



**McCormick's Addition to Horizon Hill**, Preliminary Plan Amendment No. 12007021A

CVA  
SP

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Completed: 04/11/19

**Description**

**McCormick's Addition to Horizon Hill, Preliminary Plan Amendment No. 12007021A**

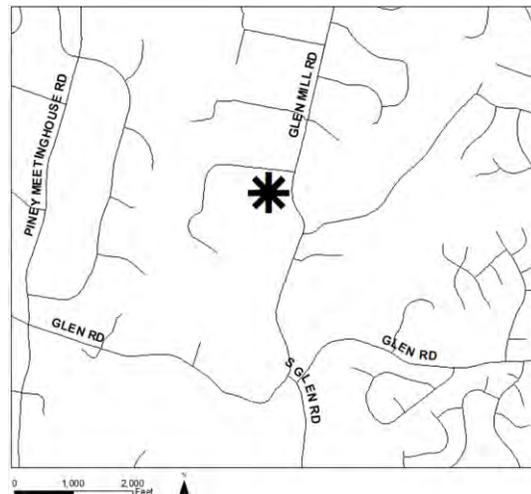
Application to extend the Plan validity period by 12 months for Preliminary Plan 120070210, which created 2 lots for two one-family detached residential units; located on the south side of Red Barn Lane at the intersection with Glen Mill Road, approximately 2 1/2 miles north of Potomac; 5 acres; RE-2 Zone; Potomac Subregion Master Plan area.

**Recommendation** – Approval with conditions

**Applicant:** Estate of Anne Hale Johnson and Robert T. Do

**Accepted Date:** November 16, 2018

**Review Basis:** Chapter 50, Section 4.2.H



**Summary**

- The Applicant requests to amend Preliminary Plan No. 120070210 to extend the plan validity period by one year from the date of mailing of the Resolution for this application.
- The Applicant justifies the extension as necessary due to the death of the original applicant as well as difficulty in negotiating the sealing of a well on the property, which is a condition required by the Preliminary Plan approval.
- Staff recommends **Approval with Conditions**

## SECTION 1 – RECOMMENDATIONS AND CONDITIONS

**Preliminary Plan Amendment No. 12007021A:** Staff recommends approval with conditions of the Preliminary Plan amendment for a 12-month Plan Validity extension. All previous conditions of approval for the Preliminary Plan remain in full force and effect except for the addition of the following condition:

- 8) The Preliminary Plan will remain valid for 12 months from the mailing of this Resolution. This validity period extension will extinguish and supersede the original validity period as defined by Preliminary Plan No. 120070210.

## SECTION 2 – SITE LOCATION AND DESCRIPTION

### Site Location

The Subject Property is approximately 5 acres in size located in North Potomac, 2.6 miles north of Potomac Village and 1.5 miles east of Travilah at the southwest quadrant of the intersection of Red Barn Lane and Glen Mill Road (“Subject Property”). The Subject Property is within the Potomac Subregion Master Plan (Master Plan) area. Surrounding the property are large lot, single-family detached residential homes in the RE-2 zone (Figure 1).

