



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM #11
5/05/05

MEMORANDUM

April 28, 2005

TO: Montgomery County Planning Board

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

Cathy Conlon, Acting Supervisor *CC*
Development Review Division

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

SUBJECT: Request for an extension of the validity period – Preliminary Plan
No. 1-99039, GEICO (Friendship Commons)

STAFF RECOMMENDATION: Denial of extension request, pursuant to Section 50-35 (h)(3)(d) of the Montgomery County Code, Subdivision Regulations

BACKGROUND

The preliminary plan for the GEICO property (No. 1-99039) was approved by the Planning Board at a regularly scheduled public hearing on February 25, 1999. The date of mailing of the Planning Board Opinion for the plan was May 13, 1999. As a condition of that approval the validity period of the preliminary plan was set at 37 months from the date of mailing of the Planning Board Opinion, or June 13, 2002. On December 28, 2000 staff received a request for an extension of the validity period for an additional three-year period. (Attachment 1). Based on a review of the statements made within the letter and by the applicant at a public hearing on January 4, 2001, the Planning Board granted a three-year extension until June 13, 2005 (Attachment 2).

On October 13, 2004, staff received a second request to again extend the validity period, this time, for an additional four-year period. (Attachment C) Supplements to the October 13, 2004 letter dated January 12, 2005 and April 6, 2005 were also received from the applicant.

further clarify the extension request. (Attachments D and E) Staff is basing their review of this extension request on the attachments referenced above.

The application must proceed to the Site Plan stage with the details of site layout, square footage, public amenities and compatibility typical of a site plan review. The ultimate recordation of plats can only be accomplished after signature set approval of the site plan and prior to the expiration of the validity period. GEICO maintains that the plan is not ready for Site Plan review and that many other issues must be resolved prior to recordation of plat.

REQUIRED FINDINGS FOR AN EXTENSION OF THE VALIDITY PERIOD

Section 50-35 (h)(3)(d) of the Montgomery County Code, Subdivision Regulations, states that the Planning Board may grant extension of the validity period of a preliminary plan if persuaded that:

- “(i) Delays, subsequent to the plan approval by the government or some other party, central to the applicant’s ability to perform the terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or
- (ii) the occurrence of significant, unusual, and unanticipated events, beyond applicant’s control and not facilitated or created by the 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.”

Applicant’s Position

The applicant’s letter of October 13, 2004 requests a four-year extension and cites specific reasons why the applicant believes the extension is warranted. The letter appears to base the justification on the occurrence of significant, unusual, and unanticipated events, beyond the applicant’s control and not facilitated or created by the applicant that have substantially impaired the applicant’s ability to validate its plan. The letter also cites undue hardship that would result if the plan expired.

The October 13, 2004 letter sets forth several reasons as to why the plan should be extended suggesting that they are based on circumstances beyond the applicant’s control. GEICO’s arguments include:

1) GEICO contends they are not in the real estate business and have encountered unexpected difficulty entering into an agreement with a developer willing to design and build the project that meets the needs of GEICO. GEICO argues that they must maintain a seamless transfer of headquarter activities from the existing building to a new building. GEICO desires to remain in Friendship Heights, but contends that they must have a new headquarter building in place on-site to move into. They argue that this has proven difficult in that the proposals that GEICO has

reviewed to date call for the demolition of the existing headquarter building to accommodate the residential component as the first phase.

GEICO also states that it has been unable to find a developer/ interested party, who can complete the detailed residential Site Plan(s) for the remainder of the project including purchasing TDR's. The applicant believes that the inability to find a suitable developer is "...outside of the control of the Applicant."

The letters also cite the shift in GEICO's business plan from a telephone-based business to an internet-based operation as an unusual or unanticipated event that has delayed them. GEICO contends that this shift has changed the headquarter's programmatic needs and has shifted corporate attention to needs other than developing the Friendship Heights site.

2) The applicant notes that a considerable amount of construction is underway in the Friendship Heights area and suggests that allowing the GEICO project to proceed at a later date may, in fact, be in the best interest of both the community and drivers using the local road network.

3) GEICO has recently entered into the New Jersey insurance market, which is a complicated and time-consuming process that demands shifting corporate attention. The applicant contends that expiration of the preliminary plan would jeopardize the New Jersey expansion, although it is not clearly stated why this may happen in the applicant's letter.

4) The applicant cites as undue hardship if the plan were to expire, the loss of years of coordination between the applicant, M-NCPPC staff and the community that has resulted in a significant residential/office plan near METRO and one that will bring community amenities to the area.

The applicant concludes that the plan as approved will be successful and provide benefits to the community. However, as GEICO is not a developer, it has made the relocation or replacement of its headquarter building a daunting task and one that it is not in a position to act on quickly. GEICO has also not been able to identify a developer that can meet its requirements and, therefore, requests the four-year extension.

Staff's Position

Staff believes that the applicant has not submitted sufficient grounds to justify the extension of the validity period for the subject preliminary plan. The applicant has based their request on Section 50-35(h)(3)(d)(ii), which required a finding by the Board that there has been:

the occurrence of significant, unusual or unanticipated events, beyond the 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.

Staff believes that the applicant has not met its burden of establishing sufficient grounds to justify the extension of the validity period for the subject preliminary plan. While staff recognizes the difficulties in the administration of a large corporation with many goals and no development expertise, the request suggests that little or no progress has been accomplished by GEICO since the original preliminary plan approval and subsequent extension approval. In fact, the justification outlined in Attachment 1, for the first extension request in year 2000, is substantially the same justification used in the current extension request.

Staff does not believe, certainly since the last extension, that the events that have transpired are significant, unusual or unanticipated, or beyond the applicant's control. The events cited by the applicant as having occurred appear to be internal to GEICO's operations and, while seemingly critical to the success of the corporation as an insurance provider, should not necessarily hinder the progress of this project. Staff has been provided no information that would demonstrate how aggressive GEICO has been in its attempt to secure a suitable developer for the project.

Staff does not find relevant to this extension request the argument that there are other substantial projects currently under construction in the Friendship Heights area and that GEICO should wait for completion of some or all of the on-going projects. While some may believe development in Friendship Heights to be significant, staff does not believe it to be an unusual or unanticipated event that substantially impairs the applicant's ability to validate the plan.

Staff concurs that many years of coordination between the applicant, M-NCPPC staff, staffs of other county agencies and the community have gone into this proposal and that the expiration of the plan would be regrettable. However, the Subdivision Regulations state the Board "may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that [the above-articulated statutory grounds for an extension exist]." Code Section 50-35(h)(3)d. Generally, staff feels that it is unfortunate that more progress was not made by GEICO to advance the plans towards record plat. Nevertheless, time and financial loss have not historically been adequate justification upon which the Board has granted extension requests.

CONCLUSION

Staff does not believe that the Applicant has met its burden of establishing the grounds in support of the requested extension. The Applicant has not demonstrated that any actions by the government or some other party have materially prevented the applicant from validating the plan. Staff concludes that the argument provided by the applicant bases the request on an inability to validate the plan due to events entirely under the control of GEICO. There is no indication that any of the events that have transpired, whether described as significant, unusual or unanticipated, were not facilitated or created by the applicant. For these reasons staff is recommending denial of the request for extension. The plan would thereby expire on June 13, 2005.

Attachments

Attachment A – December 28, 2000 extension request

Attachment B – January 23, 2001 extension approval

Attachment C – October 23, 2004 current extension request

Attachment D – January 12, 2005 supplement to extension request

Attachment E – April 6, 2005 supplement to extension request

Attachment F – Preliminary Plan

Correspondence