

Prince George's County Council Agenda Item Summary

Meeting Date: 6/2/2009
Reference No.: CB-008-2009
Draft No.: 2
Proposer(s): Dean
Sponsor(s): Dean, Bland
Item Title: An Subdivision Bill concerning validity periods for Preliminary Plans of Subdivision for the purpose of temporarily suspending or tolling the validity periods of all approved applications for Preliminary Plans of Subdivision that were in a valid status as of January 1, 2009.

Drafter: Karen T. Zvakos, Legislative Officer
Resource Personnel: Nell Johnson, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented:	3/3/2009	Executive Action:	6/4/2009 S
Committee Referral:	3/3/2009 - PZED	Effective Date:	6/4/2009

Committee Action: 3/18/2009 - HELD
4/1/2009 - FAV(A)

Date Introduced: 4/14/2009
Public Hearing: 6/2/2009 - 10:00 AM

Council Action (1) 6/2/2009 - ENACTED
Council Votes: MB:A, WC:A, SHD:A, TD:A, CE:-, AH:A, TK:-, EO:A, IT:A
Pass/Fail: P
Remarks:

AFFECTED CODE SECTIONS:

24-119

COMMITTEE REPORTS:

PLANNING, ZONING & ECONOMIC DEVELOPMENT

Date 4/1/2009

Committee Vote: Favorable as amended, 4-0 (In favor: Council Members Dean, Bland, Dernoga, and Harrison)

Staff informed the committee that no additional changes had been made to Proposed Draft-2 (DR-2) of CB-7-2009 or CB-8-2009.

Alan Hirsch addressed the committee in response to concerns raised at the March 18, 2009 committee meeting regarding the effect of CB-8-2009 on collection of the public safety surcharge fees. Mr. Hirsch provided the following detailed analysis:

Several Development Activity Monitoring System (DAMS) data runs were performed to isolate information to provide a realistic assessment of the number of preliminary plan applications that could reasonably be considered in jeopardy of expiration and the magnitude of the issue raised by Council Member Dernoga.

The first DAMS run identified 208 Preliminary Plans of Subdivision that had or have a validity period as of January 1, 2009. From that listing of 208 applications, 13 were identified as approved prior to July 1, 2005. From that listing of 13 applications, 10 were identified as consisting of 400 or more lots or dwelling units. From the remaining list of three applications, two were identified as having proceeded to final plat leaving only one that appears to consist of less than 400 lots or dwelling units and would have an initial validity period of less than six years. Given the application number of that one last remaining case (4-00064), further inquiry seemed appropriate based on its approval date in September of 2001.

Preliminary Plan of Subdivision 4-00064 was approved for the Transnational Law and Business University. Although the plan did not propose any dwelling units for the one parcel to be created, it did meet the criteria of being "...more than one hundred and fifty (150) gross acres of commercially or industrially zoned land or land designated for nonresidential uses in any CDZ..." and was therefore entitled to the initial six-year validity. Furthermore, the Public Safety Surcharge is not applicable to non-residential building permits and the property owner has authorized the submission of a new preliminary plan application for this property that does propose residential development that would generate permits subject to the payment of the surcharge.

The amount of extensions for 400 or more lot or dwelling unit preliminary plans is not limited if, in the judgment of the Planning Board, the criteria for granting such extensions is met. From the list of 10 applications that are 400 or more lots or dwelling units and were approved prior to July 1, 2005, a significant majority (seven) have progressed to partial or full final plat. The 223 final plats resulting from these seven applications have already vested 3,452 future dwelling units. This level of progress generally supports the contention that 400 or more lot or dwelling unit preliminary plan applications approved prior to July 1, 2005 are not in a posture of imminent expiration and therefore in jeopardy of losing the exemption to paying the surcharge at the time of eventual building permit issuance if extensions are sought in accordance with the Ordinance. This analysis of the specific applications involved also supports the proposition that they are not in general need of the extended validity periods that would be afforded by the approval of CB-8-2009 and should therefore not be penalized by any additional provisions that would seek to require a surcharge payment for which they are currently exempt.

Council Member Dernoga expressed concern regarding current policies for validity periods for applications of 400 or more lots or dwelling units and requested that Mr. Hirsch provide further clarification and explanation of these policies at a future committee meeting.

Based on Mr. Hirsch's analysis and determination that this legislation would not affect how or when the County collects public safety surcharge fees for certain applications, the committee voted to support Proposed DR-2 of both Council Bills.

PLANNING, ZONING & ECONOMIC DEVELOPMENT

Date 3/18/2009

Held in committee.

