



The Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Preliminary Plan of Subdivision 4-19003

Pecan Ridge (Conservation Subdivision)

REQUEST	STAFF RECOMMENDATION
Extension of preliminary plan of subdivision validity period.	APPROVAL of one-year extension

Location: On the south side of Lloyd Station Road, approximately 315 feet east of its intersection with MD 197 (Laurel-Bowie Road).



Gross Acreage:	41.70
Zone:	RR
Gross Floor Area:	N/A
Dwelling Units:	80
Lots:	80
Parcels:	8
Planning Area:	71A
Council District:	04
Election District:	14
Municipality:	N/A
200-Scale Base Map:	211NE12
Applicant Address: Caruso Homes 1655 Crofton Blvd., Suite 200 Crofton, MD 21114	
Staff Reviewer: Mridula Gupta Phone Number: 301-952-3504 Email: Mridula.Gupta@ppd.mncppc.org	

Planning Board Date:	04/21/2022
Planning Board Action Limit:	N/A
Mandatory Action Timeframe:	N/A
Memorandum Date:	04/08/2022
Date Filed:	03/21/2022
Informational Mailing:	N/A
Acceptance Mailing:	N/A
Sign Posting Deadline:	N/A

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

April 8, 2022

MEMORANDUM

TO: The Prince George's County Planning Board

FROM: Mridula Gupta, Planner III, Subdivision Section *MG*
Development Review Division

VIA: Sherri Conner, Planning Supervisor, Subdivision Section *SC*
Development Review Division

SUBJECT: **Preliminary Plan of Subdivision 4-19003
Pecan Ridge
Extension Request**

This Preliminary Plan of Subdivision (PPS), 4-19003, was approved by the Prince George's County Planning Board on February 20, 2020, and the resolution of approval was adopted on March 12, 2020 (PGCPB Resolution No. 2020-25). The PPS was approved for 80 lots and 8 parcels and is valid through March 12, 2022. By letters dated March 21, 2022 and March 28, 2022, Edward C. Gibbs, Jr. of the Law Offices of Gibbs and Haller, representing Caruso Homes, requests a one-year extension until March 12, 2023. The time of the submission of the extension request and PPS validity are discussed further within this staff memorandum. This extension request was filed in conjunction with a variation request to Section 24-119(d) of the prior Prince George's County Subdivision Regulations from the requirement to file an extension request within two years of the approval of the PPS. However, by letter dated April 5, 2022, Mr. Gibbs withdrew the variation request to Section 24-119(d). This is the applicant's first extension request.

Section 24-1704(a) of the Subdivision Regulations states that Subdivision approvals of any type remain valid for the period of time specified in the Subdivision Regulations under which the subdivision was approved. Extensions of time which were available under those Subdivision Regulations shall remain available.

PPS 4-19003 was approved under the prior Subdivision Regulations, and Section 24-119(d) of the prior Subdivision Regulations authorizes the Planning Board to grant an extension to the normal expiration of a PPS, pursuant to the criteria below in **BOLD** text. Staff analysis of the required criteria is provided in plain text.

(5) An approved preliminary plan of subdivision shall remain valid for two (2) years from the date of its approval unless an extension of the validity period is granted.

(A) Extensions of the validity of an approved preliminary plan may be granted by the Planning Board provided:

(i) The request is filed prior to the expiration of the preliminary plan approval;

The request for extension was filed on March 21, 2022. However, the PPS validity period expired on March 12, 2022. In their letters requesting the extension, the applicant states that the request was filed timely, by putting forth the following arguments:

- That March 12, 2020 is not the date that the PPS should be deemed approved, since the written notice of approval of the PPS was mailed to the applicant on March 19, 2020, and a revised notification of approval of the PPS was mailed to the applicant on May 14, 2020. The applicant claims that the final approval date of the PPS should be viewed as the date of mailing of the written notice of approval, and not the date of approval of the resolution. The applicant states that the validity period of the PPS is triggered when the PPS is *final* (emphasis added), and that adoption of the resolution is not the final act of the Planning Board, since a written notice of approval needs to be mailed, which in this case, did not occur until March 19, 2020. The applicant further provides references to the state's Land Use Article, Maryland Rule 7-203, and the Planning Board's Rules of Procedure to support their assertion that the date of approval of PPS 4-19003 is March 19, 2020 and not March 12, 2020.

Staff finds that the revised notice of approval of the PPS was mailed on May 14, 2020, to advise the applicant that the time period applicable to filing an appeal of the Planning Board's action on the PPS had changed. This change was brought about by the Executive Order No. 6-2020 by the County Executive, which proclaimed a local state of emergency, due to the COVID-19 pandemic, and temporarily suspended the expiration of time limits for court actions.

Regarding the final date of approval of the PPS, staff finds that all three of the provisions listed by the applicant relate to the dates and time frames within which an individual has a right to appeal (or request reconsideration). To protect the rights of potential appellants, the mailing date of the Planning Board's action ensures that potential appellants are aware of the Planning Board's decision and can exercise their right to appeal or request reconsideration. The final action for an appellant's rights does not, however, lead to the conclusion that the final date of approval for all other purposes is also the mailing date. Instead, adoption of a resolution memorializes the action taken by the Planning Board, and there is no requirement that further action, such as mailing the resolution, is somehow

necessary to confer on a property its development rights or allow an applicant to exercise those rights. Using this logic, the Planning Board could ostensibly refuse to approve a PPS because it never mailed the resolution to the applicant.

