



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

MCPB
ITEM #
6/5/08



DATE: May 21, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Supervisor (301-495-4542) *CC*
Development Review Division

SUBJECT: Request for an extension to the preliminary plan validity period

PROJECT NAME: Leesborough

CASE #: 120040680

ZONE: RT-15 zone

LOCATION: On the east side of Georgia Avenue (MD 97), 200 feet south of the intersection of Arcola Avenue

MASTER PLAN: Kensington-Wheaton.

APPLICANT: Batchellors Forest LLC

ATTORNEY: Linowes and Blocher

FILING DATE: February 26, 2008

STAFF RECOMMENDATION: Grant a 4-month extension of the Preliminary Plan validity period until July 8, 2008.

BACKGROUND

The subject Preliminary Plan and a concurrent Site Plan were approved by the Planning Board on November 4, 2004 for development of up to 201 residential dwelling units including one-family detached, one-family attached and multi-family units. The property is located on the east side of Georgia Avenue (MD 97), approximately 200 feet south of its intersection with Arcola Avenue in the Kensington-Wheaton Master Plan area. The Opinion reflecting the Board's action on the preliminary plan was mailed on February 8, 2005 and the preliminary plan validity period was set at 37 months from the mailing date, or March 8, 2008. Prior to that date, the Applicant either had to (1) record all plats among the land records of Montgomery County or (2) submit a request to extend the validity period.

Attached, please find the applicant's timely request dated February 26, 2008, with a supplemental letter dated May 6, 2008, to extend the validity period for four months, until July 8, 2008. The extension is requested to afford the Applicant adequate time to resolve remaining issues and allow the final 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 (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 letter seeks the extension based on certain unanticipated delays by governmental agencies as discussed below.

DISCUSSION

As noted in the applicant's request, the Planning Board has approved all record plats for the subject application and all but one of those plats have been recorded in the land records. The last remaining plat was approved by the Planning Board on February 14, 2008 with a condition that the applicant had to record a modified Conservation Easement Agreement in the land records and note the corresponding Liber/Folio on the plat prior to recordation. The modified language was requested by the Montgomery County Department of Permitting Services (DPS) as part of their review of the record plat

because a stormwater management easement overlaps the conservation easement. While this situation is not unique, this is the first time that DPS has raised concerns about the existing language in the standard Conservation Easement Agreement that was designed to deal with it. The applicant submitted suggested language to address DPS's comments, but staff and DPS could not reach consensus on final language prior to the expiration of the preliminary plan on March 8, 2008. Consequently, the applicant requested a two-month extension of the preliminary plan. Because staff and DPS have still not finalized the easement document, the applicant has updated its request to a four-month extension.

The request for extension is based on unanticipated delays not caused by the applicant that have prevented perfecting the plat recordation. It is staff's determination that the unanticipated delay outlined in the applicant's letter and summarized above provides reasonable justification upon which the Planning Board can base the approval of the requested extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. The timeframe requested is the minimum necessary to validate the plan. The easement language has now been agreed upon and it will shortly be executed and recorded. Therefore, staff recommends that the preliminary plan be extended to July 8, 2008, to allow adequate time for the plat to be recorded.

Attachments:

- A- February 26, 2008 letter
- B- May 6, 2008 supplemental letter

LINOWES
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ATTORNEYS AT LAW

February 26, 2008

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Via Hand Delivery

Royce Hanson, Chairperson
and Members of the Planning Board
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Leesborough (Former Good Counsel High School Site), Preliminary Plan No. 1-2004068 -- Request for Extension of Validity Period to Record the Open Space/Rafferty Center Plat

Dear Chairman Hanson and Members of the Planning Board:

On behalf of Batchellors Forest, LLC ("Applicant"), we are requesting a 60-day extension of the validity period for the above referenced preliminary plan (which expires on March 10, 2008) pursuant to Section 50-35(h)(3)(D) of the Subdivision Ordinance in order to record the last plat, which contains the open space and Rafferty Center. Applicant believes and certifies that the requested extension is the minimum additional time required to record the last plat and validate the preliminary plan. The anticipated date for validating the plan is May 9, 2008 or earlier.