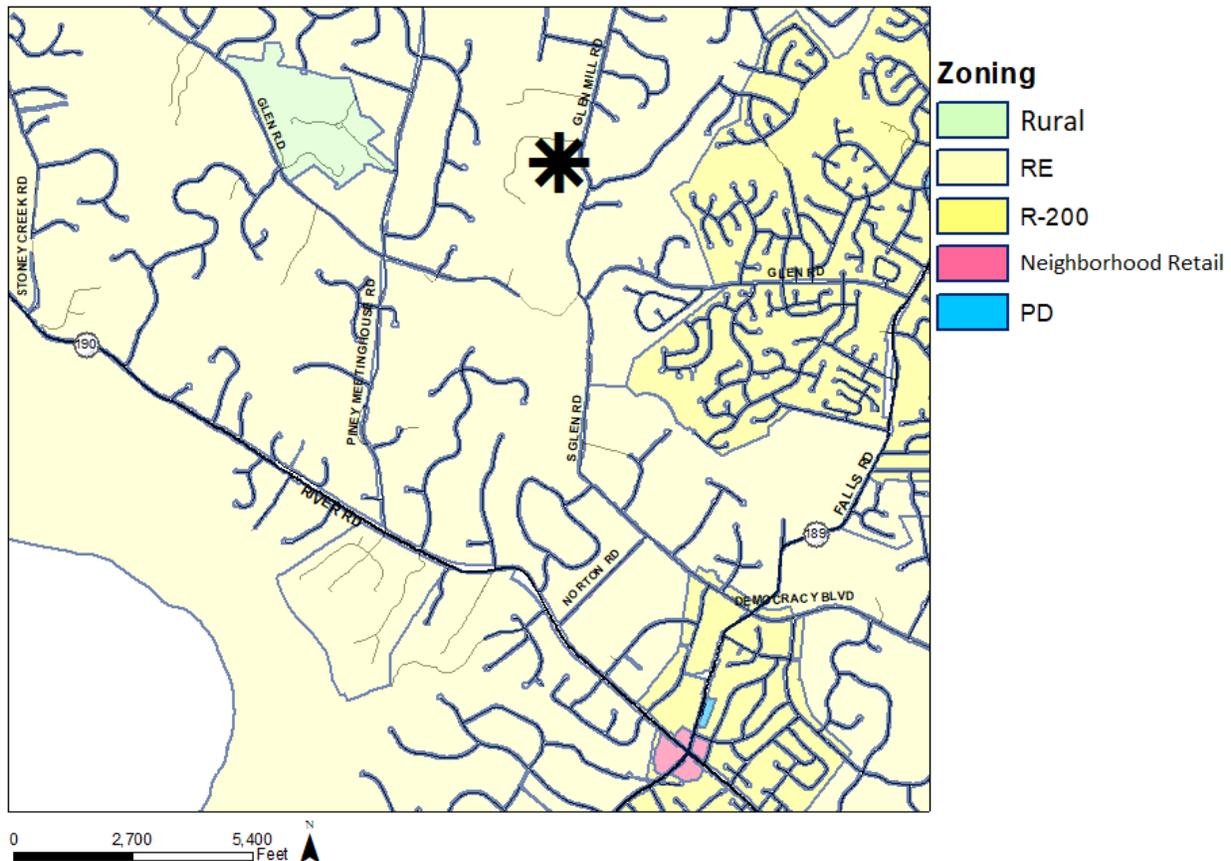


Figure 1 – Vicinity Map

## Site Description

The Subject Property is identified as Lot 1 on Plat No. 4998 and currently has one single-family detached home, an accessory dwelling and a large barn. The Subject Property is predominantly unforested open field.



*Figure 2 – Aerial Map*

## SECTION 3 – APPLICATIONS & PROPOSAL

### Previous Approvals

The Montgomery County Planning Board approved Preliminary Plan No. 120070210 on October 18, 2007, which subdivided the Subject Property into two lots for single-family residential use (MCPB Resolution No. 07-194 - Attachment A). Prior to platting, the original owner of the Subject Property, Anne Hale Johnson, sold three acres encompassing proposed Lot 1 (Figure 3) to Dr. Robert Do while retaining the 2 acres defined by proposed Lot 2.