- That, based upon the applicant's assertion that March 19, 2020 should be considered the final approval date of PPS 4-19003, the PPS was actually valid until March 19, 2022, which falls on a Saturday. Here, the applicant states that in accordance with Section 27-108.01(8)(A) of the Prince George's County Zoning Ordinance, the validity of the PPS extended until the following Monday, which is March 21, 2022, since the PPS expired on a Saturday.

Staff finds that Section 27-108.01(8)(C) further states that where the County offices provide for electronic or drop box filings, the last day of the period computed is included, whether the County office is open or not. Therefore, staff does not agree with this explanation.

- That principles of equitable estoppel justify the late filing of the extension request. The applicant states that information available through the Planning Department's database and correspondence provided to the applicant by staff, presented inconsistent information regarding the validity of PPS 4-19003. The applicant argues that this inconsistency led to their belief that the PPS was valid until at least December 31, 2022.

The validity of PPS applications was complicated by the executive order tolling appeal periods and enactment of legislation, which served to extend the validity dates of valid PPS during the COVID 19 pandemic (Prince George's County Council Bill CB-74-2020). CB-74-2020 extended the validity of PPS approved on January 1, 2015, and later until December 31, 2022. However, this legislative extension was only applicable to PPS in a valid status as of January 1, 2020, thereby allowing a PPS older than the subject application to remain valid longer. Staff finds that though the two misrepresentations by the Planning Department regarding the PPS validity period were unintentional, but nonetheless these mistakes may have contributed to the applicant's failure to file their extension request prior to the PPS expiration. The applicant did file the request within the believed validity period as provided by staff and during this time staff had been continuously working with the applicant regarding the final plat filing. The applicant filed the extension request immediately after realizing the validity computation errors, just nine days past March 12, 2022. Therefore, staff finds that it is reasonable in this unique case for the Planning Department to accept the applicant's extension request filed on March 21, 2022, as being timely under the circumstances, and that the above criterion (i) is met.

(ii) The preliminary plan remains in conformance with all the requirements of Subtitle 27 applicable to the subject property;

Staff finds that the above criterion (ii) is met. Section 27-1704 of the Zoning Ordinance sets forth that development applications approved prior to

April 1, 2022 (pursuant to the prior Subdivision Regulations) may continue to the next steps in the approval process under the Zoning Ordinance and Subdivision Regulations which it was approved.

(iii) Two (2) years is not sufficient time to prepare the final plat(s);

The applicant cites three reasons why they found two years not sufficient time to prepare the final plat. The applicant states that they experienced extensive delays in finding an additional party to the conservation easement for conservation parcels, as required by the Subdivision Regulations; a delay in approval of the entrance road and the stormwater management (SWM) concept plan; and discovery of an existing BGE easement, which requires partial redesign of the lotting pattern approved with the subdivision, all of which resulted in two years not being sufficient time to prepare the final plat.

Per Section 24-152(n) of the prior Subdivision Regulations, any conservation areas proposed within a conservation subdivision are required to be owned and controlled by an individual, a homeowners association, a public or private organization, land trust, or corporation. A conservation easement is required be recorded in the Prince George's County Land Records and include an additional party, being a land trust organization or local government agency, to ensure responsibility for the maintenance and continued protection of the conservation areas. Section 24-152(o) provides specific requirements for the conservation easement agreement, which is required, prior to final plat approval. A draft of the conservation easement agreement was filed with the PPS application, as required in accordance with Section 24-152(l). The PPS was accepted on November 6, 2019. Staff finds that the requirements of a conservation subdivision, as listed in the Subdivision Regulations, are anticipated when opting for this development method. The action to find an additional party to the proposed conservation easement should therefore not justify two years as insufficient time to prepare the final plat.

SWM Concept Plan 15661-2019-00 was approved for the proposed development, prior to the signature approval of the PPS in October 2020. Staff finds that the delay in approval of the SWM concept plan, and subsequent signature approval of the PPS, does not impact the time available to the applicant to prepare the final plat. The PPS was approved in March 2020, and the plans were certified seven months later. The applicant had sufficient time after certification of the PPS to prepare the final plat and did submit draft final plats in February 2021.

During staff review and further investigation by the applicant's consultant of the draft final plats, extents of an existing BGE easement were discovered, which impact the lotting pattern approved with the PPS, including the conservation area, and the approved Type 1 Tree Conservation Plan TCP1-013-2019. The applicant is in the process of filing a reconsideration of the PPS, in order to account for the BGE easement and its impact on the approved conservation area, lot layout, and TCP1. The final plats will be

updated and resubmitted subsequent to the reconsideration of the PPS, if approved. Staff finds that the additional time is required by the applicant to resolve the impacts associated with the BGE easement, and that two years is not sufficient time to prepare the final plat.

(iv) The applicant is not unduly delaying the filing of the final plat(s);

The applicant states that they have not delayed the filing of the final plats and has indicated that factors outside their control have led to their inability to proceed with preparation of the final plats.

As stated under the finding for the prior criterion, staff finds that the applicant is not unduly delaying the filing of the final plat given the efforts by the applicant to resolve the impacts associated with the unidentified BGE easement on-site, and that the above criterion has been met.

(v) The validity of a preliminary plan consisting of less than one hundred (100) residentially zoned lots or less than one hundred (100) gross acres of commercially or industrially zoned land or land designated for nonresidential uses in any CDZ or M-X-T Zone shall not be extended more than one (1) year from the normal expiration of the approved preliminary plan;

This is the first extension requested by the applicant, which is not more than one year, therefore this criterion is met.

Pursuant to the findings presented above, staff recommends that the Planning Board approve a one-year extension.