date of this written opinion is JAN 25 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

I. INTRODUCTION

On 3/29/05, Heritage Development LLC ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the RDT zone. The application proposed to create 4 lots on 161.2 acres of land located on the east and west sides of Laytonsville Road (MD 108) approximately 1,000 feet north of Brink Road, in the Olney master plan area. The application was designated Preliminary Plan 1-05083. On 6/02/05, Preliminary Plan 1-05083 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.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. SITE AND PROJECT DESCRIPTION

The W. Drew Stabler Property is located immediately north of the Laytonsville town limits on Laytonsville Road (MD 108). MD 108 bisects the property into western and eastern areas (Attachment A). The eastern portion is 146.6 acres and includes existing farm fields and 23.2 acres of forested stream buffer. The western portion is 14.6 acres and includes 13.2 acres of forest and is not currently farmed. The entire property is zoned RDT.

The 14.6 acres of the parcel located on the west side of the road is the subject of the proposed preliminary plan. The remaining 146.6 acres is not included in the preliminary plan and will remain an unplatted farm. There are no dwellings currently existing on the overall property. There is an existing barn on the east side of the property, which will remain on the unplatted remainder of the site.

The western portion of the property drains to the Great Seneca Creek watershed (Use Classification I-P) and the eastern portion drains to the Hawlings River watershed (Use Classification IV-P). The eastern portion of the property contains a tributary stream and associated floodplain and stream buffers.

The proposed preliminary plan creates four lots on the west side of MD 108. The lots will be developed with four one-family detached dwelling units (Attachment B). The proposed lots will front on MD 108 and have direct access to the road via shared and individual driveways. The lot sizes will be 2.9, 2.8, 4.4, and 3.7 acres, respectively. The lots will be served by private wells and trench septic systems. Approximately 7.9 acres of the property will be protected in a Category I conservation easement.

The remaining acreage of the site will not be platted and will remain in agricultural use. According to documentation provided by the Applicant, all but five Transfer Development Rights (TDRs) have been sold from the subject property and the

property remains vacant. Therefore, only one TDR will remain with the unplatted parcel if this preliminary plan is approved.

III. STAFF ANALYSIS

A pre-preliminary plan for the subject property was submitted for staff review in 2003. Strictly speaking, the proposed lots could be platted by minor subdivision per Section 50-35A(a)(8)1 of the Subdivision Regulations. However, in this instance, Staff chose to require preliminary plan review to more fully address the forest conservation, road, and potential compatibility issues related to the proposal.

A. Relationship to the Master Plan

The property is located within both the Agricultural and Rural Open Space (AROS) Master Plan (subject 14.6-acre western portion) and the Olney Master Plan (remainder 146.6-acre eastern portion). Both AROS and the Olney Master Plan establish agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. The proposed development plan creates four residential lots on the property west of MD 108 and retention of the majority of the parent parcel as an unplatted remainder that will continue to be farmed.

The remainder parcel can receive building permits for agricultural structures (barns, storage buildings, etc.) currently allowed under Section 50-20 of the Subdivision Regulations. One development right will remain on the remainder parcel if this proposal is approved.

Staff believes the proposed plan meets the goal of the master plans for agricultural preservation and the requirements for the RDT Zone. Grouping of smaller lots provides a large, contiguous remainder parcel (146 acres), most of which will continue to be used for agriculture and related uses. The zone allows one-family dwellings as a permitted use on lots as small as 40,000 square feet.

B. Forest Conservation

During review of the pre-preliminary plan for this site, Environmental Planning staff recommended against the placement of proposed dwelling units in existing forested area rather than utilizing unforested portions of the overall property on the

¹ Section 50-38A(a)(8) establishes the ability to plat up to five lots in the RDT zone through the minor subdivision process after Planning Staff or Planning Board approval of a pre-preliminary plan, with the requirement that the pre-preliminary plan *must* be approved by the Planning Board if proposed lots exceed an average lot size of five acres, which these do not.

eastern side of MD 108. Since portions of the eastern property border residentially-developed land on the northern edge of the town of Laytonsville, and southwest of the Brook Hollow subdivision to the north, staff requested justification from the Applicant for not placing the proposed residential development adjacent to one of these areas. In response to staff, the Applicant stated that the more productive farmland on the eastern portion of the property exists on the southern area adjacent to the town of Laytonsville. The Applicant cited a strong desire to continue farm use of this area at current levels, and the fact that the western portion of the site is not desirable for replacement of these uses. The Applicant's engineer also provided soils data for the lower quality, northern area of the eastern portion of the property along Griffith Road, which demonstrated that percolation rates would be inadequate to provide septic fields for the proposed dwellings in this location.

