



Cavanaugh Property, Preliminary Plan Amendment No. 12010019A

WJK

Mary Jo Kishter, Planner Coordinator, Area 3, MaryJo.Kishter@montgomeryplanning.org, 301-495-4701

SP

Sandra Pereira, Supervisor, Area 3, Sandra.Pereira@montgomeryplanning.org, 301-495-2186

RAW

Richard Weaver, Chief, Area 3, Richard.Weaver@montgomeryplanning.org, 301-495-4544

Completed: 11/2/18

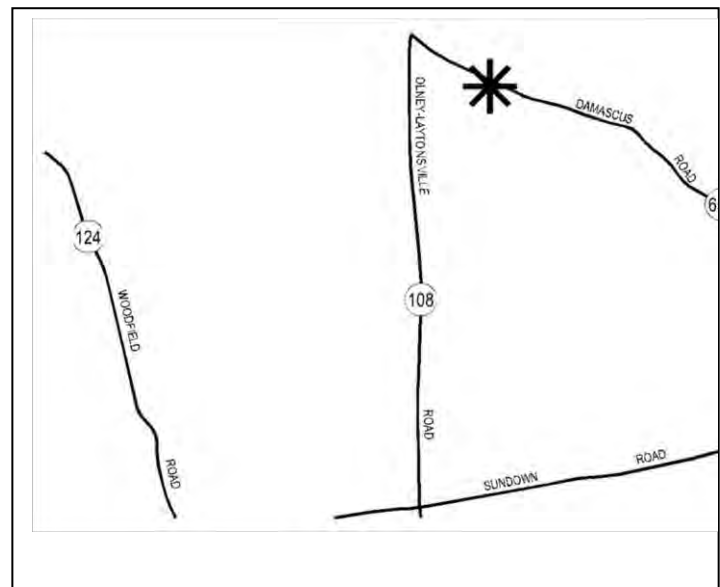
Description

Cavanaugh, Preliminary Plan Amendment No. 12010019A

A request to separate the project into two phases to allow the two child lots to be recorded as part of Phase I and the remaining twelve lots, two outlots, and public street to be recorded as part of Phase II; located on the south side of Damascus Road (MD 650), approximately 2,000 feet east of Olney-Laytonsville Road (MD 108); AR Zone; 312.61 acres within the *2005 Olney Master Plan* and *AROS Functional Master Plan*.

Staff Recommendation: *Approval with conditions*

Applicant: Cavanaugh Family, LLC
Accepted Date: June 29, 2018
Review Basis: Chapter 50, 59, 22A



Summary

- Staff recommends **Approval with conditions**
- Application to amend the approved Preliminary Plan and Preliminary Forest Conservation Plan to separate the project into two phases to allow recordation of the two child lots that contain existing homes and currently stand alone as separate deeded parcels as part of Phase I. Phase II will include the remaining twelve lots, two outlots, and public street. No clearing, grading, or construction will occur as part of Phase I.
- Forest planting requirements will be prorated based on the net tract area of each phase.
- Update the acreage of the Subject Property based on a new property survey and refine lot sizes, area of farm remainder, and areas of conservation easements accordingly.
- The amendment does not change the existing approval for 14 lots, including two child lots, and two outlots other than refinements to lot sizes based on an updated boundary survey of the property.
- Staff supports request to extend the Preliminary Plan validity by two years, until August 2023.
- Meets requirements of Chapter 22A, Forest Conservation Law.
- Substantially conforms to the *2005 Olney Master Plan*.

SECTION 1 - RECOMMENDATION AND CONDITIONS

Preliminary Plan Amendment No. 12010019A: The conditions and findings of Preliminary Plan No. 120100190 remain in full force and effect unless modified or added as noted below. All references to Phase I and Phase II are as described on the Phasing Schedule outlined on the Preliminary Plan Amendment and the Preliminary Forest Conservation Plan Amendment. Staff recommends approval of the Preliminary Plan Amendment and the associated Preliminary Forest Conservation Plan subject to the following conditions:

3) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan ~~dated March 17, 2014,~~ No. 12010019A, approved as part of this Preliminary Plan amendment, including:

- a. Prior to recordation of any plats, or any clearing, grading or demolition on the Property, the Applicant must obtain M-NCPPC approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
 - d. Prior to any clearing, grading, or demolition in Phase II on the Property, the Applicant must submit financial surety for the remainder of the forest planting on the Property, as specified on the approved Final Forest Conservation Plan.
 - e. Prior to any clearing, grading or demolition in Phase II on the Property, the Applicant must submit a Maintenance and Management Agreement for the forest planting on the Property as shown on the approved Final Forest Conservation Plan.
 - f. Prior to any clearing, grading, or demolition in Phase II on the Property, the Applicant must place a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers as specified on the approved Final Forest Conservation Plan. Conservation easements must be recorded in the Montgomery County Land Records and referenced on the plats.
 - g. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of all forest conservation easements. The timing of the installation will occur at the direction of the M-NCPPC forest conservation inspector.
 - k. Prior to recordation of any plats in Phase I, the Applicant must submit financial surety for 0.77 acres of forest planting on the Property, as specified on the approved Final Forest Conservation Plan.
 - l. Prior to the recordation of any plats in Phase I, the Applicant must submit a Maintenance and Management Agreement for 0.77 acres of forest planting on the Property as shown on the approved Final Forest Conservation Plan.
 - m. Prior to the recordation of any plats in Phase I, the Applicant must place a Category I conservation easement over 0.77 acres of forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. Conservation Easements must be recorded in the land records and referenced on the plats.
- 11) As part of Phase II, tThe Applicant must dedicate and show on the record plat(s) all road rights-of-way to the full width mandated by the *2005 Olney Master Plan* or as otherwise designated on the Preliminary Plan. These include the following:
- a. 40 feet from the existing pavement centerline along the Subject Property frontage for Damascus Road (MD 650).
 - b. Dedication of Cavanaugh Farm Lane as a 60-foot wide open section tertiary street.

- 12) As part of Phase II, tThe Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
- 20) Prior to recordation of any lot within Phase II approved under this Preliminary Plan Amendment, the easement on Outlot B for the cistern, the Category I conservation easements in Phase II, and the planting requirements for Phase II must be initiated.
- 21) Prior to the recordation of any plats in Phase II, the Applicant must address the recommendations of the Montgomery County Department of Fire and Rescue Services ("MCFRS") in its letter dated February 21, 2012, as accepted by the Planning Board with the approval of Preliminary Plan No. 120100190.
- 22) This preliminary plan validity period will be extended by two years from the expiration of Preliminary Plan No. 120100190 approval as noted in the Planning Board Resolution 14-52, dated July 29, 2014.

SECTION 2 - SITE LOCATION AND EXISTING CONDITIONS

Site Location and Vicinity

The property is a 312.61-acre farm within the Patuxent River Watershed identified as Parcels P484, P100, P750, and P634 on Tax Map GW52, zoned Agricultural Reserve (AR), previously zoned Rural Density Transfer (RDT) ("Property" or "Subject Property"). It is located approximately 2,000 feet east of Olney-Laytonsville Road on the south side of Damascus Road (MD 650); depicted in Figures 1 and 2. Low-density residential lots and open agricultural fields surround the Property. The Property has three houses, agricultural buildings, and five bee hives and is currently used for hay production. The Property is located within the 2005 Olney Master Plan ("Master Plan") area.