The committee discussed CB-7-2009 and CB-8-2009 simultaneously due to their related subject matter. CB-7-2009 (Draft-1) temporarily suspends the validity periods for all approved Detailed Site Plans and Specific Design Plans, and CB-8-2009 (Draft-1) temporarily suspends the validity periods for all approved Preliminary Plans of Subdivision that are currently in a valid status. In accordance with Draft-1 of both bills, the validity periods will be temporarily suspended until April 15, 2011.

Staff presented Proposed DR-2s for CB-7-2009 and CB-8-2009 to change language in the purpose clause from "are currently in a valid status" to "were in a valid status as of January 1, 2009." This change was also made on page 2, lines 2 and 11 of CB-7-2009 (Proposed DR-2) and page 3, lines 2 and 10 of CB-8-2009 (Proposed DR-2). The last line of Section 1 in each bill (page 3 of CB-7-2009 and CB-8-2009) was also amended in Proposed DR-2 to change "April 15, 2011" to "December 31, 2010."

Section 2 of CB-7-2009 was changed from the following language in Draft-1:

“BE IT FURTHER ENACTED that the suspension of the validity period for a given application shall only be applied if the application is, at the date of adoption of this Ordinance, in an active, current validity period. This suspension shall not be applied to any application where a validity period has expired prior to the date of the adoption of this Ordinance or to any application whose validity period begins after the date of the adoption of this Ordinance” to the following revised language in Proposed Draft-2:

“BE IT FURTHER ENACTED that the suspension of the validity period for a given application shall only be applied if the application was in an active, current validity period as of January 1, 2009. This suspension shall not be applied to any whose validity period begins after the date of the adoption of this Ordinance.”

Council Member Dean, the bill’s sponsor, informed the committee that the change in Proposed DR-2 to grandfather certain applications which were valid as of January 1, 2009 is based on when discussions concerning suspending or tolling validity periods initially commenced, and the change in the end date for the tolling period from “April 15, 2011” to “December 31, 2010” ensures that the extension of validity periods does not exceed past the current County Council’s term of office.

Council Member Olson inquired about the number of plans which would be affected by the legislation and Council Member Dernoga expressed concern regarding the affect of CB-8-2009 on collection of public safety surcharge fees. Council Member Dernoga also questioned whether the applicants of the plans for which validity periods will be extended would be willing to meet new requirements which may be different than those in effect when their plans were approved and still valid. He commented that some preliminary plan applications that may be ready to expire are being helped by this legislation and that if they were left to expire and have to refile, permits resulting from the new applications would then be subject to pay the surcharge. Additionally, Mr. Dernoga suggested a possible amendment to create additional language in CB-8-2009 that would provide for the extensions to applications that are currently exempt from paying the surcharge, but would remove the exemption. The intention would be to not make a project go through the expense of refilling an application, but would capture the surcharge money that that application is currently not required to pay.

Bill Hunt, of Audits and Investigations, informed the committee that \$794,000 and \$22,700, was collected in public safety surcharge fees in FY08 and FY09, respectively.

Alan Hirsch, M-NCPPC Subdivision Section, informed the committee that the Planning Department’s Information Management Division ran a program on the Development Activity Monitoring System on February 23, 2009 (including preliminary plans, Detailed Site Plans (DSP) and Specific Design Plans (SDP), approximately 508). The program run identified 8 DSPs and no SDPs that are set to expire prior to the anticipated date of action on this legislation in mid-April. The run, however, would not have captured any DSPs or SDPs that may have expired between January 1, 2009 (date included in Proposed DR-2) and February 22, 2009. Mr. Hirsch noted that it would be difficult to obtain this additional date in a timely manner.

The Planning Board submitted a letter to the committee in support of CB-7-2009 and CB-8-2009. The Office of Law determined that these Council Bills are in proper legislative form with no legal impediments to their enactment.

Tom Haller, representing MTM Builders, and Tom Farasy, representing the Maryland National Capital Building Industry Association spoke in support of CB-7-2009 and CB-8-2009. Catharine Taggart-Ross and Kamita Gray addressed the committee in opposition to both Council Bills.

The Prince Georges County Association of Realtors submitted a letter in support of CB-7-2009 and CB-8-2009.

The legislation was held in committee to allow time for M-NCPPC staff to provide data on the impact of the proposed legislation on collection of the public safety surcharge fees.

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

This uncodified bill will temporarily extend the validity periods for approved applications for Preliminary Plans of Subdivision until a date certain and is not intended to affect any other provisions contained in Section 24-119 related to the extension of preliminary plans.

CODE INDEX TOPICS:

INCLUSION FILES:
