



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

**MCPB
ITEM #
5/22/08**

DATE: May 9, 2008

TO: Montgomery County Planning Board

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

FROM: *NS*
Neil Braunstein, Planner Coordinator (301) 495-4532
Development Review Division

SUBJECT: Request for reinstatement of the preliminary plan and extension to the validity period – Preliminary Plan No. 119970220 - Traville

Recommendation: Reinstate the preliminary plan and extend validity period to September 1, 2008

Discussion:

The subject preliminary plan was approved by the Planning Board on September 11, 1997, for six lots to contain a total of 750 multiple-family dwelling units and 750,000 square feet of commercial, office, and research and development uses, on 192.1 acres of land located in the southeast quadrant of the intersection of Darnestown Road (MD 28) and Travilah Road. The resolution reflecting the Planning Board's action was mailed on September 12, 1997. The applicant submitted an application to amend the plan in 2000. The amended preliminary plan was approved by the Planning Board on March 8, 2001, for ten lots to contain a total of 750 multiple-family dwelling units and 1,322,500 square feet of retail, office, and research and development uses. Because the project was to be developed in phases, the Planning Board approved a phasing schedule for the recordation of nine plats to cover the property that was the subject of the preliminary plan approval. Eight of the plats that relate to this preliminary plan have been recorded within the time limits established in the preliminary plan approval; one remains to be recorded. The one remaining plat to be recorded is for one 1.68-acre lot for the construction of a 12,000-square foot day care center. Pursuant to the phasing schedule established in the conditions of approval, the preliminary plan remained valid until January 1, 2008 unless,

prior to that date, the applicant either recorded a plat for this last unplatted portion of the land shown on the approved plans or submitted a timely request to extend the validity period.

Because the applicant's request to extend the preliminary plan validity period was submitted on March 31, 2008, after expiration of the preliminary plan, the extension request also includes a request to reinstate the expired plan. Attached, please find the applicant's request dated March 31, 2008 to extend the validity period for Preliminary Plan 119970220, (formerly 1-97022), Traville, for 12 months, until December 30, 2008. The extension is requested to afford the applicant adequate time to record the plat.

Pursuant to Section 50-35(h)(3)(c) of the Subdivision Regulations, the Planning Board may reinstate an expired plan and establish a new validity period where practical difficulty or undue hardship is demonstrated by the applicant. Further, 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 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 reinstatement and extension based on certain unanticipated delays in processing of the associated site plan that have resulted in significant delays to the project, as discussed below.

Applicant's Position

Since approval of the amended preliminary plan on March 8, 2001, and acquisition of the property by the current applicant, Shangri La LC, the applicant has been taking the steps necessary to record the plat. According to the applicant's letter of March 31, 2008, however, unexpected delay arose in processing the associated site plan application. As shown in the timeline included in the applicant's letter, lengthy staff delays, including several staff reassignments, took place. The certified site plan was finally signed on March 4, 2008, which now allows the plat to be recorded.

Staff Position

The request for extension is based on unanticipated delays by MNCPPC staff in processing the associated site plan application. The plat could not be recorded until after approval of the certified site plan, which was signed on March 4, 2008. 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. Further, it is staff's determination that not reinstating the plan and requiring a new preliminary and site plan application and a new adequate public facilities (APF) test would constitute undue hardship for the applicant and would provide no benefit to the public, particularly because the Planning Board recently approved a six-year extension to the APF validity period.

Although the applicant's request is for a 12-month extension, staff believes that a nine-month extension, to September 1, 2008, provides sufficient time for recordation of the plat. Therefore, staff recommends that the preliminary plan be extended to September 1, 2008.

Attachment:

Extension Request Letter dated March 31, 2008.



Loiederman
Soltesz Associates, Inc.

March 31, 2008

VIA HAND DELIVERY

Ms. Cathy Conlon
Maryland-National Capital Park and Planning Commission
Development Review
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Traville – Preliminary Plan 1-97022R- Request for Extension
Day Care Facility
1438-00

Dear Ms. Conlon:

On behalf of Shangri La, LP, owners of the Traville Day Care site, we are writing to request an extension to the Record Plat Validity Period outlined in the Preliminary Plan for Traville, as it relates to this project. As noted in the revised Preliminary Plan Opinion for Traville dated 4/23/01, the current Record Plat Validity Period extended to 01/01/08. Please note the Adequate Public Facilities Agreement is valid until 9/11/09, and is the subject of a separate extension request currently under review at MNCP&PC. In support of this request, we offer the following information.

This letter includes some general information regarding the status of the plats and new development for Traville, and some information regarding the plans review process specific to the Day Care Center. Section A lists a summary of the Record Plat status for all of Traville. As can be seen, all of the plats for Traville have been recorded, except for the Day Care parcel. Section A also notes the building development constructed to date. Section B is an overview of the the project history for the Day Care site.

Section 50-35(h)(3)(d) of the Subdivision Regulations states that the Planning Board may grant an extension to the validity period 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 or conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created or facilitated 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.