Figure 1 - Vicinity Map

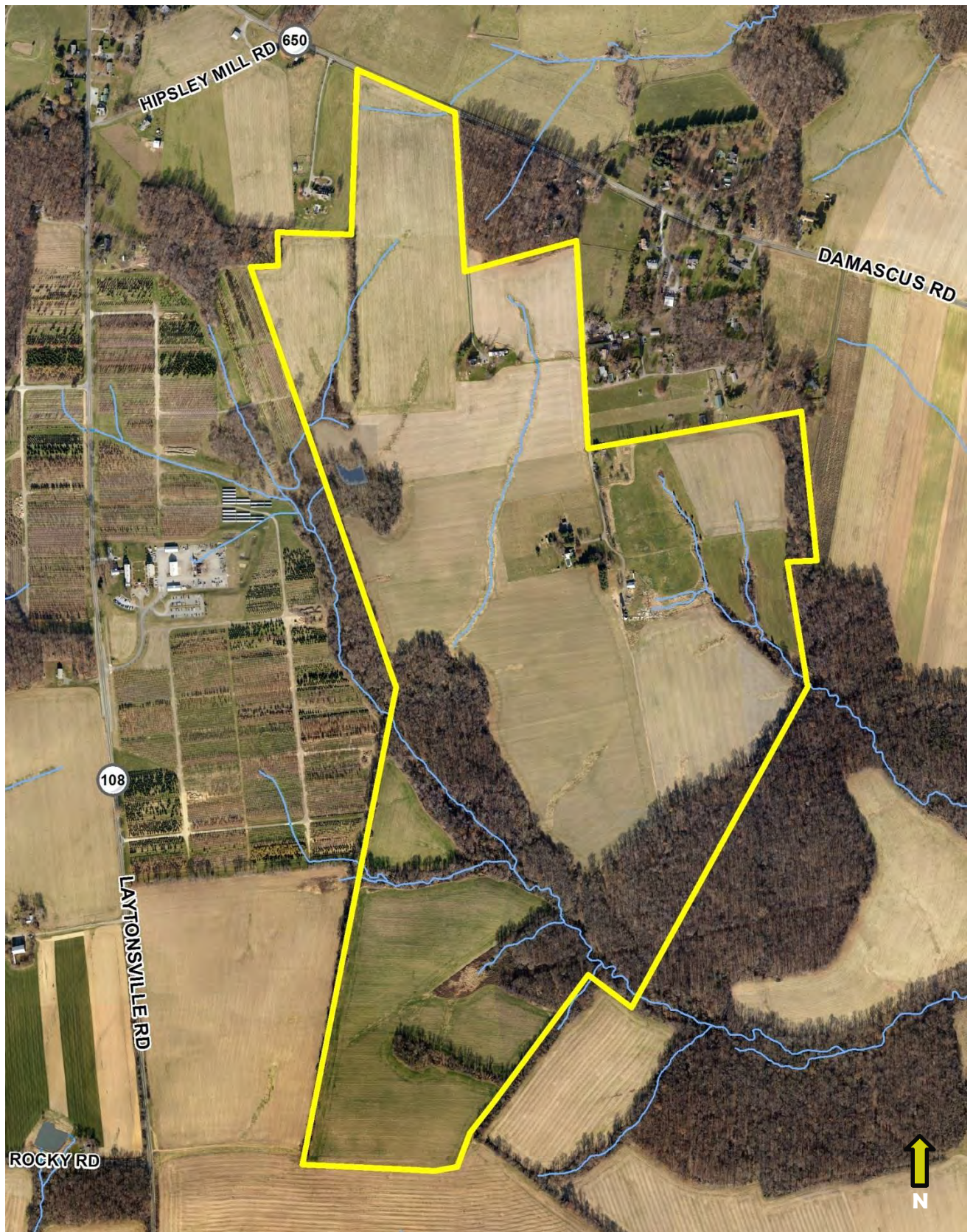


Figure 2 - The Property

Existing Conditions

The Property consists of a main farm house and two additional houses that are all occupied by family members. The Property contains outbuildings related to the agricultural use, a farm pond, actively farmed agricultural fields used for hay production, and 39.6 acres of existing forest, of which 33 acres is located within the environmental/stream buffers on the Property. There is an existing apiculture operation within the stream buffer on the Property, where bees are kept.

The Property is located within the Hawlings River watershed, a tributary to the Patuxent River, which is classified by the State of Maryland as Use IV waters. There is a tributary stream system of the Hawlings River located in the eastern portion of the Property. This system includes three headwater streams that originate onsite, and flow in a southeasterly direction before reaching a confluence and flowing offsite in the eastern part of the Property. There are several seeps and wetlands associated with this tributary system. The main stem of the Hawlings River flows onto the Property from the western Property line and travels through the Property in a southeasterly direction before exiting the Property. There are several tributary streams, a pond, seeps and extensive wetlands that originate on the Property and flow into the Hawlings River. There is no mapped 100-year floodplain or highly erodible soils on the Property. Steep slopes ($\geq 25\%$) exist in only a minor portion of the Property.

