M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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MCPB
ITEM # 8
5/4/06

April 21, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief RK YC
Development Review Division

Catherine Conlon, Supervisor CAC
Development Review Division

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

SUBJECT: Request for an extension to the validity period – Preliminary Plan No. 1-01037 – Frazier Property

Recommendation: Extend Validity period to January 5, 2007 with the following condition:

1) Complete record plat application(s) to be submitted to MNCPPC no later than July 31, 2006.

Discussion

Attached please find the applicant's timely request to extend the validity period for the Plan referenced above for a minimum of twelve months or until at least February 5, 2006. The extension is requested to afford the applicant adequate time to resolve remaining issues which will allow the pending plat to be recorded. 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 (c 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."

This is the second extension of the validity period requested for this application. The Board approved a one-year extension on January 13, 2005, until February 5, 2006. By letter of February 3, 2006, the applicant seeks letter seeks the current extension based on certain unanticipated delays by governmental agencies which continue to impact the project.

Applicant's position

The applicant's letter cites difficulties that are related to the inability to record a final record plat. As was discussed in the first request for extension, the Subject Property contains an existing WSSC easement over which the approved structures cannot be located. There has been a considerable amount of back and forth between the applicant, WSSC, WMATA and Miss Utility to determine if a water line existed within the easement area. At the previous extension hearing, the applicant was confident that they had exhausted all efforts and that none of the aforementioned agencies had any evidence of a water line being located on the property.

Subsequent to that hearing, the applicant's contractors dug up significant portions of the site and did in fact locate a water main. Due to the size of the main (16 inch) the WSSC have to review and approve an engineering study to relocate the main around the site within a newly established easement, to be shown on the record plat. As the letter notes, this will take more time to complete and the plats cannot be finalized until WSSC approves the study.

Staff Position

The request for extension is based on the same *unanticipated delays* that lead the Planning Board to approve the initial extension request. Staff is convinced that progress has been made to resolve the issues that WSSC has in relocating the main, however slow it may be. The main concern staff has is that the Adequate Public Facilities (APF) review for the original preliminary plan approval expires January 5, 2007. Prior to that date, building permits for all structures on the property must be issued by the Department of Permitting Services to validate the preliminary plan. Prior to issuance of building permits, record plats must be recorded for the site. This allows less than nine months to record plats and secure building permits in order for the APF review to be valid; a timeframe that concerns staff.

The preliminary plan validity cannot extend beyond the APF validity period. Therefore, staff recommends that the preliminary plan only be extended to January 5, 2007, the validity period of the APF review. As a condition of this extension, staff recommends that the plat(s) for the property be required to be submitted no later than July 31, 2006 so that adequate time is available to review and record the plat prior to release of the building permits.

It is staff's determination that the unanticipated delay outlined in the applicant's letter and summarized above are 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. Staff recommends that the validity period not extend beyond the APF validity period established by the original preliminary plan. **Therefore, staff recommends extension of the validity period to January 5, 2007 with the condition cited above.**

Attachments:

Extension letters dated February 3, 2006 and supplemented March 9, 2006

CAPITAL CITY MORTGAGE CORPORATION

A Maryland Corporation licensed to do business in the District of Columbia

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February 3, 2006

Ms. Catherine Conlon, Acting Supervisor
Development Review Division
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Frazier Property (1-01037

Dear Ms. Conlon:

Attached herewith is an application for an Extension Request for the subject project. The project was approved by the Planning Board at a meeting on 10/25/01. The approval of the Preliminary Plan will soon expire.

A significant amount of work has already been done in an effort to get the project to record. A Record Plat for the property was prepared and submitted to M-NCPPC and the Department of Permitting Services by Total Engineering Services (TES). Problems have been encountered that have led to delays in further processing of the Record Plat. A WSSC easement exists on the property bisecting the northern portion of the site. The location of the easement impedes the placement of any building in this section of the property. We have had this part of the site excavated; the location of the water line within the easement has been verified and surveyed. This effort has taken the better part of this last year to accomplish. Now that we know the location of the water line we must have engineering plans drawn up for its location, and then actually relocate those lines so that the easement on our property can be vacated by WSSC.

This easement issue has been usual, and difficult to rectify, leading to serious delays in the processing of the Record Plat. As such, we are requesting an extension of the validity period of the Preliminary Plan. With the extension of time, we feel the issues can be resolved and the plans for development of this property can move forward as intended.

Please let us know if any further information is needed at this time.

Very sincerely yours,

Alan W. Nash
President
Capital City Mortgage Corporation

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Original Filed
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To: Richard A. Weaver / Development Review Division of MNCPPC

From: David W. McKee

Date: 3/10/2006

Re: Frazier Property / Extension Request(1-01037)

Rich:

As per your conversation with Heshmat Eskandari, attached is a letter with additional information related to this project.

Thank you,

David W. McKee

The water line is a large 16" main that must be relocated away from the proposed building area and out towards Blair Road. For this to happen, a new engineered design with approval of WSSC will be required. The cost of this relocation is to be borne completely by the applicant.

The issue noted above is unusual and has led to serious delays in the processing of the Record Plat. As such, we are again requesting an extension of the validity period of the Preliminary Plan. At least another 12 month extension of time is needed to fully resolve this issue. With this extension, we feel the issues can be resolved and the plans for development of this property can move forward as intended.

Please let us know if any further information is needed at this time.

Very sincerely,

David W. McKee