



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

MCPB
ITEM #
11/13/08

DATE: October 31, 2008

TO: Montgomery County Planning Board

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

FROM: Richard Weaver, Planner Coordinator (301) 495-4544 *RAW*
Development Review Division

SUBJECT: Request for an extension to the validity period – Preliminary Plan No.
12005007E– Kingsview Knolls

Recommendation: Denial

Discussion:

The subject preliminary plan was approved by the Planning Board on April 21, 2005 for two, one-family residential lots located on the east side of Schaeffer Road, south of the intersection with Kingsbrook Drive. The Opinion reflecting the Planning Board's action was mailed on May 31, 2005. Pursuant to the conditions of approval, the preliminary plan remained valid for 37 months from the date of the mailing (August 1, 2008) 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.

Please find attached to this staff memo, the applicant's timely request for extension of the validity period. 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."

BACKGROUND

The approval of the subject preliminary plan (120050070) was based, in part, on a finding of adequate public facilities for sewage disposal. The two approved lots were, and continue to be, in sewer category 3, which makes them eligible for a connection to a sewer main. The sewer main in question is within Schaeffer Road and terminates some distance from the subject property. At the time of subdivision approval, it was the applicant's belief that the sewer would be extended by the developer of an adjacent four lot subdivision located immediately to the north on Schaeffer Road. Had the adjacent developer constructed the entire sewer main envisioned at that time, sewer would have been extended to a point in close proximity to the subject property and the applicant would have had to construct only a small portion of sewer main. At this time, however, only a portion of the required sewer main has been extended by the adjacent developer and it remains approximately 200-300 feet away from the applicant's property.

In meeting with staff of other agencies including WSSC, the Montgomery County Department of Permitting Services and the Montgomery County Department of Environmental Protection, ~~staff concludes that the adjacent developer is under no obligation to complete the sewer but it is understood that he cannot develop the third and fourth lot of his subdivision without it.~~ The applicant for this application is in no way prohibited from assuming the obligation to build the entirety of the remaining sewer to connect to his subdivision.

Applicant's Position

The applicant's letter provides the argument that the sewer extension required to serve the subject two lot subdivision has not been completed, and that the lots do not have adequate public facilities. The letter does not request a specific period for the extension, however; conversation with the applicant revealed that a three years extension is desired.

In meeting with the applicant, he believes that the adjacent subdivision's failure to extend sewer closer to the subject property is an unanticipated event beyond his control that has caused him to be unable to record a plat for the subdivision prior to the expiration date of the plan. The applicant claims that the cost of completing the remaining segment of sewer main is financially infeasible for his two lot subdivision and believes that the adjacent developer should have some obligation towards completion of a portion of the sewer. The applicant further claims that due to the lack of sewer, it is

impossible to estimate how long it will take to complete the development of his lots. Because of the inability to determine the completion date of the project, the applicant is reluctant to submit a road construction bond to the Montgomery County Department of Transportation (MCDOT) based on concerns that it will have no release date. The bond is required before MCDOT will sign off on the record plat. Hence, the basis of the applicant's argument.

Staff Position

The ability or inability of the subject subdivision to receive sewer service appears to be a purely financial matter and does not represent an unanticipated event or other procedural issue that would hinder plat recordation. Staff understands the difficult position that the applicant is in, but believes the funding of the sewer to be a matter to be resolved between the two development interests discussed in this report. Therefore, staff does not find there is adequate justification based on an unanticipated event beyond the control of the applicant upon which an extension could be granted.

Conclusion:

The three year period requested by the applicant cannot be supported. Since extension of sewer is not needed to record the lots, the fact that a sewer extension has not occurred is not an unanticipated event that has impaired the applicant's ability to validate the plan. Therefore, Staff does not recommend an extension to the validity period.