The Subject Property is located within the Patuxent River Primary Management Area (PMA). The purpose of the PMA guidelines is to provide strategies to protect, preserve, and restore the Patuxent River and its drinking water supply reservoirs. Montgomery County's PMA is consistent with the PMA widths recommended in the State's Patuxent River Policy Plan, which are $\frac{1}{4}$ mile (1,320 feet) strips of land running along both sides of the Patuxent main stem and $\frac{1}{8}$ -mile (660 feet) strips of land running along both sides of all tributaries. In addition, Montgomery County also recommends a PMA width of $\frac{1}{4}$ mile for the main stem of the Hawlings River. The Hawlings River is a tributary to the Patuxent River and its watershed lies almost entirely within Montgomery County. The Environmental Guidelines state that the *"preservation of prime and viable agricultural land is a goal of the Patuxent watershed primary management area as it is throughout upper Montgomery County. It is hoped that the designation of the Patuxent PMA will help achieve the delicate balance between development and agriculture while ensuring water quality"* (p. 52). The majority of the soils on the Property that underlay the existing agricultural fields are mapped as Glenelg silt loam (2B), which is a prime agricultural soil and a priority for preservation.

SECTION 3 - PRIOR APPROVAL AND PROPOSED AMENDMENT

Prior Approval for Preliminary Plan 120100190

Preliminary Plan No. 120100190 was approved by Planning Board Resolution No. 14-52 dated July 29, 2014 (Attachment A) to create 14 lots (two child lots) for 14 single family dwelling units, three of which are existing, a farm remainder, and two outlots. The two child lots are to be converted from deeded parcels to individual lots. There are existing dwellings on the two proposed 10-acre child lots (Lots 13 and 14) and an existing farm house and outbuildings on the largest of the proposed lots (Lot 12). The Planning Board approved an over-length cul-de-sac to access 12 of the 14 lots, and waived frontage for the two child lots with existing dwellings. Lots 13 and 14, the child lots, will continue to have access from Damascus Road via a 20-foot wide private asphalt common driveway that has an ingress/egress easement. The remaining lots will have access from Damascus Road via a new public road called Cavanaugh Farm Lane, as an open section tertiary cul-de-sac with a 60- foot wide right-of-way. Lots 1 through 8 will have direct access from Cavanaugh Farm Lane, while lots 9 through 12 will have access via a private shared driveway from Cavanaugh Farm Lane. All dwellings will be served by private well and septic systems. Outlot A will remain in agricultural production and Outlot B will include an easement for a possible future cistern.

A farm remainder of 226 acres was approved. A Preliminary Forest Conservation Plan No. 120100190 was approved as part of the Preliminary Plan, which included no forest clearing. A total of 65.47 acres of Category I conservation easement was approved to protect 36.9 acres of existing forest, 9.15 acres of new forest plantings associated with planting requirements per the Forest Conservation Law and the PMA requirements, and environmentally sensitive features, including tributary streams, the Hawlings River main stem, 27 acres of wetlands, seeps, springs, and an existing farm pond.

Current Application for Preliminary Plan Amendment 12010019A

Cavanaugh Family LLC ("Applicant"), filed an application to amend the approved Preliminary Plan to allow for the project to occur in two phases and to revise the areas of the Subject Property based on survey information that was obtained after the initial plan approval ("Application"). The amended Preliminary Plan is included in this report as Attachment B. The surveyed property boundary results in necessary revisions to property lines for the proposed lots, outlots, and other areas on the Property related to the Application; however, the plan essentially remains unchanged (Figure 3). In addition, the Applicant has requested an extension of the preliminary plan validity period. The proposed amendment does not alter any of the findings previously made as part of the original Preliminary Plan approval. The proposed changes to the plan requested in this Application are outlined and discussed in more detail below.