By way of background, on February 14, 2008, the Planning Board approved the last plat for the Leesborough project subject to the condition that "Applicant is to record a modified Conservation Easement Agreement among the Land Records of Montgomery County and note the corresponding Liber/Folio on the plat prior to recordation." Prior to DPS approval of the plat, DPS legal counsel requested Applicant add language in the standard Conservation Easement Agreement to reflect a Stormwater Management Easement and Right-of-Way previously granted to Montgomery County, which overlaps a conservation easement area. Subsequently, M-NCPPC legal counsel requested language be added to reference a written

Royce Hanson, Chairperson
and Members of the Planning Board
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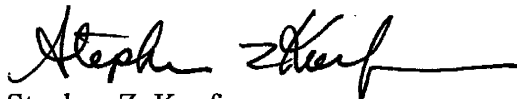
consent from DPS on the planting of trees in the Stormwater Management Easement area in a form that is acceptable to M-NCPPC, which Applicant has requested from DPS staff.

Given our best efforts to meet the March 10, 2008 deadline, Debra Daniel of the M-NCPPC legal office has indicated that additional time may be required for all parties to come to an agreement of the language to be added to the Conservation Easement Agreement and recommended that Applicant file for an extension request. Accordingly, as a result of the requests made by DPS and M-NCPPC legal counsels, Applicant will be prevented from validating the preliminary plan within the current time frame due to no delays created by Applicant. Therefore, we respectfully request the Planning Board grant the 60-day extension.

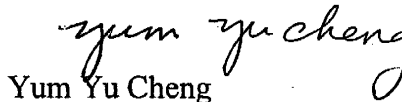
Thank you for your attention to this matter. Should you have any questions, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Yum Yu Cheng

cc: Howard Katz
Steve Baldwin
Keith Tunell
Melanie Graf
Ed Wallington
Debra Daniel, Esq.
Malcolm Spicer, Esq.

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May 6, 2008

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Via Hand Delivery

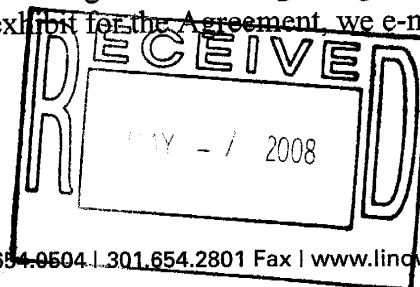
Royce Hanson, Chairperson
and Members of the Planning Board
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Leesborough (Former Good Counsel High School Site), Preliminary Plan No. 1-2004068 -- Request for Extension of Validity Period to Record the Open Space/Rafferty Center Plat

Dear Chairman Hanson and Members of the Planning Board:

On behalf of Batchellors Forest, LLC ("Applicant"), we had requested a 60-day extension of the validity period for the above referenced preliminary plan (which expired on March 10, 2008) pursuant to Section 50-35(h)(3)(D) of the Subdivision Ordinance in a letter dated February 26, 2008 (a copy of which is attached for your reference). At that time, Applicant believed and certified that the requested extension was the minimum additional time required to record the last plat and validate the preliminary plan. The anticipated date for validating the plan was May 9, 2008 or earlier. However, that date is approaching and the last plat will not be recorded by that time due to no delays created by Applicant. Accordingly, we wish to modify that extension request to 120 days, making the anticipated date for validating the preliminary plan July 8, 2008 or earlier.

As noted in our February 28th letter, Applicant was working with M-NCPPC and DPS legal counsels to come to an agreement on modified language to the Conservation Easement Agreement (the "Agreement"), which must be recorded and referenced on the last plat prior to its recordation. After discussions with M-NCPPC and DPS legal counsels regarding the modified language to the Agreement and a supporting exhibit for the Agreement, we e-mailed



Royce Hanson, Chairperson
and Members of the Planning Board
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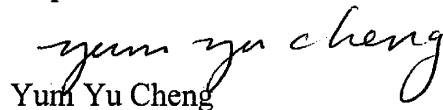
to M-NCPPC legal counsel a draft of the modified language to the Agreement on March 5, 2008. However, we did not receive suggested changes to the modified language from M-NCPPC legal counsel until April 15, 2008. Shortly thereafter, we received approval of M-NCPPC's suggested changes to the Agreement from DPS legal counsel and submitted the final Agreement on April 23, 2008 to M-NCPPC legal counsel to have it executed and notarized by the appropriate M-NCPPC representatives. As of the date of this letter, we are still waiting to get back from M-NCPPC legal counsel a fully executed Agreement. Accordingly, Applicant will be prevented from validating the preliminary plan by May 9th due to no delays created by Applicant. Therefore, we respectfully request the Planning Board grant the 120-day extension.

Thank you for your continued attention to this matter. Should you have any questions, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen Z. Kaufman


Yum Yu Cheng

Enclosure

cc: Ronald Salameh
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