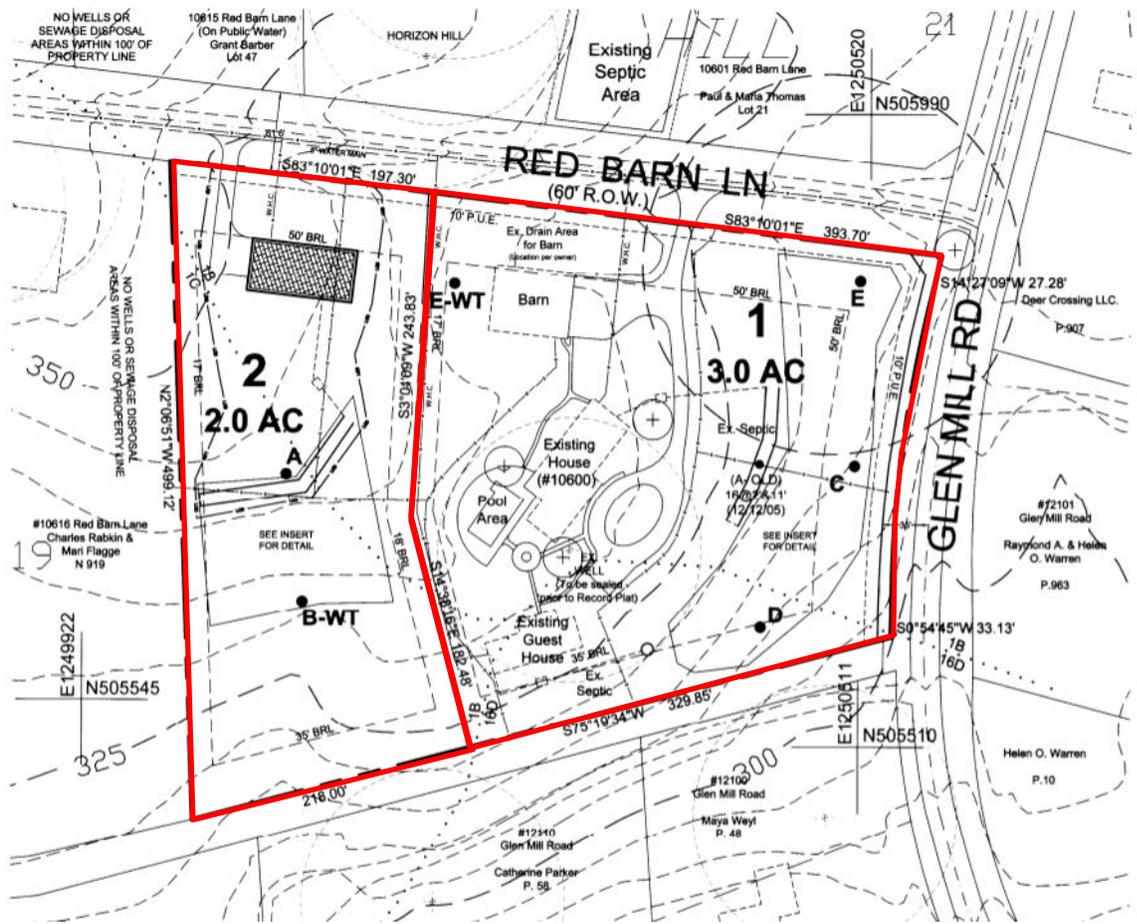


Figure 3 – Approved Preliminary Plan 120070210

**Proposal**

The estate of Ms. Johnson and Dr. Do, co-owners of the Subject Property (“Applicant”), seek a 12-month extension of Preliminary Plan No. 120070210, submitted November 16, 2018. The Applicant, through a letter as part of this application, explains that the extension is necessary following the unexpected death of Ms. Johnson in early 2018 and will provide additional time to complete the platting process, which has already been initiated.

Prior to the execution of the Preliminary Plan, Ms. Johnson sold 3 acres of the Subject Property encompassing the proposed Lot 1 to the co-applicant, Dr. Do. A condition of the Preliminary Plan required the provision of public water and the sealing of a well on the property for the two lots. Dr. Do originally objected to the sealing of the well on his portion of the Subject Property, but later relented prior to Ms. Johnson’s death. Additional difficulties arose after lienholders filed liens on Dr. Do’s portion of the property, the resolution of which is still ongoing.

This extension is proposed by the Applicant, the estate of Ms. Johnson along with Dr. Do, to continue the platting process following months of necessary pause as the estate continued to be settled and progress made to resolve lienholder issues on Dr. Do’s portion of the property. The Applicant is currently in the final stages of the platting process, awaiting final authorization from Dr. Do’s creditors and Planning Board approval for this extension.

According to Section 50.4 of the County Code, the validity period associated with a preliminary plan requires that all approved lots and parcels must be recorded by record plat within the plan validity period established in the Planning Board Resolution. Resolution No. 07-194 (Attachment A) established a 36-month validity period for the Preliminary Plan with an initial expiration date of December 5, 2010. The Montgomery County Council adopted legislation granting four separate 2-year extensions, for a total of eight years, of all preliminary plans valid as of March 31, 2009; this extended the validity of the Preliminary Plan to November 18, 2018. An application to extend validity by an additional six months was received by the Montgomery County Planning Department on November 16, 2018 and revised to one year by correspondence dated March 1, 2019 (Attachment B).

#### **SECTION 4 – CITIZEN CORRESPONDENCE AND ISSUES**

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the submitted Application. To date, Staff has not received any correspondence regarding this Application. Correspondence received after posting of the Staff Report will be forwarded to the Planning Board for discussion at the Hearing.

#### **SECTION 5 – ANALYSIS AND FINDINGS, Sect. 50.4.2.D**

The proposed Amendment does not alter the original intent and all findings of Preliminary Plan No. 120070210 remain in full force and effect, except as modified by the findings below.