Staff accepts the justification provided by the Applicant for placement of houses in existing forested area, however, given the extent of forest loss, staff felt the Planning Board should review and approve the proposed Forest Conservation Plan. The Applicant has indicated his intent to submit an Agricultural Declaration of Intent for the entire eastern portion of the property. The Agricultural Declaration of Intent confirms the Applicant's desire and intent to continue farming on the eastern portion of the property.

The Applicant's preliminary forest conservation plan covers only the western side of the property because the eastern side will be exempt from forest conservation. Under Section 22A-5(b) of the Montgomery County Code, an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2), is also exempt from forest conservation. The eastern portion of the property is exempt from platting and sediment control.

The preliminary plan of subdivision proposes to create four new lots on the 14.6-acre western portion of the property. Since the proposed development is in an agricultural resource area, it must comply with Section 22A-12(f) of the Montgomery County code. This section of the code requires developments in agricultural resource areas to either retain or plant a certain percentage of forest onsite. For this particular plan, the appropriate threshold is the conservation threshold. The Applicant is proposing to remove 4.99 acres of forest and retain 8.21 acres. The amount of forest retained exceeds the conservation threshold. The preliminary forest conservation plan submitted indicates that there will be a planting requirement of less than 1 acre, which will occur on-site. All retained and planted forest will be permanently protected in a Category I forest conservation easement.

C. Road Issues

Proposed Lot 4 may be impacted by the proposed right-of-way for a bypass of MD 108 around the town of Laytonsville which is shown in the Comprehensive Plan of

Laytonsville, but which is not included in the county master plans covering the area outside the Town's boundary. By letter of April 18, 2005 (Attachment C), the Town of Laytonsville has requested that the Applicant be required to provide the necessary right-of-way. Accommodating the right-of-way as requested would necessitate reconfiguration of the house and driveway as shown on the plan. The house location is conceptual and could be modified to provide necessary setback from the bypass right-of-way. Approval of the driveway access points fall under the purview of the State Highway Administration (SHA). If SHA determines that the driveway location must be changed, a revision to the forest conservation easement boundary may be required.

Since the bypass alignment for MD 108 is not included in the applicable county master plan, staff does not feel that grounds exist to require dedication of the right-of-way for this alternative alignment. Staff has recommended to the Applicant that they coordinate with the Town of Laytonsville prior to final placement of a house on Lot 4. If future relocation of the proposed house or driveway modifies the proposed limits of the on-site conservation easement, an amendment to the approved forest conservation plan would be needed. Such an amendment would likely be minor, and could be done at a staff level.

D. Compatibility

During review of this plan, staff met with adjacent property owners, the Linthicum Family, who operate an existing farm on land immediately west of the proposed lots. The Linthicum's expressed concern that residential dwellings may be incompatible with their existing operation which includes stockpiling of manure and operation of large machinery and heavy vehicles. The main driveway entrance to their farm is located along the northern boundary of proposed Lot 1. The Linthicums questioned the location of houses in this portion of the overall property as opposed to placing them closer to the other residential development on the eastern portion of the property. The Linthicum's requested that the proposed house on Lot 1 be located as far as possible from their existing driveway and that the lot boundaries adjacent to their farm be fenced.

Staff recommended against relocation of the proposed houses, given the resulting loss of agricultural use area on the eastern portion of the property that would result, and the existing soil limitations on septic fields in that area. Staff also concluded that the applicable master plans, Subdivision Regulations and Zoning Ordinance do not contain authority to deny the proposed lots. The original preliminary plan layout was modified to move proposed houses away from the existing driveway entrance and maintain a forested buffer. A portion of the property boundary is already fenced and staff has included a requirement that the remainder be provided by the Applicant as part of the approval conditions. Finally, staff is recommending that future lot owners be notified of the adjacent farm operation.

Staff recommended to the Board that the proposed preliminary plan complies with Chapter 50, the Subdivision Regulations, Chapter 59, the Zoning Ordinance, and all applicable regulations and guidelines regarding the subdivision of land in Montgomery County, and recommended approval of the subdivision subject to the specified conditions.

IV. PUBLIC HEARING TESTIMONY

Staff testified and summarized the information contained in its staff report, making no changes to its recommended conditions of approval. The Applicant appeared and testified, and concurred with staff's recommendation of approval and proposed conditions. The adjoining property owner, Mr. Linthicum, appeared and testified regarding his concern that the location of the four proposed residential lots will not be compatible with the ongoing farming on their 800-plus acre property.