It is clear from reviewing the information in Section B that the owner of the Day Care has been active over the last 3 years in pursuing the required plan approvals to allow for the Site Plan and Record Plat to be approved and to commence construction. The timeline has been adversely affected by several factors, including the time that was required to address issues with the adjacent property owners and the time that was required to process a Site Plan from the initial application through Resolution Letter approval (in this case, 21 months).

The timeline outlined in Section B highlights numerous milestones related to the Site Plan process. As noted, staff requested that the applicant contact the owner of HGS property, to determine if a new driveway could be added from the HGS property to serve the Day Care. After considerable time, HGS representatives indicated they could not support this request. This delay impacted the Site Plan submittal. After the Site Plan was submitted, the applicant contacted the owner of the Senior Apartments to discuss a possible driveway access point from their property, which was also not favored. This process required additional time and delayed the Site Plan process.

Please note that the Site Plan was submitted on March 30, 2006, approved by the Board on June 7, 2007, and the Resolution Letter was approved by the Board on December 6, 2007. The Record Plat was submitted to MNCP&PC in September, 2008. The plat was reviewed by staff and, on a technical basis, was ready for Planning Board approval. However, the plat could not be approved prior to January 1, 2008 because the Certified Site Plan was not approved, and its approval was dependent on obtaining the approved Site Plan Resolution Letter (and a subsequent staff review of the Certified Site Plan).

Regarding the timing of this request, which is being submitted after January 1, 2008, when the validity period ended, we offer the following:

The original Preliminary Plan Opinion Letter is dated September 12, 1997, and did not make reference to a validity period related to plat recordation. An amended Opinion Letter dated April 23, 2001 (Item 4) lists a three-phase validity period with respect to plat recordation, with the third and last phase ending on January 1, 2008.

The applicant, Shangri La, LC (SLC) operates Day Care Centers. SLC purchased this parcel in 2004, and has since that time pursued the required plan approvals in a timely manner, including the Special Protection Area related requirements, which has allowed SLC to be in a position to begin grading and building construction this spring. SLC is fully aware that the current APFO validity period expires on September 11, 2009. However, while SLC and our office were active in pursuing the Site Plan related requirements and the technical work related to the Record Plat last year, the need to extend the validity period related to the Record Plat phasing was not

identified at that time. The Day Care site is a very small parcel within the large Traville mixed-use development. As noted in Section B which follows, all of the other plats were recorded between 2001 and 2004. The majority of the approved development within these platted parcels has been constructed and are occupied. SLC is now developing the Day Care Parcel without the benefit of the developer and builder interaction which occurred earlier in this project, and was not aware of the Record Plat phasing requirement. However, when assisting another property owner on another matter in February of this year, I took notice of the Record Plat phasing condition listed in Condition 4 of the Opinion Letter dated April 23, 2001. At that time, the Day Care plat was under staff review, but had not been scheduled for the Planning Board. I advised staff of the Development Review Division of my finding, and was advised that we should proceed with this request for an extension. We waited until the Certified Site Plan was signed before making application.

The last paragraph in Condition 4 of the Preliminary Plan Opinion (1-97022R) dated April 23, 2001 reads (after correcting the language to read as intended in that condition):

Phase III – January 1, 2005 to January 1, 2008 – Record Plats must be recorded for the remaining 250 multi-family dwelling units and the remaining 250,000 square feet of mixed commercial/employment development.

On behalf of SLC, we respectfully request that the Planning Board reinstate the validity period and extend the ending date of this particular condition to read as December 31, 2008, which will allow ample time to record the plat.

Please note that December 31, 2008 remains within the current APFO validity period, which will end September 11, 2009 (and as noted, is the subject of a separate application at MNCP&PC).

A. Record Plat Status:

The following is a summary of the plat recordation information.

Parcel	Plat Recordation Date	Plat	Development to Date
Parcel A, Block A (HGS)	9/13/01	21961	500,000 SF (R&D)
Parcels B, C, F & G, Block A (Retail)	9/17/01	21963	99,229 SF (Retail)
Parcels D, E & H, Block A (Sr. Housing)	9/10/02	22289	230 units (Sr. Housing)
Parcel A, Block B (Avalon Bay)	9/10/02	22290	200 Units (Apartments)
Parcel B, Block B (Avalon Bay)	9/10/02	22291	320 Units (Apartments)
Parcel C, Block B (Open Space)	9/10/02	22292	--
Parcel D & E, Block B (Open Space)	9/10/02	22293	--
Parcels I, J & K, Block A (Willco)	11/18/04	23056	90,009 SF (Office)

B. Overview of Traville Day Care Project History. We have highlighted the key milestones with respect to the MNCP&PC Site Plan process in bold print.

