



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Preliminary Plan of Subdivision Livingston of Fort Washington

4-07050

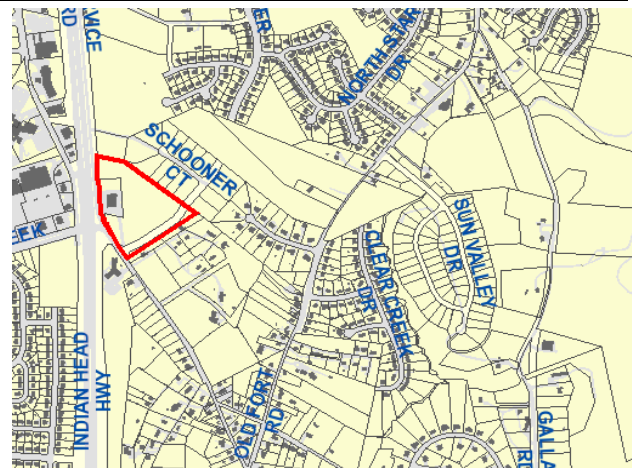
REQUEST	STAFF RECOMMENDATION
Extension of preliminary plan of subdivision validity period.	APPROVAL of a one-year extension

Location: At the northeast corner of the intersection of Livingston Road and MD 210, approximately 105 feet north of Rich Hill Drive.

Gross Acreage:	12.27
Zone:	CGO
Prior Zone:	C-S-C
Reviewed per prior Subdivision Regulations:	Section 24-1704
Gross Floor Area:	80,000 sq. ft.
Dwellings:	0
Lots:	0
Parcels:	5
Planning Area:	80
Council District:	08
Municipality:	N/A

Applicant/Address:
Livingston of Fort Washington, LLC
P.O. Box 581
Riva, MD 21140

Staff Reviewer: Antoine Heath
Phone Number: 240-245-5251
Email: Antoine.Heath@ppd.mncppc.org



Planning Board Date:	01/19/2023
Planning Board Action Limit:	N/A
Mandatory Action Timeframe:	N/A
Memorandum Date:	01/04/2023
Date Filed:	11/21/2022
Informational Mailing:	N/A
Acceptance Mailing:	N/A
Sign Posting Deadline:	N/A

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

January 4, 2023

MEMORANDUM

TO: The Prince George's County Planning Board

FROM: Antoine Heath, Planner II, Subdivision Section
Development Review Division *AH*

VIA: Sherri Conner, Supervisor, Subdivision Section
Development Review Division *SC*

SUBJECT: **Preliminary Plan of Subdivision 4-07050
Livingston of Fort Washington
Extension Request**

This preliminary plan of subdivision (PPS) was approved by the Prince George's County Planning Board on December 6, 2007, and the resolution of approval was adopted on January 3, 2008 (PGCPB Resolution No. 07-233). The PPS was approved for five parcels and is valid through December 31, 2022, due to prior legislative extensions of the validity period, as well as a previously approved extension request filed in October 2021. By letter dated November 17, 2022 (then later revised on December 29, 2022), Arthur J. Horne, Jr. of the Law Offices of Shipley and Horne, P.A., representing Livingston of Fort Washington, LLC, requests a one-year extension until December 31, 2023. This is the applicant's second extension request.

In accordance with Section 24-1704 of the Prince George's County Subdivision Regulations, subdivision approvals of any type remain valid for the period of time specified in the Subdivision Regulations under which the subdivision was approved. Extensions of time, which were available under those Subdivision Regulations, shall remain available. Section 24-119(d)(5)(A) of the prior Subdivision Regulations authorizes the Planning Board to grant an extension to the normal expiration of a PPS:

Section 24-119(d):

- (5) An approved preliminary plan of subdivision shall remain valid for two (2) years from the date of its approval, unless an extension of the validity period is granted.**

(A) Extensions of the validity of an approved preliminary plan may be granted by the Planning Board provided:

(i) The request is filed prior to the expiration of the preliminary plan approval;

Staff finds the above criteria (i) to be met, as the extension request was filed on November 17, 2022, prior to its expiration date on December 31, 2022.

(ii) The preliminary plan remains in conformance with all the requirements of Subtitle 27 applicable to the subject property;

Staff finds the above criteria (ii) to be met, as the subdivision was approved, in accordance with the prior Commercial Shopping Center zoning of the subject property, which remains applicable under the prior Prince George's County Zoning Ordinance.

(iii) Two (2) years is not sufficient time to prepare the final plat(s);

From the time of PPS approval until now, the applicant has benefited from multiple legislative extensions via the Prince George's County Council. This includes Prince George's County Council Bills CB-7-2010, CB-8-2011, CB-70-2013, CB-80-2015, CB-98-2017, CB-60-2018, and CB-74-2020. These extensions were enacted to allow a PPS to remain valid for an extended period of time, due to a weakened market from the nationwide 2007–2009 recession, the poor market conditions that followed, and the COVID-19 pandemic.

The applicant states that extensive delays in obtaining a right-of-way dedication determination from the Maryland State Highway Administration (SHA), for the subject property's frontage on MD 210, has prevented the applicant from platting the property. Condition 16 of the PPS requires Parcels D and E, comprising approximately 3.65 acres of the subject site, be placed in reservation for a period of not less than three years, to commence upon platting the reservation, unless the Planning Board determines that the reservation no longer appears necessary.

In order to preserve the development rights of the property, the applicant filed Detailed Site Plan DSP-20030 in September 2020, but this DSP was not accepted until October 13, 2022, due to issues surrounding right-of-way reservation on the property. SHA made a decision on the right-of-way determination in 2021, in a letter stating that SHA does not anticipate acquiring the land within three years. As a result of reservation applicable to the property and the legislative extensions, staff finds that two years has not been sufficient time to prepare final plats, and that the above criterion has been met.