##### Preliminary Plan Validity – Section 50.4.2.H

The Preliminary Plan Amendment requests a one-year (12 month) extension to the validity period which expired on 11/18/2018. To approve a Plan extension, the Board must make the following analysis and findings as part of its approval.

1. *Extension Requests*

- a. *Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.*

The Applicant submitted a timely plan validity extension request to the Planning Board. The request was received on 11/16/2018 which is prior to the validity expiration on 11/18/2018.

- b. *The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.*

Not applicable.

- c. *The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the*

*requested extension is the minimum additional time required to record all plats for the preliminary plan.*

The Applicant has provided a justification statement for the requested extension to the plan validity (Attachment B). The current validity expired on 11/18/2018. The request for 12 months of extended validity will allow the Applicant to complete the platting process following the death of Ms. Johnson along with the recent resolution of the disagreement over the on-site well. The Applicant has demonstrated that the request is the minimum additional time required to complete recordation of the two outstanding plats due to the reasonable length of time for final approval of the platting application as well as the time needed to resolve the creditor issue on Dr. Do's portion of the property as mentioned previously.

2. *Effect of failure to submit a timely extension request.*

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

3. *Grounds for extension.*

a. *The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:*

- i. *delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or*
- ii. *the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.*

The Applicant's validity extension justification (Attachment B) states that significant, unusual and unanticipated events, beyond their control and not caused by the Applicant, have impaired their ability to validate the plan, and that an undue hardship would result if the validity period is not extended. The Applicant provided justification detailing reasons for the extension as part of the submitted Application, chief among them being the unexpected death of Ms. Johnson, one of two original co-owners. The extension is needed to execute the subdivision of land which following her death as well as following on the resolution of a multi-year disagreement with Dr. Do over the sealing of a well on the Subject Property. The time is also needed to resolve ongoing liens on Dr. Do's portion of the property with his creditors. The Applicant requested a validation date of November 18, 2020; a one-year extension was explained to be the minimum time needed to accomplish the platting process (Attachments B and C) given the issues at hand, these being the final resolution of the well dispute, the resolution with lienholders on Dr. Do's portion of the property, and the time needed to finalize and execute the submitted platting application and record the plats on the public record. Staff finds that a one-year extension is the minimum time needed to execute the Preliminary Plan given these issues.

- b. The applicant bears the burden of establishing the grounds in support of the requested extension.*

The Applicant provided Staff with justification (Attachment B) outlining the validity extension request and the necessary justifications. As mentioned, the Applicant justified the request primarily based on the unexpected death of Ms. Johnson, the former co-owner of the Subject Property, which Staff finds to qualify as a “significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant.”

*4. Planning Board considerations for extension.*

- a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.*

Staff does not recommend the Board require the Applicant to conform to any changes that have occurred in Chapter 50 since the initial approval date.

- b. The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project’s viability upon request by the Board or the Director.*

As a two-lot subdivision with an existing house, Staff does not recommend that additional information on the feasibility of the project be required.

*5. Planning Board action.*

- a. After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.*

The Preliminary Plan Amendment was noticed as other amendments pursuant to the requirements of Chapter 50 and the Development Manual and is scheduled for a public hearing before the Board as required.

- b. If voting to approve an extension, the Planning Board must only grant the minimum time it deems necessary for the applicant to validate the plan.*

The Applicant has requested a 12-month extension to the Preliminary Plan and states this is the minimum necessary to complete the validation. Staff agrees with the Applicant’s request as a reasonable amount of time to finalize the platting application for the Subject Property and accommodate any issues that may arise, particularly with the lienholders for Dr. Do’s portion of the Subject Property.

- c. The Board may only grant an extension to a preliminary plan within the plan’s APFO validity period, unless a further extension is allowed by law.*

The recommended plan validity extension period falls within the Preliminary Plan’s existing APFO validity period, which is not set to expire until 12/18/2020.

- d. *An applicant may request, and the Board may approve, more than one extension.*

This is the first request for a plan validity extension made for the current Preliminary Plan approval.

- e. *Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of the validity period.*

Not applicable.

## **SECTION 5: CONCLUSION**

Preliminary Plan Amendment No. 12007021A meets all requirements established under Section 50.4.2.D of the zoning ordinance. Based on this analysis, the Applicant has qualified for an extension of the Preliminary Plan validity period. Staff recommends approval of this Application, with the conditions as enumerated in the Staff Report.