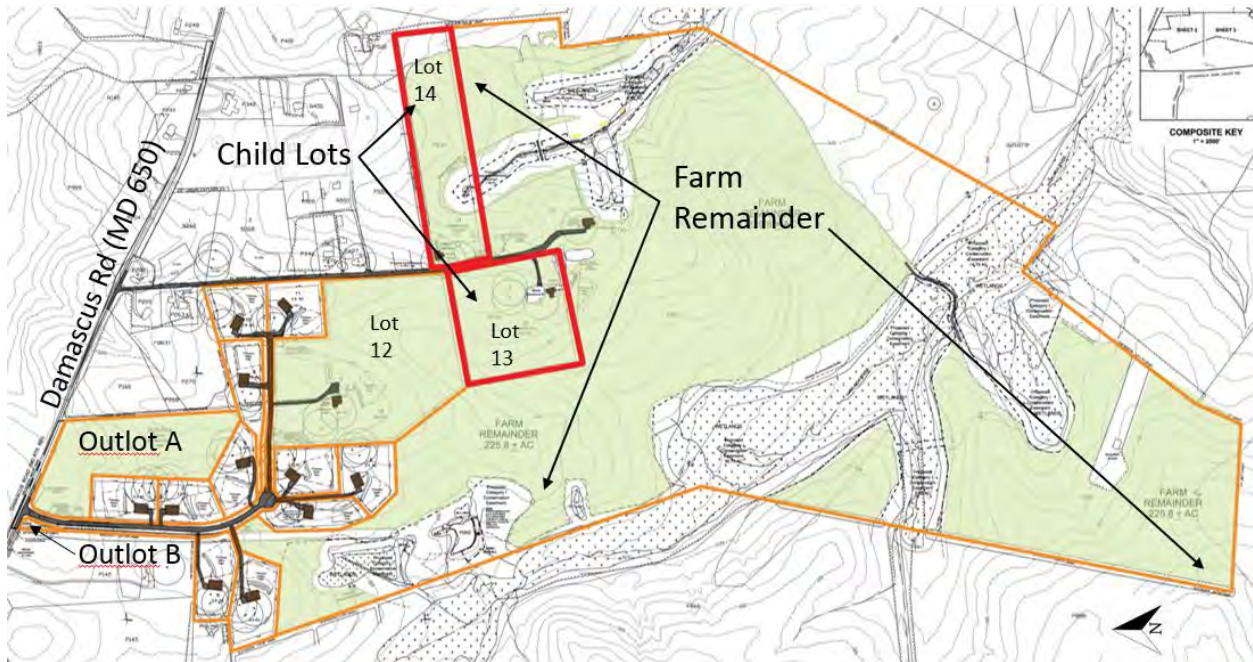


Figure 3 – Preliminary Plan 12010019A

Proposed Phasing

The Applicant has requested to separate the development into two phases. The desire of the Applicant to maintain the Property in agricultural use and not record the twelve, market rate lots is the impetus behind the proposed amendment. As the Applicant explores available options to keep the farm intact, such as taking advantage of the Building Lot Termination (BLT) Program, the two proposed child lots are deeded parcels with existing dwellings inhabited by two of the Cavanaugh children and they wish to record these two lots without undertaking the burden of all of the development requirements when the remaining twelve lots may never be recorded. Phase I would include the two child lots (Lots 13 and 14 as identified in Figure 3) and the forest conservation requirements associated with those two lots. Phase II would include the remaining twelve lots, two outlots, and the proposed cul-de-sac. Forest conservation for the two child lots would be completed as part of Phase I. The remaining forest conservation requirements, Patuxent River Primary Management Area requirements, dedication along Damascus Road (MD 650), and other requirements of the original Preliminary Plan approval will be completed as part of Phase II.

Phase I – Recordation of Lots 13 and 14, the two proposed child lots. No new development is proposed in Phase 1. These two lots contain existing single-family homes and will be created by converting them from deeded parcels to individual lots. The two homes are occupied by children of the Property owner and include area that will continue to remain in agricultural production. The lots are currently accessed and will continue to be accessed from Damascus Road via a 20-foot wide private asphalt common driveway that has an ingress/egress easement. No clearing, grading or any land disturbance activity will occur as part of Phase I. An afforestation requirement of 20% of the net tract area of Phase I is attributable to Lots 13 and 14, which equates to approximately 0.77 acres of planting. The afforestation will occur within the stream buffer located on Lot 14 and the adjacent farm remainder. This area will be protected in a Category I conservation easement as part of this phase.

Phase II – Recordation of Lots 1-12, the two outlots, and the dedication of streets. Phase II will include the recordation of 66.88 acres of conservation easement areas not included in Phase I, and the planting of 8.92 acres of forest. Requirements for access and improvements as required by MCDOT and MDSHA, and for emergency vehicle access and water supply will be part of Phase II.

