



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

**MCPB**  
**ITEM #**  
**6/19/08**

**DATE:** June 6, 2008

**TO:** Montgomery County Planning Board

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

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

**SUBJECT:** Request for reinstatement of the preliminary plan and extension of the validity period – Preliminary Plan No. 120041040 – Cambodian Buddhist Temple

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**Recommendation:** Reinstate the preliminary plan and extend the validity period to August 25, 2009

**Discussion:**

The subject preliminary plan was approved by the Planning Board on November 4, 2004, for one lot to contain an existing temple, another existing temple with monk's residence, and a proposed 2,345 square foot accessory building on seven acres of land located on the west side of New Hampshire Avenue (MD 650) at the terminus of Green Spring Lane. The resolution reflecting the Planning Board's action was mailed on January 25, 2005. Pursuant to the conditions of approval, the preliminary plan remained valid for 36-months (until February 25, 2008) 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.

Because the applicant's request to extend the preliminary plan validity period was submitted on May 5, 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 May 5, 2008 to extend the validity period for Preliminary Plan 120041040,

(formerly 1-04104), Cambodian Buddhist Temple, for 18 months, until August 25, 2009. 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 unanticipated delay in processing the forest conservation plan, as discussed below.

### **Applicant’s Position**

Since approval of the preliminary plan on November 4, 2004, the applicant has been taking the steps necessary to record the plat. According to the applicant’s letter attached to the extension request, however, unexpected delay arose in processing the associated offsite forest conservation certificate of compliance. After a preparation process that was lengthened by communication delays by MNCPPC staff, the offsite forest conservation certificate of compliance was finally submitted to MNCPPC on August 16, 2007 and approved on February 7, 2008. The offsite forest conservation certificate of compliance documents the use of credits in a forest conservation bank for offsite forest mitigation.

With respect to expiration of the plan, the applicant simply made an error regarding the expiration of the plan. Although preliminary plan validity periods and expiration dates are calculated based on the date that the Planning Board resolution was mailed (36 months from January 25, 2005, in this case), the applicant incorrectly measured the validity period based on the date that the preliminary plan mylar was signed (May 13, 2005). The applicant was surprised to learn that the preliminary plan had already expired before the extension request was submitted.

**Staff Position**

The request for extension is based on unanticipated delays by MNCPPC staff in processing the associated offsite forest conservation certificate of compliance. The plat could not be recorded until after approval of the certificate of compliance, which was approved on February 7, 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 plan application would constitute undue hardship for the applicant and would provide no benefit to the public.

Although the applicant's request is for a 18-month extension, staff believes that a nine-month extension, to November 25, 2008, provides sufficient time for recordation of the plat, because the plat has already been submitted to and reviewed by staff. An extension of one and a half years is excessive to make the final corrections to the plat and record it. Therefore, staff recommends that the preliminary plan be extended to November 25, 2008.

**Attachment:**

Extension Request dated May 13, 2008.

Tan Ser  
The Cambodian Board Member/Architect  
1 Coachmans Ct  
Germantown, MD 20874  
301-540-6372 (home)  
202-719-8156 (office)  
[tanser2002@yahoo.com](mailto:tanser2002@yahoo.com)  
Monday, May 05, 2008

Ms. Cathy Conlon  
Development Review Division  
Montgomery County Department of Parks and Planning  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Ms. Conlon,

I am writing you to request approval of an extension to the Preliminary Plan for the Cambodian Buddhist Temple. We started this project in 2002 and the preliminary plan was approved in 2005. However, Richard A Weaver of the Development Review Division informed me today that our Preliminary Plan expired in February 2008 and may have to be resubmitted. Given the time and energy spent on this effort, the Cambodian community is asking the Department for help in moving the project forward, rather than backward. We understood that the Preliminary Plan would remain valid for 36 months from its initiation date. The only date we are familiar with is its May 13, 2005 approval signed by Delores Kenny, and we are uncertain as to what event occurred in February of 2005 that is being used as the start of the 3-year period.

Last week I spread the good news that the process of building the proposed Stupa is finally moving ahead, based on our finalizing the Offsite Forest Conservation Certificate and our record plat submission to the County. Over a period of several years we have tried to comply with everything that the County has asked of us. However, communications with the Department have been slow, and it seems that many of our email messages and phone calls go unanswered for months, if a response is received at all. We have worked with our civil engineers to resolve many issues over that period, and upon completing arrangements for the required 1.05 acre Forest Conservation we believed that we were finally ready to move forward. The Offsite Forest Conservation Certificate of Compliance was submitted to Environmental Planning on August 16, 2007. The approved document was returned from Environmental Planning on February 7, 2008, after a six-month review by the Department, just as the Preliminary Plan apparently expired. In order to proceed we need your assistance with this requested extension of our Preliminary Plan, and believe our request to be a reasonable one given the time and effort we have already invested in the project and the fact that the expiration apparently occurred just as the County finally processed the Certificate of Compliance. We would be very grateful for any help you can give us, and are anxious to provide any additional information that would make your review of this request easier.

Sincerely



Tan Ser  
The Cambodian Board Member/Architect

CC:  
AB Consultants, Inc  
Stephen D Federline, Environmental Planning.

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Maryland-National Capital  
Park and Planning Commission

Approved Preliminary Subdivision Plan No. 1-04104

At its meeting of 11/4/04

Approval, subject to the following condition

- 1) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits
- 2) Approval under this preliminary plan is limited to an existing free-standing temple, an existing one-story temple with monk's residence, and a proposed 2,345 square foot accessory building and no weekday educational institution, daycare or school.
- 3) Consistent with the 1997 approved and Adopted *White Oak Master Plan*, dedicate and show on the final record plat, right-of-way along New Hampshire Avenue to provide either 60 feet from the roadway centerline, or 120 feet from the opposite roadway right-of-way line.
- 4) Per the Montgomery County Department of Public Works and Transportation (DPWT) letter dated October 8, 2004, provide an easement for the full width extension and termination of Green Spring Lane as a cul-de-sac entirely within the subject property.
- 5) Provide a lead-in sidewalk into the site from New Hampshire Avenue to the existing concrete walk that leads to the existing temple.
- 6) Coordinate with the DPWT, Department of Permitting Services (DPS) and Maryland State Highway Administration (SHA) on any site access/site frontage improvements along New Hampshire Avenue, and on-site parking.
- 7) Record plat and revised preliminary plan to reflect a 10-foot Public Utility Easement (PUE) parallel to New Hampshire Avenue, free and clear of any obstructions, including grading and stormwater management facilities.
- 8) Compliance with the conditions of the MCDPS stormwater management approvals dated May 12, 2004 and September 8, 2004.
- 9) Compliance with conditions of MCDPWT letter dated October 8, 2004, unless otherwise amended.
- 10) 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.
- 11) Other necessary easements.

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.

  
Development/Review Division

5/13/05  
Date