1. Property purchased by Shangri La, LP 8/24/04
2. **LSA & Dr. Ghosh met with MNCP&PC in 2004 to review a Concept Plan. MNCP&PC staff encouraged Dr. Ghosh to contact HGS to discuss whether a new driveway access serving the Day Care Parcel could be added from the existing HGS property.**
3. After a lengthy time period, HGS eventually responded by phone call (in 2005) that they did not favor adding a new driveway from the Day Care into the HGS property.
4. **LSA sent a memorandum to Dr. Ghosh dated 12/15/05 advising him that the timeline for the Site Plan review process at MNCP&PC would be impacted due to the staff burden required to address "Clarksburg related issues."**
5. LSA forwarded a Site Plan for review to Dr. Ghosh on January, 30, 2006. LSA requested an appointment at MNCP&PC to file the Site Plan.
6. **LSA submitted the Site Plan on March 30, 2006.**
7. LSA submitted a copy of the FWQP to MCDPS on 3/1/06.
8. **The MNCP&PC Development Review Committee meeting occurred on 5/8/06.**
9. **LSA met with MNCP&PC staff reviewer Laxmi Srinivas (Temporary Site Plan Reviewer) in June to review the comments.**
10. LSA revised and then formally resubmitted the FWQP to MCDPS on 8/7/06. This design plan proposed to utilize Water Quality Facility No. 1 for water quality controls, based on the original Prel Water Quality Plan approved in 2001.
11. MCPPS responded in a letter dated 8/31/06, and then an email dated 9/20/06, noting the design shown on the plan approved in 2001 was no longer acceptable and additional on-site controls would be required.
12. **At this time, the Temporary Site Plan MNCP&PC Reviewer was reassigned back to Prince Georges County, so for a period of time, a Site Plan Reviewer was not assigned to this project (for approximately 2-3 months).**
13. LSA forwarded a Project Status Letter to Dr. Ghosh on 10/11/06, updating the client that Laxmi Srinivas was no longer working as the Site Plan Reviewer.

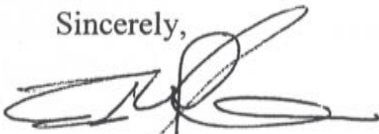
14. **LSA resubmitted the Site Plans to MNCP&PC on October 30, 2006.**
15. As requested by Dr. Ghosh, LSA forwarded a Site Plan to First Centrum (10/04/06) to review the driveway access from the proposed Day Care to the Senior Housing parcel. Mike Milhaupt reviewed the plan and ultimately denied the proposed access point. The plan was revised accordingly.
16. Dr. Ghosh forwarded a letter dated November 23, 2006, which notes the dropoff patterns at an existing Day Care facility, as required to support the parking waiver.
17. LSA forwarded the updated Site Plan to the Fire and Rescue services on December 13, 2006.
18. LSA resubmitted the FWQP to MCDPS on 01/12/07 (after addressing comments and updating the plan).
19. Fire and Rescue approved the plan for emergency vehicle access on 1/17/07.
20. **LSA attended several meetings with MNCP&PC staff in late 2006 and early 2007. Calvin Nelson was assigned as the MNCP&PC staff reviewer (December 2006). MNCP&PC staff agreed to pursue a Planning Board date in the first half of 2007, subject to receiving the prerequisite agency approval letters.**
21. MCDPS approved the FWQP on 3/23/07.
22. **The Site Plan and FWQP were approved by the Planning Board on June 7, 2007.**
23. **Calvin Nelson faxed LSA a draft copy of the Montgomery County Planning Board Resolution Letter on 7/11/07. He later indicated that he forwarded the draft letter to the MNCP&PC legal staff for review.**
24. We contacted Calvin several times over the next few months, inquiring as to the status and when the Resolution Letter would be approved. **The Planning Board ultimately approved the Resolution Letter on December 6.** This is a prerequisite step to the Certified Site Plan approval and then the Record Plat approval.
25. **LSA submitted the Record Plat to MNCP&PC on September 12 (approximately).** Current process does not allow the Record Plat to be submitted until after the Site Plan Resolution Letter is approved by the Planning Board. However, due to the lengthy time frame to obtain an approved Resolution Letter, MNCP&PC staff allows for the plat to be submitted approximately 2 months after the Site Plan hearing, if the Resolution Letter has not been approved, and we followed this approach.

26. The Plat was reviewed by MNCP&PC and MCDPS staff in the fall of 2007, and approved on a technical basis, subject to obtaining the approved Certified Site Plan. The plat was resubmitted to MNCP&PC for approval in December 2007.
27. **LSA met with Robert Kronenburg on 01/04/08 and submitted the Certified Site Plan, with the Resolution Letter added, for staff review.**
28. Calvin Nelson contacted LSA and advised that he had reviewed the plan. LSA met with Calvin Nelson on 01/17/08 to review the comments.
29. LSA resubmitted the Certified Site Plan on 01/22/08.
30. MNCP&PC contacted LSA with some minor comments, which were addressed. The Certified Site Plans were submitted to MNCP&PC on February 20, 2006.
31. **The Certified Site Plans were signed on March 4, 2008.**

Now that the Certified Site Plan is approved, the Record Plat can be recorded.

In advance, thank you for your cooperation in reviewing this request. Please contact this office if we can be of further assistance.

Sincerely,



Ed Wallington
Vice President of Land Development

cc: Dr. Ghosh – Shangri La, LP
Carlos Ostria - LSA