



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

MCPB
ITEM #
3/1/07

MEMORANDUM

DATE: February 16, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Development Review Division

Catherine Conlon, Subdivision Supervisor
Development Review Division *CC*

FROM: Richard A. Weaver, Coordinator
Development review division *RAW*

SUBJECT: Request for an extension to the validity period – Preliminary Plan No. 12003110A, Cabin Branch

STAFF RECOMMENDATION: Grant eighteen (18) month extension to Stage I until January 22, 2009 and eighteen (18) month extensions to each successive stage.

BACKGROUND

The Planning Board approved the preliminary plan for Phase I of Cabin Branch on June 3, 2004. The Opinion for the project (Attachment A) was mailed on June 22, 2004 approving 1600 residential units, 1,538,000 square feet of commercial space and 500 elderly housing dwelling units spread across 535 acres. The approval was phased over four stages with each stage having a three-year validity period and a specified number of residential units and commercial square footage. The validity period for Stage I was for 37 months, or July 22, 2007, with each stage extended out from that date in three-year increments culminating in the expiration date of Stage IV, 145 months (12 years) from the date of mailing of the Opinion, or July 22, 2016.

The Planning Board's approval of the Preliminary Plan required, by condition, that an Infrastructure Plan be approved prior to Site Plan approvals. That Infrastructure Site Plan was submitted in October 2004. The Infrastructure Plan was required because the project is so large that the Board believed there needed to be a single plan, approved by all appropriate review agencies and ultimately the Board, that concentrated on the roads, water and sewer lines, parks and stormwater management for the site. In anticipation of an approval of the Infrastructure Plan, four individual Site Plan applications have been submitted to Park and Planning for the Property. An amended Preliminary Plan has also been submitted to capture remaining development for the property that was not possible at the original approval due to Policy Area limitations.

DISCUSSION OF THE EXTENSION

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 (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 memorandum seeks the extension based on both: 1) delays, subsequent to the approval of the plan, and essential to Applicant's ability to perform the terms and conditions of the plan, which have materially prevented the timely validation of the plan, and 2) on significant, unusual and unanticipated events that have occurred beyond the Applicant's control which prevent timely validation of the plan.

Applicant's position

By letter dated January 2, 2007 (Attachment B), the Applicant makes a timely request to extend the validity period for three years for each of the four stages approved by the Planning Board. The applicant's letter cites certain delays, subsequent to the Board's approval, that have lengthened the time it has taken to complete the Infrastructure Plan approval process, which in turn has prevented the individual Site Plans from proceeding to the Planning Board. The applicant states that it has taken an inordinate amount of time to secure approvals by the Montgomery County Department of Permitting Services (MCDPS) for the Water Quality Plan. This is in part due to the nature of the neo-traditional development which has structures close to the street and requires that some stormwater management water quality facilities be located

within the public road rights-of-way. These facilities require approvals and coordination with the Montgomery County Department of Public Works and Transportation (MCDPWT). Further, since Montgomery County Fire and Rescue Services (MCFRS) now take a more active role in plan review, plans had to be re-submitted to MCFRS to show compliance with their requirements. The applicant believes they have made their best effort to proceed diligently with these reviews, but they are taking an inordinate amount of time. The applicant believes this delay is justification for their extension request.

The applicant's letter also refers to the review of the Clarksburg Town Center plan and issues related to it, as a significant, unusual and unanticipated event that they believe has slowed their approval process. The letter argues that this event is beyond the Applicant's control and that it has impaired the ability to validate the plan.

Staff Position

Staff supports extension of the preliminary plan validity and phasing schedule, but not for the three years requested by the applicant. Staff acknowledges that the size and neo-traditional design of the proposed plan, combined with Special Protection Area (SPA) water quality plan requirements, result in an unusually complex review. The additional requirement for the approval of an Infrastructure Plan further complicates matters. In staff's opinion, this complicated review and the number of different plans and agencies involved, have resulted in unexpected delay of the project; but not enough to warrant three additional years of validity. Instead, staff recommends an 18-month extension.

In staff's opinion, a shorter extension is more commensurate with the delays that have actually been experienced due to forces outside the applicant's control. Park and Planning staff have been involved with meetings on the water quality plan with county agencies since summer 2005, approximately eighteen (18) months ago. Hence, we are basing our recommendation on this timeframe. Staff supports an eighteen (18) month extension to all four stages of the Phase I approval. The three-year extension that the applicant requests is excessive and is not representative of the actual delays experienced. The extension should commence from the current expiration dates of each stage, i.e. eighteen (18) months from July 22, 2007 for Stage I.