Mr. Linthicum noted that the nearest residential lot is located a little more than 800 feet from the Linthicum's grain storage building, and expressed concern that noise and dust will generate complaints from future homeowners, because they may be unaware of the impact of an active farm. He also expressed concern about the termination of a bike path at the driveway entrance to the Linthicum property. Additionally, Mr. Linthicum noted that they had just finalized a soil conservation project, and expressed concern that drainage from the new homes will require them to re-engineer and rebuild those facilities, and finally also raised concerns about trespassing on his property, particularly by people riding dirt bikes and other vehicles. Specifically, Mr. Linthicum asked that (1) the Applicant build new fencing along the property line; (2) that the number of driveways be reduced to two; (3) assurances that the new property owners will have written disclosure that they are purchasing lots adjacent to a working farm; and (4) resolution of who will pay for the redesign and rebuilding of the soil conservation facilities.

Mr. Stabler testified, in response, that he too has a working farm, one closer to existing residential neighbors than those proposed in this project, and that conflicts between the two uses are minimal. He stated that he located the four new lots where he did in large part because they are located on soil that is less favorable for agricultural uses.

In response to Planning Board questioning, staff noted that the Montgomery County Department of Permitting Services (DPS) has approved a conceptual stormwater management plan. Staff pointed out that DPS has not required quantity control, because DPS has concluded that the forested buffer will manage runoff and concluded it should not result in runoff on the Linthicum site.

The Board also discussed at some length the location and orientation of the proposed lots. The Board concluded that Route 108 provided a natural geographical

separation that is ideal for the location of the proposed lots, and further (a) protects 8 out of 13 acres of existing forest; and (b) preserves some of the most favorable tillable soil on the property.

The Applicant proffered to provide a fence between the Linthicum and Stabler properties along the new residential properties, in consultation with staff, and to provide written disclosure to prospective purchasers disclosing that the adjoining property is a working farm operation.

V. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The uncontested evidence of record demonstrates that Preliminary Plan No. 1-05083 substantially conforms to the Olney master plan.
- b) The uncontested evidence of record demonstrates that public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The Board find, based upon the preponderance of evidence of record, that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision, taking into consideration the natural geographical demarcation of Route 108, and further meeting the County's dual policy goals of preserving existing forest and large contiguous lots of prime agricultural land, and accepting the Applicant's proffer that it will provide fencing and notification as detailed above.³

² The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

³ Commissioner Wellington dissented from the majority's opinion. In voting against the application, Commissioner Wellington asserted that the proposed development demonstrated the failure of the County's subdivision regulations with regard to agricultural areas. Citing the "inherent incompatibility" of the Applicant's proposed use with the remaining agricultural land in his possession as well as that of his neighbor, the Commissioner was unable to find that the Applicant's project suitably would promote the objectives of agricultural preservation.

- d) The uncontested evidence of record demonstrates that the application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) Based upon the conceptual plan approved by DPS, and recognizing that DPS has jurisdiction over this aspect of the development, the Planning Board finds by a preponderance of evidence that the application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the DPS that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Planning Board finds that any objection not raised during the public hearing concerning a substantive issue in this application, is waived.

VI. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05083 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05083, subject to the following conditions:

- 1) Approval is limited to four (4) one-family detached dwelling units.
- 2) Compliance with the conditions of approval of the Preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to recording of plat(s) or issuance of sediment control permits, as applicable.
- 3) Compliance with the conditions of approval of the MCDPS stormwater management approval dated March 11, 2005.
- 4) Compliance with conditions of MCDPS (Health Dept.) septic approval.
- 5) Compliance with the conditions of the MCDPWT approval letter dated May 25, 2005, unless otherwise amended.
- 6) Applicant shall provide a 4-foot bike shoulder for the Class III bikeway along Laytonsville Road (MD 108).
- 7) Revise the preliminary plan to show dedication of 80 feet of right-of-way, and an easement for future dedication of an additional 40 feet of right-of-way, for Laytonsville Road (MD 108) along the property frontage.

- 8) Record Plat shall contain the following note: "Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 9) Record Plat to reflect dedication of 80 feet of right-of-way, and easement for future dedication of an additional 40 feet of right-of-way, for Laytonsville Road (MD 108) along the property frontage.
- 10) Record Plat to reflect a Category I conservation easement over all forest conservation areas.
- 11) Record Plat to reference a recorded easement for the parent parcel indicating that density for these lots was removed from the parent parcel, Parcel 900 at Liber 19147, Folio 644 and that four TDR's were available on the parent parcel for creation of the four lots.
- 12) Record Plat to reflect shared ingress/egress and a utility easement for proposed Lots 2 and 3.
- 13) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
- 14) The term "denied access" is to be placed on the final record plat along the property that abuts MD 108, except at the approved three entrances.
- 15) Other necessary easements to be reflected on plat.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

* * * * *

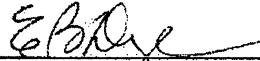
[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AS TO LEGAL SUFFICIENCY
MR 1/13/06
MONTGOMERY LEGAL DEPARTMENT

W. Drew Stabler
Preliminary Plan 1-05083
Page 10

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, January 19, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for W. Drew Stabler property, Preliminary Plan 1-05083.