Attachment:

- A) Extension request letter dated June 5, 2008
- B) Preliminary Plan

Minter P. Farnsworth, III (Bubba)
25101 Peach Tree Road
Clarksburg, MD 20871
301-370-8625

June 5, 2008

Development Review Division
MC Planning Department
Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Members of the Development Review Division:

This letter shall serve as my request for an extension of my _____
Preliminary Subdivision Plan with File Number: 1-05007 and Plan
Name: Kingsview Knolls.

The reason for my request for an extension is due to the fact that the
sewer extension for the adjacent subdivision is not yet complete.
Therefore the lots will not have adequate utilities until sometime in the
future.

Thank you for your consideration in this matter.

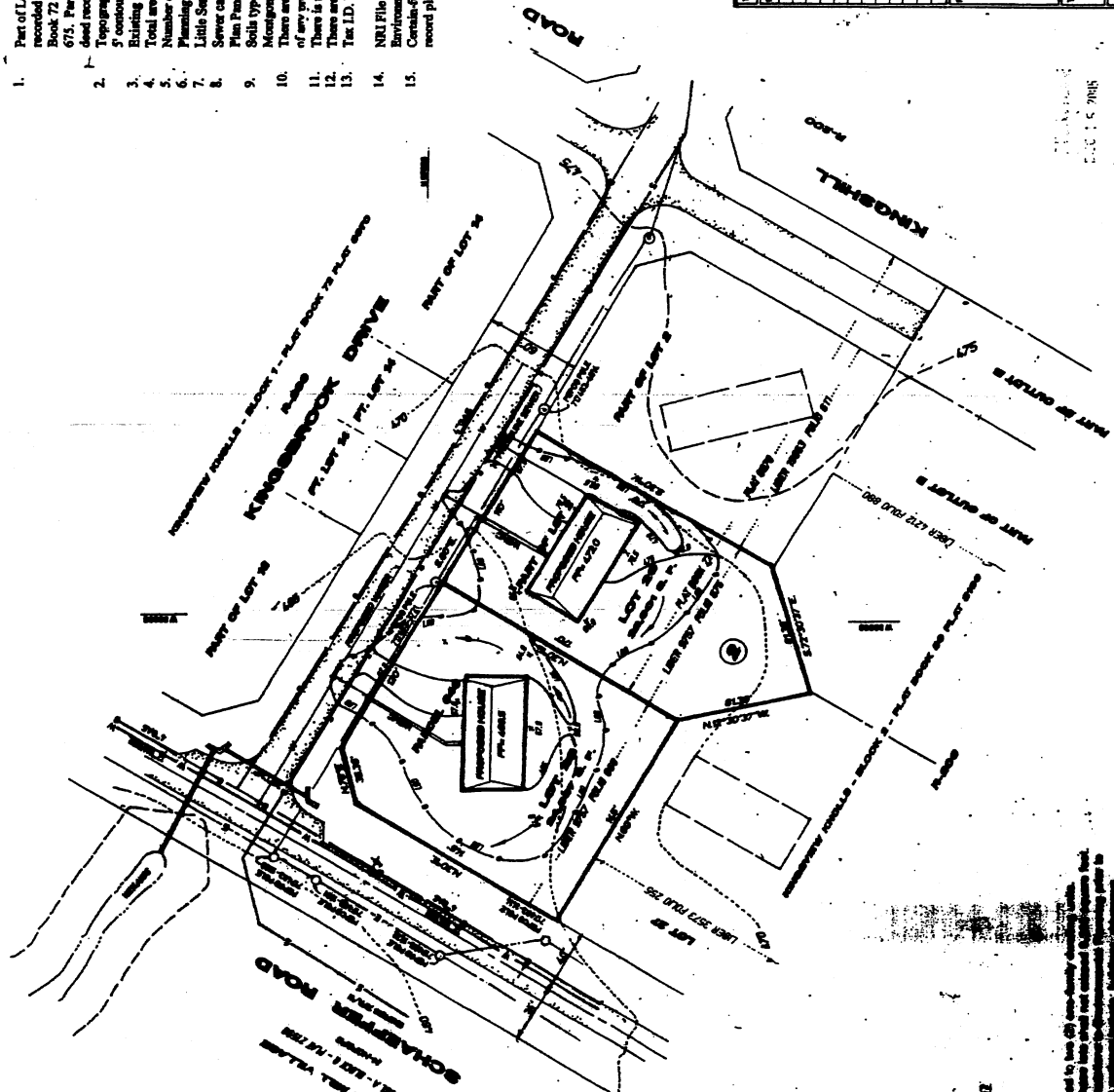
Sincerely,

A handwritten signature in black ink, appearing to read 'Minter P. Farnsworth, III', with a large, stylized flourish extending from the end of the signature.