The issues surrounding Clarksburg Town Center may have changed the pace of the review process for Park and Planning staff, however, staff has accommodated the Cabin Branch team when meetings were requested and continued to be involved in the process. The Site Plans have received continued attention from staff and have not remained idle. Just how the Clarksburg Town Center issues have affected the review of other county agencies is unknown.

CONCLUSION

It is staff's determination that delays, which occurred during the Infrastructure Plan review, are reasonable justification upon which the Planning Board can base the approval of a limited extension of the current validity period pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. Staff, therefore recommends that the Stage I of the preliminary plan be

extended eighteen (18) months to January 22, 2009, and each subsequent stage be extended similarly to allow adequate time for Site Plans to be approved and for plats to be recorded.

Attachments:

Attachment A – January 2, 2007 extension request letter

Robert R. Harris
301 215 6607
robert.harris@hklaw.com

January 2, 2007

Dr. Royce Hanson
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Cabin Branch (Preliminary Plan No. 1-03110A)

Dear Chairman Hanson:

We represent Cabin Branch Management, LLC, the developer of this project. By Opinion dated June 22, 2004, the Montgomery County Planning Board approved this Preliminary Plan for 1,600 residential dwelling units, 1,538,000 square feet of commercial space and 500 dwelling units of elderly housing. The approval provided for the development to proceed in four roughly equivalent stages, with the first stage expiring 37 months from the date of the Opinion (i.e. July 22, 2007) and the remaining three stages expiring in successive three year periods. In order to validate the various stages of development, the Preliminary Plan Opinion calls for record plats to be recorded for each such stage, which first requires approval of an Infrastructure Site Plan covering the entire property and then individual Site Plans for the actual development within that stage.

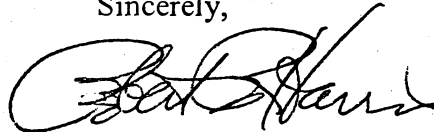
As your Staff is aware, the Applicant has been working diligently since approval of the Preliminary Plan to complete the requirements for validating each stage of the development. We filed the Infrastructure Site Plan in October, 2004, shortly after approval of the Preliminary Plan, and have been working on all aspects of that approval ever since then. That Infrastructure Plan, however, has required approval from the Department of Permitting Services (DPS) of a Final Water Quality Plan which itself has required various prerequisite approvals from the Department of Public Works and Transportation and others. Despite our continued efforts, DPS still has not completed its review and approval of the Water Quality Plan at this time. Accordingly, we have been prevented from proceeding with the Infrastructure Site Plan approval. That, of course, has prevented us from obtaining the individual Site Plan approvals which themselves are required before recording the plats. The result is that delays, subsequent to approval of the plan, essential to the Applicant's ability to perform the terms and conditions of that plan, have materially prevented Applicant from validating the plan. In addition, in the past year, the Planning Board and other County agencies

have been focused on issues arising from the Clarksburg Town Center review resulting in projects moving much more slowly through the approval process. It is now apparent that significant, unusual and unanticipated events have occurred beyond the Applicant's control which have impaired Applicant's ability to validate the plan within the time initially allotted.

Applicant is taking every possible step to move this project forward. Presently, we are hoping to have a Planning Board date on the Infrastructure Site Plan in February, 2007, and we then hope to follow with individual Site Plan approvals. (Those plans already are on file and have been waiting approval of the Infrastructure Site Plan). Equally important, based on the Preliminary Plan, the Applicant has acquired properties required for implementing road improvements that are a condition of the approval, has obtained all of the approvals for extension of a major sewer line to serve the property and has begun construction of that sewer line. The Applicant has spent many hundreds of thousands of dollars implementing the Preliminary Plan to the extent possible at this time and is ready, willing and able to complete the Preliminary Plan validation process as soon as governmental approvals can be obtained.

Based on these circumstances, we ask that the phasing schedule be extended or revised by continuing Stage 1 for an additional three year period (from July 22, 2007 to July 22, 2010) with the remaining stages following in successive three year periods. We are submitting with this letter, a complete application form, a copy of the Preliminary Plan Opinion, 3 copies of the approved Preliminary Plan, a list of the adjacent and confronting property owners and a check in the amount of \$1,390 to cover the filing fee.

Sincerely,



Robert R. Harris

cc: Rose Krasnow
Cathy Conlon
Rich Weaver
Robert Kronenberg
Mike Conley
Stan Aldridge
Larry Walker
Benson Klein
Will Collins
John Brundage