### **ATTACHMENTS**

- Attachment A – Previous Resolution (MCPB No. 07-194) for Preliminary Plan No. 120070210
- Attachment B – Applicant’s Extension Request
- Attachment C – Applicant’s Supplemental Request



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 28 2007

**MCPB No. 07-194**  
**Preliminary Plan No. 120070210**  
**McCormick's Addition to Horizon Hill**  
**Date of Hearing: September 27, 2007**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on October 6, 2006, Anne H. Johnson ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on five acres of land located in the southwest quadrant of the intersection of Glen Mill Road and Red Barn Lane ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070210, McCormick's Addition to Horizon Hill ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 14, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on September 27, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

APPROVED AS TO LEGAL SUFFICIENCY

*Ruthellen H. Bolen*

M-NCPPC LEGAL DEPARTMENT

DATE 10/5/07

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 27, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Cryor; with a vote of 5-0; Commissioners Bryant, Cryor, Hanson, Lynch, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070210 to create two lots on five acres of land located in the southwest quadrant of the intersection of Glen Mill Road and Red Barn Lane ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) and/or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The record plat must provide for dedication of right-of-way for Glen Mill Road to achieve a 35-foot-wide right-of-way as measured from the centerline.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management concept and preliminary water quality plan approval dated November 1, 2006.
- 5) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated April 10, 2007.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (MCDPWT) letter dated November 7, 2006, unless otherwise amended.
- 7) The Applicant must satisfy provisions for access and improvements as required by MCDPWT prior to recordation of plat(s).
- 8) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.
- 9) The record plat must show necessary easements.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Potomac Subregion Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the subregion in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing RE-2 zoning. The proposed subdivision complies with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation.

The Master Plan identifies the segment of Glen Mill Road on which the Subject Property fronts as an exceptional rustic road. The proposed development will not negatively affect the character of the road because access will be from Red Barn Lane and no improvements are proposed on Glen Mill Road.

The Planning Board finds, therefore, that the Preliminary Plan substantially conforms to the Master Plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area Transportation Review. Access to the proposed lots will be from driveways on Red Barn Lane. Sidewalks do not exist and are not proposed on Red Barn Lane; however, the low traffic volume allows safe pedestrian use of the roadway. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate.

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed units. The Property will be served by private septic systems and public water. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical and telecommunications services are also available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision, as discussed below. Access and public facilities will be adequate to support the lots and uses. The lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application.

- 4. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

There are no forests on the site, but three significant trees exist. A preliminary forest conservation plan was submitted that addresses tree protection for these three trees, which are proposed to be retained. One acre of afforestation is required, which will be satisfied off-site. Staff intends to try to locate this afforestation within the Piney Branch Special Protection Area (SPA). The Planning Board finds that the Preliminary Plan meets all applicable requirements of the County Forest Conservation Law.

- 5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by MCDPS that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept and Preliminary Water Quality Plan (PWQP) for the project on November 1, 2006. The stormwater management concept includes dry wells and rooftop disconnects for water quality control and recharge. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

- 6. The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report ("Neighborhood")), as analyzed below.*

Size: The lots in the delineated neighborhood range from two acres to 6.11 acres. Eighteen of the 24 existing lots are under three acres in size. Proposed Lot 1 is three acres in size and Proposed Lot 2 is two acres in size. The proposed lot sizes are of the same character as size of existing lots in the neighborhood.

Width: The lots in the delineated neighborhood range from 150 feet to 636 feet in width. Sixteen of the existing lots have widths under 200 feet, seven have widths between 200 feet and 392 feet, and one lot has a width of 636 feet. Proposed Lot 1 has a width of 383 feet and Proposed Lot 2 has a width of 190 feet. The proposed lots will be of the same character as the existing lots in the neighborhood with respect to width.

Frontage: In a neighborhood of 24 lots, lot frontages range from 32 feet to 710 feet. Five of the lots have frontages of less than 100 feet and the remaining 19 lots have frontages of more than 100 feet. Proposed Lot 1 has a frontage of 370 feet on Red Barn Lane and 280 feet on Glen Mill Road, and Proposed Lot 2 has a frontage of 192 feet. The proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Area: The lots in the delineated neighborhood range from 0.32 acres to 2.55 acres in buildable area. Twenty-one of the existing lots have a buildable area under two acres and three have a buildable area over two acres. Proposed Lot 1 has a buildable area of 2.00 acres and Proposed Lot 2 has a buildable area of 1.33 acres. The proposed lots will be of the same character as other lots in the neighborhood with respect to buildable area.