Minter P. Farnsworth, III (Bubba)

NOTES

1. Part of Lot 2, included herein, is the residue of Lot 2, Kingsview Knolls recorded among the Land Records of Montgomery County, Maryland in Plat Book 72 at Plat 6970 as described in a deed recorded in Liber 9757 at Folio 673. Parcel 640, included herein, is a dead recorded in Liber 9757 at Folio 669.
2. Topography, as shown, from MNCAPPC aerial photography Sheet 225 NW 14; 5' contour interval.
3. Existing zoning is R-200 - 20,000 s.f. minimum lot size.
4. Total area included is 46,338 s.f. or 1.06 acres.
5. Number of lots proposed is 2.
6. Planning Area 19 - Germantown & Vicinity
7. Little Seneca Creek; Hydrologic segment C-49
8. Sewer category: S-1; Water category W-1 from the 10 year Water & Sewer Plan Parcel B.
9. Soils type 17B Occoquan Loam, 3-8% slopes from Sheet 12 of the Montgomery County Soils Survey.
10. There are no streams, non-tidal wetlands or flood plains on site nor within 200' of any property line.
11. There is no forest on site.
12. There are no historic or cultural features on site.
13. Tax I.D. No. Parcel 640: 06-0091237
14. NRI File No. 4-02678 (Small Property Exemption) approved by Environmental Planning Division-MNCAPPC April 24, 2003.
15. Certain features shown herein are scaled and subject to revision at time of record plat or field survey.



TAX MAP	ET 123	200 INSET 225 NW 14	INDEX MAP 18, 000A-1
PROJECT		PROJECT NAME	SCALE: 1"=100'
PREPARED FOR:		PROJECT NUMBER	
DATE		DATE	
PROJECT NUMBER		DATE	
DATE		DATE	

PRELIMINARY PLAN OF SUBDIVISION

LOTS 20 & 29 - BLOCK 2

KINGSVIEW KNOLLS

MONTEGOMERY COUNTY SUBDIVISION

MONTEGOMERY COUNTY, MARYLAND

W WITNER ASSOCIATES, LLC
 Land Services, Land Planning & Survey
 134-A Harford Drive, Landolt, MD 20899
 Tel: (301) 984-3400 Fax: (301) 984-3400

DATE: JANUARY, 2003

SHEET NO. 02726 A

SCALE: 1" = 80'

SUBDIVISION CERTIFICATE

I, COUNTY CLERK, DO HEREBY CERTIFY AND RECORD THIS INSTRUMENT AS SUCH AND AS SUCH INSTRUMENT IS CORRECT.

DATE: 4/10/03

4/10/03

4/10/03

- Approved Preliminary Subdivision Plan No. 1-08002
- At its meeting of 04/02/03
- Approval, subject to the following condition:
- 1) Approval under this preliminary plan is limited to two (2) one-family detached lots.
 - 2) All improvements indicated on this plan shall not be installed until the owner has obtained the necessary permits from the appropriate agencies. The owner shall be responsible for obtaining all necessary permits from the appropriate agencies. The owner shall be responsible for obtaining all necessary permits from the appropriate agencies. The owner shall be responsible for obtaining all necessary permits from the appropriate agencies.
 - 3) Compliance with conditions of MNCAPPC later dated, March 14, 2003.
 - 4) Compliance with the conditions of approval of the MNCAPPC.
 - 5) Other necessary comments.
- 4/10/03
- Development Northern District