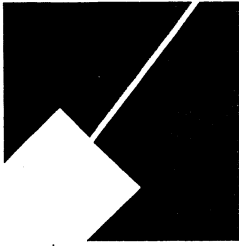


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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MCPB
ITEM # 9
12/8/05

MEMORANDUM

November 28, 2005

TO: Montgomery County Planning Board

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

Cathy Conlon, Supervisor *CC*
Development Review Division

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

SUBJECT: Request for an extension of the validity period – Preliminary Plan 120010300 (1-01030), Cabin John Park

STAFF RECOMMENDATION: Approval of extension of the validity period to October 19, 2006

BACKGROUND

The preliminary plan for Cabin John Park, 120010300 (1-01030) was approved by the Planning Board at a regularly scheduled public hearing on January 25, 2001. The date of mailing of the corrected Planning Board Opinion for the plan was September 19, 2001. As a condition of that approval of the preliminary plan the validity period was set at 37 months from the date of mailing of the Planning Board Opinion, or October 19, 2004. By letter dated July 22, 2004, the applicant requested an extension of the preliminary plan for a period of two years. On September 19, 2004, at a regularly scheduled public hearing, the Planning Board approved a one year extension of the validity period to October 19, 2005. In a letter dated September 8, 2005 and received September 30, 2005 the applicant is now requesting another one year extension to October 19, 2006. (Attachment 1)

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.

DISCUSSION

Applicant's Position

The letter from Holland and Knight, dated September 8, 2005, requests a one year extension based on undue hardships beyond the applicant's control that have delayed the review process. The letter cites difficulty in perfecting a Stream Restoration Plan and conservation easement on the two lots required as part of the preliminary plan approval. Resolution of the issues have taken much longer than originally anticipated due to multiple owners, plat signatories and the fact that there are two existing homes in close proximity to the area of concern on the property.

The applicant does acknowledge that progress has been rather slow but that they have been diligent and are nearing finalization of the Plan and easement agreements. The Stream Restoration Plan and easements have been agreed upon and are awaiting lender's consent to finalize. Record plats have been filed and are under review.

Staff's Position

Staff believes that the applicant has submitted sufficient grounds to justify the extension of the validity period for the subject preliminary plan. Staff has been actively participating in the Stream Restoration Plan and believes that progress is being made. The completion of the Plan and easements has been extremely difficult due to disagreements among the property owners and the length of time it has taken to review changes to the agreements. Staff will note that staff

turnover during the long history of this plan may have played a role in the delay of the completion of the Stream Restoration Plan. Staff recommends approval of the extension of the validity period.

CONCLUSION

Staff believes that a sufficient argument has been made regarding the request to extend the validity period for preliminary plan No. 120010300 (1-01030), Cabin John Park under Section 50-35(h)(3)(d). Staff has determined by review of the statements made in the applicant's letter that unanticipated events, beyond the applicant's control, have substantially impaired the applicant's ability to validate the plan. Staff concludes that the argument provided by the applicant is valid and recommends extending the validity period to October 19, 2006.

Attachments

Attachment 1 – Extension Request Letter

Attachment 2 – Approved Opinion