Alignment: Of the 24 existing lots in the neighborhood, 20 are perpendicular in alignment, three are radial, one is a corner lot. Proposed Lot 1 is a corner lot and Proposed Lot two is a perpendicular lot. The proposed lots are of the same character as existing lots with respect to the alignment criterion.

Shape: Eighteen of the existing lots in the neighborhood are irregularly shaped. The remaining six lots consist of three pipestem lots and three rectangular lots. The two proposed lots are irregularly shaped. The shapes of the proposed lots will be of the same character as the shapes of the existing lots.

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

7. *The PWQP is approved by the Planning Board.*

Because the Property is within the Piney Branch SPA, it has been determined to require approval of a PWQP. MCDPS approved its portion of the PWQP requirements on November 1, 2006. In this SPA, there are no limits on impervious surfaces, and the Property does not include any stream valley area that should be reforested. The Planning Board, therefore, approves the PWQP.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is OCT 18 2007 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

At its regular meeting held on Thursday October 11, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Lynch, seconded by Commissioner Bryant, with Vice Chair Robinson, and Commissioners Bryant, Cyror, and Lynch present and voting in favor. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120070210,, McCormick's Addition to Horizon Hill.

  
Royce Hanson, Chairman  
Montgomery County Planning Board

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120070210

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November 16, 2018

Via Electronic Mail and Hand Delivery

The Honorable Casey B. Anderson, Chairman  
and Members of the Montgomery County Planning Board  
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RECEIVED  
NOV 16 2018

OFFICE OF THE CHAIRMAN  
THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Re: Request for Extension of Preliminary Plan Validity Period  
Preliminary Plan No. 120070210 (the "Preliminary Plan")

Dear Chairman Anderson and Members of the Board:

On behalf of the Estate of Anne Hale Johnson (the "Applicant"), we are submitting an application for a 6-month extension of the validity period for the referenced Preliminary Plan, along with a check for the filing fee of \$2,390.00. Pursuant to the Preliminary Plan (with a Resolution mailing date of October 19, 2007) and the 8-year automatic extension granted to it by Ordinance No. 18-04, the current Preliminary Plan is poised to expire on November 18, 2018.

**Background**

The Preliminary Plan authorizes the creation of two lots on five acres of land located at 10600 Red Barn Lane in Potomac, Maryland (the "Property"). The Property is further identified as Lot 1 on Plat No. 4998. Anne Hale Johnson initially owned all five of the acres, but, prior to the approval of the Preliminary Plan, sold three acres to Dr. Robert T. Do. As part of the land sale, Dr. Do agreed to participate in obtaining a Record Plat to resubdivide the Property into two lots of 3 acres and 2 acres, respectively. It was Ms. Johnson's intent to sell her 2-acre portion of the Property once the new lots were created.

Due to a series of unforeseeable and unfortunate events chronicled below, it has taken much longer than anyone would have expected to record the two lots that had been approved in the Preliminary Plan. At this point, all Preliminary Plan Conditions of Approval have been met and the proposed Record Plat has been signed by the Property owners. The only remaining steps

in the Plat recordation process are final lender and agency signatures. It is anticipated that these last steps will easily be completed in the next few months.

### **Basis for the Extension**

As a condition of approval for the Preliminary Plan, the Montgomery County Department of Permitting Services required that: (1) public water must be provided to the two new lots and (2) the existing well on Dr. Do's portion of the Property must be sealed. Dr. Do objected to the sealing of the well because he relied on it to fill his swimming pool and care for the horses he maintained at the Property. After several years of discussions, Dr. Do and Ms. Johnson finally agreed that Ms. Johnson would provide the required water connection to Dr. Do's house and also dig an agricultural well that could be used for the horses.

