



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

MAY 15 2019

MCPB No. 19-045
Preliminary Plan No. 12007021A
McCormick's Addition to Horizon Hill
Date of Hearing: April 25, 2019

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on October 18, 2007, the Planning Board, by Resolution MCPB No. 07-194, approved Preliminary Plan No. 120070210, creating two lots on 5 acres of land in the RE-2 zone, located on the south side of Red Barn Lane at the intersection with Glen Mill Road, approximately 2 ½ miles north of Potomac ("Subject Property"), in the Rural West Policy Area and Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on November 16, 2018, the Estate of Anne Hale Johnson and Robert T. Do, ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to extend the validity period by one year (12 months) for the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12007021A, McCormick's Addition to Horizon Hill ("Amendment"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 12, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 25, 2019 the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12007021A to extend the validity period of the Preliminary Plan

Approved as to
Legal Sufficiency:

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MNCPPC Legal Department
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by one year (12 months) by adding the following condition:¹

8) The Preliminary Plan will remain valid for one year (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.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

Preliminary Plan Validity – Section 50.4.2.H

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 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.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- 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 creditor-related issues on Dr. Do's portion of the property.

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 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 plating 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. The Board 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 the Board 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 the Planning Board 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.*

The Board shall not 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, the Board shall not require additional information on the feasibility of the project.

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. The Board 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.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 15 2019 (which is the date that this Resolution is mailed to all parties of record); and

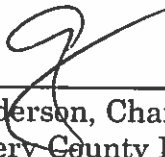
BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of

this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board