(iv) The applicant is not unduly delaying the filing of the final plat(s);

The applicant states that they have not delayed the filing of the final plats and has indicated that factors outside their control have led to their inability to proceed with preparation of the final plats. The applicant states that the extensive time required in obtaining a right-of-way determination from SHA, for Parcels D and E of the subject property, delayed the acceptance of DSP-20030, which was filed by the applicant in 2020, and that SHA only recently rendered a decision on the right-of-way in 2021.

Staff agrees that the applicant is required to plat Parcels D and E of the subject site in reservation, in accordance with Condition 16 of PPS 4-07050. The applicant provided an exhibit dated July 19, 2016, of correspondence from staff of the Maryland-National Capital Park and Planning Commission. In this correspondence, the applicant and staff discussed the reservation expiration, and its effect on the property, given the time that had passed since the PPS approval. However, Condition 16 of the PPS required that the three-year reservation period would not commence until the reservation was platted, but also allowed the applicant to request cancellation of the reservation from the Planning Board if the reservation no longer appeared necessary. The reservation was never platted and so, upon filing of the DSP, the applicant began pursuing the agreements of SHA and the property owner, in order to request the Planning Board cancel the reservation. The agreement for cancellation of reservation did not receive final correspondence from SHA until February 2021.

The applicant also filed a draft plat of subdivision for the subject property in 2020, which has been reviewed by staff to the extent possible and was only awaiting the approval of DSP-20030, in order to move forward to final plat approval. DSP-20030 was approved by the Planning Board on December 15, 2022, however, the DSP must also be reviewed for approval by the Prince George's County District Council per Condition 6 of the PPS (as required by the Zoning Map Amendment A-9739-C), before final plat. Staff finds that the applicant is not unduly delaying the filing of the final plat, and that the above criteria has been met.

(v) The validity of a preliminary plan consisting of less than one hundred (100) residentially-zoned lots or less than one hundred (100) gross acres of commercially or industrially-zoned land or land designated for nonresidential uses in any CDZ or M-X-T Zone shall not be extended more than one (1) year from the normal expiration of the approved preliminary plan;

- (vi) The validity of a preliminary plan consisting of more than one hundred (100) residentially-zoned lots or more than one hundred (100) gross acres of commercially or industrially-zoned land or land designated for nonresidential uses in any CDZ or M-X-T Zone shall not be extended more than two (2) years from the normal expiration of the approved preliminary plan;**

Of the above provisions, Section 24-119(d)(5)(A)(v) is applicable to the subject property. A one-year extension to December 31, 2022 was previously approved by the Planning Board on January 13, 2022. However, the applicant has filed this extension request in accordance with the provision below.

- (vii) A final extension of up to two (2) years from the expiration of a previously approved extension(s) may be granted upon the applicant's submission to the Planning Board of a letter from a permitting agency (including, but not limited to the Washington Suburban Sanitary Commission, U.S. Army Corps of Engineers, Maryland Department of Water Resources Administration, Prince George's County Department of Permitting, Inspections, and Enforcement) indicating:**

- (aa) The date of application for the required permit;**
- (bb) That the issuance of the required permit is delayed due to circumstances beyond the control of the applicant;**
and
- (cc) The approximate date of issuance of the required permit.**

As stated above, the applicant has experienced delays regarding a determination for the property's required right-of-way reservation and future acquisition along the frontage along MD 210. The master plan right-of-way cannot be used for development of the property until and unless the reservation of the right-of-way expires, or is otherwise determined not to be necessary. The right-of-way is under the permitting authority of SHA and would be a major improvement that would have had a substantial effect on the design of the project.

A letter was provided from SHA in 2021, confirming that reservation of the right-of-way is not desired, and SHA does not intend to purchase the property in the next three years for development of the interchange. This determination was needed to obtain a building permit for the site. Accordingly, the applicant proceeded to file DSP-20030, for development of the site, which was approved by the Planning Board on December 15, 2022. A permit will be required for development of the site following and in accordance with the DSP and final plat approvals. Staff finds that issuance of the required

permits has been delayed due to circumstances beyond the control of the applicant, given the legislative extensions based in market conditions, the COVID-19 pandemic, and the necessary approval from SHA (permitting authority over the right-of-way) needed for development of the site to move forward, and that the above criterion is met. The applicant has requested a one-year extension to complete the approvals necessary for issuance of the building permits.

The applicant also requested a three-year extension of the PPS, as an alternative, in accordance with Section 24-3402(e)(1)(A)(x) and (xi) of the current Subdivision Regulations, which provides that:

“An approved preliminary plan of major subdivision is valid for six years from the date of its approval, unless the time of validity is extended at the time of approval, at the discretion of the Planning Board, for an appropriate amount of additional time that does not exceed a 12-year total validity period. Two extensions of the validity period for up to three years each may be granted by the Planning Board in accordance with Section 24-3402(e)(1)(A)(xi), Extensions, prior to the end of a validity period.”

Staff finds the above criterion is not applicable and cannot be applied to the subject PPS, which is valid, in accordance with the prior Subdivision Regulations only. In accordance with Section 24-1704 of the current Subdivision Regulations, subdivision approvals of any type remain valid for the period of time specified in the Subdivision Regulations under which the subdivision was approved. Extensions of time, which were available under those Subdivision Regulations, shall remain available. Therefore, extensions of the validity period should be reviewed and approved in accordance with the prior Subdivision Regulations in this instance.

Pursuant to the findings presented above, staff recommends that the Planning Board approve the requested one-year extension, pursuant to Section 24-119(d)(5)(A) of the prior Subdivision Regulations.