Updated Survey Information

A survey of the Property boundary was completed after the Preliminary Plan was approved. This resulted in necessary revisions to proposed property boundaries and corresponding acreages. A comparison of the approved Preliminary Plan and the proposed changes included with this amendment based on the survey information is provided below. While the overall property area increased by almost seven acres, the proposed lot sizes did not change significantly. Most of the increased acreage is attributed to the farm remainder, including forest retention and conservation easements.

Table 1. Summary of revisions to plan due to updated survey information

FEATURE	120100190	12010019A
Gross Tract Area	305.8 acres	312.61 acres
Lot 1	2.2	2.22 acres
Lot 2	2.0	1.96 acres
Lot 3	2.3 acres	2.28 acres
Lot 4	2.3 acres	2.37 acres
Lot 5	2.7 acres	2.76 acres
Lot 6	2.1 acres	2.09 acres
Lot 7	3.0 acres	3.07 acres
Lot 8	2.5 acres	2.61 acres
Lot 9	2.4 acres	2.15 acres
Lot 10	2.8 acres	2.90 acres
Lot 11	2.9 acres	3.08 acres
Lot 12	20.0 acres	20.27 acres
Lot 13 (child lot)	10.0 acres	10.00 acres
Lot 14 (child lot)	10.0 acres	10.03 acres
Outlot A (agricultural production)	9.5 acres	10.15 acres
Outlot B (easement for cistern)	0.5 acres	0.68 acres
Farm Remainder	224.9 acres	230.18 acres
Road Dedication	2.8 acres	2.89 acres
Category I Conservation Easement	65.47 acres	67.65 acres
Forest Retention	36.90 acres	39.59 acres
Forest Planting	9.15 acres	9.69 acres

Preliminary Plan Validity Period Extension and Adequate Public Facility Review

The Applicant requested an extension to the validity period for the Preliminary Plan. The current approval has a validity period that ends on August 29, 2021. This date is based on the initiation date of the plan validity period of 30 days from the July 29, 2014 date of mailing indicated on the original Resolution, the approval granting 60 months from August 29, 2014 (August 29, 2019), and the addition of two years granted by the County Council for all valid plans on March 31, 2015 (August 29, 2021). Staff

recommends an additional two-year extension, ostensibly to allow the Property owner time to find a buyer for the BLT's, resulting in the Preliminary Plan remaining valid until August 29, 2023.

The Adequate Public Facility review will remain unchanged. It is valid until August 29, 2023 based on the original approval granting 85 months from the July 29, 2014 date of the Resolution with the addition of two years granted by the County Council for all valid plans as of March 31, 2015.

SECTION 4 - ANALYSIS AND FINDINGS

All preliminary plan findings made as part of the original Preliminary Plan No. 120100190 approval remain in full force and effect unless modified below.

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

Public facilities will continue to be adequate to support and service the area of the approved subdivision. The Montgomery County Fire and Rescue Service reviewed the amended plans and determined that the easement for the future cistern to be located within Outlot B is not required until Phase II. The Applicant's engineer forwarded correspondence from the Montgomery County Department of Permitting Services that includes the determination that if no new construction is proposed as part of Phase I and the homes are occupied with valid use and occupancy certificates, no fire department access review is required (Attachment C). Therefore, Staff has concluded that the proposed easement for the cistern and the recordation of Outlot B may occur as part of Phase II.

3. The layout of the subdivision, including size, width, shape, orientation, and density of the approved lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.

The proposed amendment changes the size, width, and shape of some of the approved lots due to the updated property survey information. The proposed lots continue to meet the required findings as the revisions were very minor as noted in Table 1 earlier in this report.

Preliminary Plan Validity

The Applicant has requested to extend the validity period for an additional two years. The criteria for extending the plan validity period is governed by Chapter 50 Section 4.2.H.3. While the current approval has a validity period that ends on or about August 29, 2021 which is ample time to allow for the recordation of the 14 lots, there are extenuating circumstances which the Applicant describes in a written request for the extension (Attachment D). The Subject Property is a family owned farm that is actively farmed. The owners of the farm are the children and heirs to the original Cavanaugh land owners. Some of the children live on the farm and are active in its operation while others have moved away and are no longer involved in the operation of the farm.

