



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

MCPB
ITEM #
2/1/07

DATE: January 16, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

Richard Weaver, Planning Coordinator *RAW*
Development Review Division

FROM: Dolores Kinney, Senior Planner *DK* (301) 495-1321
Development Review Division

SUBJECT: Request for an extension to the validity period – Preliminary Plan No. 120030140 – Hillmead/Bradley Hills – Lots 100 and 101

Recommendation: Extend validity period to May 11, 2007

Discussion:

The Planning Board approved the subject preliminary plan on November 13, 2003 for two one-family residential lots located on south side of Greentree Road, approximately 150 feet west of Ewing Drive. The resolution reflecting the Planning Board's action was mailed on December 11, 2003. Per the conditions of approval, the preliminary plan remained valid for 37-months (January 11, 2007) 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 December 22, 2006, to extend the validity period for Preliminary Plan 120030140, (formerly 1-03014), Hillmead-Bradley Hills (Resubdivision), for 120 days, until May 11, 2007. The extension is requested to afford the applicant adequate time to record the plat.

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 unusual, and unanticipated events, beyond applicant's control as discussed below.

Applicant's Position

The preliminary plan was approved for two lots on November 13, 2003. According to the Applicant's letter dated December 22, 2006, the Applicant chose to withhold platting in order to delay the increased tax obligation. The property was also subject to a lease obligation, which did not expire until mid 2006. Rather than violate the terms of the lease, the Applicant waited until the lease expired. Subsequent to the expiration of the lease, the Applicant proceeded with the processing of the record plat. During preparation of the record plat, environmental issues pertaining to the tree save plan arose. Coordination between the Applicant and the Environmental Planning Division of Park and Planning to address the tree save issues became time consuming and lengthy. Ultimately, an evaluation by a certified arborist was required. A revised plan was submitted to Environmental Planning on November 9, 2006. The Applicant contends that additional time is needed to resolve the environmental issues associated with the tree save plan.

Staff Position

The request for extension is based on unusual, and unanticipated events, beyond the applicant's control that have prevented timely recordation of the plat. It is staff's determination that the unanticipated delay associated with the tree save plan, as 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 11, 2007, to allow adequate time for all issues to be addressed prior to plat recordation.

Attachments:

Extension Request Letter dated December 22, 2006.

S**utherland**

13938 Layhill Road
Silver Spring, MD 20906
301-871-6527
Fax: 301-438-3139

Rose Krasnow
Development Review Division
MNCP&PC
8787 Georgia Ave
Silver Spring, Md. 20910

December 22, 2006

Re: Preliminary Plan Extension Request
Hillmead/ Bradley Hills – Lots 100 & 101
Preliminary Plan: 1 -03014
Record Plat: 2-05034
NRI/FSD: 4-03057E
Job # S-18-01

Dear Ms. Krasnow:

At the request of the owner of the above referenced property, we are hereby requesting an extension of 120 days of the Preliminary Plan approval listed above. Due to lease conditions at the time, Ms. Balaban elected to wait to a later date to record the new lots so that increased taxes would not be generated. Those lease conditions were settled in 2006 and we were instructed to proceed with the plat. We had, in fact already prepared the record plat and had submitted that plat to Park and Planning, D.E.P. as well as D.P.S. for an initial review. The comments from those reviews have been addressed and the plat re-submitted for review by those agencies.

This preliminary plan was initially submitted in late 2002 showing a three (3) lot configuration. In September 2002 a “small property exemption” was approved by Environmental Planning for that configuration. A copy of that memo is herewith attached. In November 2003, the Planning Board approved a two (2) lot subdivision for this property. The Planning Board Opinion was mailed on December 11, 2003 and the Preliminary Plan signed by staff on December 19, 2003 (copies attached).

After being instructed by the owner to proceed with the plat, we had an undated, detailed topographic survey done by Potomac Valley Surveys so that detailed site plans and other improvement plans could be prepared. When reviewing the approval conditions, a number of questions arose about the trees to be saved and the tree save plan. Attempts were made to contact Environmental Planning to discuss these issues but since the original plan reviewer had left the Agency it was difficult to obtain and answer to our questions. Finally it was suggested by your staff that we contact _____ for an answer. A letter with attachments was hand carried to _____ office on November 9, 2006, requesting a review of the conditions of approval and answers to our inquires. After waiting a reasonable amount of time, we then attempted to contact Mr. _____ to determine his response. Messages were left on a number of occasions but no response was received. Finally, after a couple of attempts to visit the office to speak to _____, we were able to speak to him on the afternoon of December 19, 2006,

Page two

almost six (6) weeks after the letter was submitted to him. In a very quick meeting, stated that they were "very busy and only had time to respond to emergencies", that he did not remember the letter from us and would pull the file if he could find where it was stored. After searching in a number of files the file folder was found, he took a quick look and stated that we needed to hire an Arborist to prepare a plan to address the conditions. We re-submitted the November 9, 2006 package with a request for a written response.

Realizing that all of this will take more time than is left in the approval period, we are herewith requesting that an extension of the approval period be granted by the Planning Board so that the environmental issues regarding the trees can be addressed. We realize that time is short on this request but we feel with the delays in response to our request for clarification have left us no choice but to request the extension of 120 days.

We have attached copies of the earlier three (3) lot plan, approvals obtained to date, a copy of the up-dated topography survey with proposed house grading, copy of the record plat and other support data.

Kindly review this request at your earliest convenience and should you have any questions or wish to discuss any aspect of this request, please do not hesitate to call.

Sincerely,



M. Lee Sutherland

Cc; K. Balaban
S. Abrams, Esq.