Certification As To Vote of Adoption
Technical Writer



LAW OFFICES
MILLER, MILLER & CANBY
CHARTERED

PATRICK C. McKEEVER (DC)
JAMES L. THOMPSON (DC)
LEWIS R. SCHUMANN
JODY S. KLINE
ELLEN S. WALKER
MAURY S. EPNER (DC)
JOSEPH P. SUNTUM

200-B MONROE STREET
ROCKVILLE, MARYLAND 20850
(301) 762-5212
FAX (301) 424-9673
WWW.MILLERMILLERCANBY.COM

SUSAN W. CARTER
ROBERT E. GOUGH
DONNA E. McBRIDE (DC)
GLENN M. ANDERSON (FL)
MICHAEL G. CAMPBELL (DC, VA)
SOO LEE CHO (CA)
AMY C. GRASSO

** All attorneys admitted in Maryland and where indicated*

JSKLINE@MMCANBY.COM

January 23, 2009

Ms. Cathy Conlon
Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Preliminary Plan No. 1-05083,
Stabler Property;
Request for Extension of Validity Period

Dear Ms. Conlon:

I am writing on behalf of Robert N. and Betsy A. Stabler, the owners of the 161.2 acre property which was the subject of Preliminary Plan No. 1-05083 approved by the Planning Board on January 25, 2006. The purpose of this letter is to request an extension of time, until August 25, 2009, to record the record plat for the subject property. The basis for this request for an extension pursuant to the standards of Section 50-35(h)(3)(D) is as follows:

1. The primary reason why the subject property was not recorded in a timely manner related to the unfortunate death of the principal of the engineering firm responsible for preparing and recording the record plat – Mr. Gary Fowler of Fowler Engineering. Mr. Fowler was the principal employee of Fowler Engineering and was exclusively responsible for the processing of the plans associated with the Stabler property. Mr. Fowler passed away in the summer of 2005, after the preliminary plan had been approved, but before publication of the Opinion. Because of the nature of the Fowler Engineering firm, Mr. Gary Fowler was the only person in a position to pursue recordation of the plat of subdivision.

2. From the summer of 2005, until the summer of 2008, Ms. Lois Fowler, mother of Gary Fowler and office manager of Fowler Engineering, talked with other engineering and surveying firms about the sale of the assets and ongoing work of Fowler Engineering. Those discussions culminated in the summer of 2008 with the sale of the assets of Fowler Engineering to Site Solutions, Inc.

3. During the time that Fowler Engineering was discussing and negotiating with other engineering firms to sell its assets, the property owners did not want to transfer its work to another firm for completion and recordation of the plat of subdivision, both because of the contractual relationship with Fowler Engineering and the longstanding and warm working relationship with Fowler Engineering, which they hoped to help through a tough period by leaving their work with the firm until its assets were sold to another firm.

4. Also during the time that Fowler Engineering was negotiating to sell its ongoing work to another firm, the property owners identified the fact that the record of Preliminary Plan No. 1-05083 may have unintentionally underestimated the number of TDR's associated with the 161.2 acre parcel of land (the confusion due to the fact that the total tract is made up of two confronting but non-contiguous parcels of land). The issue about the number of available TDR's was brought to a head when Site Solutions acquired Fowler Engineering in the summer, 2008.

In the summer, 2008, when Site Solutions acquired the assets and ongoing work of Fowler Engineering, the issue of undetermined TDR's was identified by Site Solutions as an open problem.

5. An Investigation of the issue of TDR's was conducted by the author of this letter, culminating in meetings with Staff of M-NCPPC in December, 2008.

6. Site Solutions has the record plat for the Stabler property through its first review by the Montgomery County Department of Transportation. However, it is anticipated that the plat's second review will not be completed by late February, 2009 and cannot be recorded prior to the expiration of the preliminary plan.

For the reasons set forth above, Robert N. and Betsy A. Stabler request that the Planning Board extend, until August 25, 2009, the validity period for Preliminary Plan No. 1-05083 and the date by which the record plat must be recorded. Failure of the Planning Board to grant such an extension will cause an exceptional undue hardship requiring the property owners to go back through the entire preliminary plan process over again, which would be both wasteful and unnecessary in light of the unfortunate circumstances that have caused the delay in the recordation of the plat.

Thank you for your consideration of this request on behalf of Robert N. and Betsy A. Stabler.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK/dlt

Enclosures

cc: Al Blumberg