While the well issues were being resolved, Ms. Johnson's health began to fail and a number of lienholders filed liens on Dr. Do's portion of the property. No significant actions were taken to plat the new lots until after Ms. Johnson passed away and a personal representative, Eric Core, was appointed on January 30, 2018. Mr. Core has diligently pursued the pending Record Plat for the past nine months and is anxious to complete the process so that he can sell the lot as Ms. Johnson originally desired. The actions that Mr. Core has taken include the following:

- Resolution of Preliminary Plan issues and Creation of the Record Plat mylar through Thomas A. Maddox, professional land surveyor;
- Coordination with Dr. Do's lienholders regarding confirmation that the proposed Record Plat will not affect their liens on Dr. Do's Portion of the Property; and
- Coordination with Dr. Do's lenders regarding their approvals of the proposed Record Plat. Access to these lenders has been challenging for us as a third party representative. It has also take time to work through certain road dedication issues that affect the lenders' real estate collateral. At this time, the primary mortgagee has authorized its trustee to sign the Plat and we are awaiting approval from the secondary lender.

The Board may grant a request to extend the validity period of a preliminary plan pursuant to Section 50.4.2.H of the Subdivision Regulations if the Board finds that:

- i. *Delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant;*  
*or*
- ii. *The occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to*

*implement the terms and conditions of the plan approval in order the validate the plan) would result to the applicant if the plan were not extended.*

As discussed above, the delays in validating the Preliminary Plan have not been caused by the Applicant. Rather, the Applicant has experienced significant, unusual and unanticipated events beyond her control, which have substantially impaired her ability to validate the Preliminary Plan. Following the resolution of the well dispute with Dr. Do, Ms. Johnson was physically unable to pursue the Record Plat in earnest. Once Ms. Johnson's estate committed to complete the Record Plat process, the complications in obtaining necessary approvals from Dr. Do and his lenders have been extraordinary. These are circumstances that cannot be attributed to the Applicant. Moreover, exceptional or undue hardship would result if the Preliminary Plan were not extended. The combination of Ms. Johnson's sickness and an incredible amount of work and expense to address all of the issues associated with this Record Plat has necessitated this extension request.

In support of this Extension Request, we are submitting the following items, in addition to this Letter of Explanation:

1. Application Form and Checklist;
2. Extension Fee;
3. Copies of the Approved Preliminary Plan and Resolution;
4. Adjoining and Confronting Property Owner and HOA/Civics Notice List;
5. Appointment of Personal Representative for the Estate of Anne Hale Johnson; and
6. Proposed Record Plat

We thank the Planning Board for its consideration of this extension request. We believe this Property satisfies the provisions of the Subdivision Regulations for extensions and is deserving of a favorable review. For all of the reasons articulated herein, we respectfully request the Planning Board to approve the Preliminary Plan extension for the Property.

Very truly yours,



Patrick L. O'Neil

Enclosures: As Stated

Cc: Mr. Eric Core  
Mr. Stephen Smith

**Van Alstyne, Chris**

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**From:** O'Neil, Patrick L. <ploneil@lercheearly.com>  
**Sent:** Friday, March 1, 2019 4:08 PM  
**To:** Van Alstyne, Chris  
**Cc:** O'Neil, Patrick L.  
**Subject:** RE: Preliminary Plan Extension for McCormick's Addition to Horizon Hill Preliminary Plan

Yes. We support a 1-year extension, although we hope to complete the plat long before that. At this point a FFCP has been submitted and I am hoping that this is well into the review cycle.

Please let me know if you need anything else from us at this point.

Thank you.

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**Patrick L. O'Neil, Attorney**  
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**From:** Van Alstyne, Chris <chris.vanalstyne@montgomeryplanning.org>  
**Sent:** Friday, March 1, 2019 2:59 PM  
**To:** O'Neil, Patrick L. <ploneil@lercheearly.com>  
**Subject:** RE: Preliminary Plan Extension for McCormick's Addition to Horizon Hill Preliminary Plan

Hi Patrick,

I'm reaching back out for follow-up on this application (below) to extend the validity period for Preliminary Plan No. 120070210. Please let me know if the applicant would like additional time as we're not confident the original 6-month extension period will be adequate. Let me know.

Thanks,

**Chris Van Alstyne**  
Senior Planner, Area 3  
301.495.4629



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**From:** Van Alstyne, Chris  
**Sent:** Tuesday, February 12, 2019 9:57 AM  
**To:** 'ploneil@lercheearly.com' <[ploneil@lercheearly.com](mailto:ploneil@lercheearly.com)>  
**Subject:** RE: Preliminary Plan Extension for McCormick's Addition to Horizon Hill Preliminary Plan