The Property is proposed to be subdivided into lots so that lots can be sold to compensate each heir for their share of the farm. However, there continues to be an interest in keeping the farm intact by selling all of it (minus the child lots) to one of the local farmers with a large-scale farming operation in Montgomery County. Keeping the farm intact is consistent with the primary intent of the AR zone. In order for this to succeed financially for the farmer and the Cavanaugh family heirs, BLT Program would need to be utilized for some or all of the lots. The family is exploring the option of utilizing the BLT

Program to reduce the number of lots or to eliminate the development completely. The family would like the opportunity to delay the costs associated with recording all of the lots, which requires engineering, permits, and bonds for the public street in order to keep the option of participating in the BLT Program.

Per Chapter 50-4.2.H.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:*
 - 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 significant, unusual and unanticipated events are outlined above as taken from the Applicant's documented request for the extension. The BLT program was not available when the Applicant began the process of subdividing the Property but the program now provides another option for compensating the heirs that are no longer involved in the farm while allowing the farm to remain intact. Because the BLT program is not a financially viable option at this time (it is market driven and supported by public funds that are not currently available), the Applicant has requested an extension of the validity period to allow more time for this option to become viable.

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

The Application to amend the Preliminary Plan includes a revised Preliminary Forest Conservation Plan that was updated to reflect necessary revisions based on the updated property survey information and phasing of forest conservation requirements to coincide with the phasing of the preliminary plan (Attachment E). All of the previous findings made as part of the original Preliminary Plan No. 120100190 and associated Preliminary Forest Conservation Plan approval remain valid.

The total tract area for forest conservation is calculated by deducting the land dedicated for roads that are not being constructed as part of the Application and the area to remain in commercial agricultural production, and by adding land that is located off-site that will be improved as part of the Application (i.e., off-site road improvements or utility connections). All of the existing forest is located within the farm remainder, so the forest conservation worksheet for the proposed development reflects that there is no forest within the net tract area, and therefore, no forest retention or clearing. The result is an afforestation requirement that increased from 7.40 acres on the original approval to 7.49 acres on the proposed amendment.

The revisions to areas and acreages related to the Forest Conservation Plan resulting from the updated survey information are summarized in Table 2.

Table 2. Comparison of Approved and Amended Forest Conservation Plan due to updated survey

Forest Conservation Plan No.	120100190 Approved	12010019A Proposed
Total Tract Area	305.80 acres	312.61 acres
Land Dedication (not constructed by plan)	0.24 acres	0.32 acres
Area remaining in Ag. Production*	268.67 acres	274.95 acres
Off-site Improvements (LOD)	0.10 acres	0.10 acres
Net Tract Area (NTA)	36.99 acres	37.44 acres
Existing Forest within NTA	0.00 acres	0.00 acres
Afforestation Threshold (20% of NTA)	7.40 acres	7.49 acres
Total Afforestation Required	7.40 acres	7.49 acres
Category I Conservation Easement	65.47 acres	67.65 acres
Forest Planting per Forest Conservation Law	7.40 acres	7.49 acres
Forest Planting per PMA Requirements	1.75 acres	2.20 acres

*Includes farm remainder and portions of Lots 12, 13, and 14, and Outlot A that will remain in agricultural use

As noted earlier in this report, the forest conservation requirements will be phased to coincide with the phasing of the preliminary plan. An afforestation requirement of 20% of the net tract area of Phase I is attributable to Lots 13 and 14, which equates to approximately 0.77 acres of planting. The afforestation will occur within the stream buffer located on Lot 14 and the adjacent farm remainder. This area will be protected in a Category I conservation easement as part of this phase. Phase II will include the recordation of 66.88 acres of conservation easement areas not included in Phase I, and the planting of 8.92 acres of forest.

Agricultural Declaration of Intents

The Applicant provided three updated Agricultural Declaration of Intent for Lots 12, 13, and 14, Outlot A and the farm remainder dated August 28, 2018. The Declaration of Intent affirm that these areas are exempt from the requirements of Chapter 22A per Section 22A-5(b) since they will remain in commercial agricultural use for a period of at least five consecutive years.

SECTION 5 - CITIZEN CORRESPONDENCE

The Applicant notified adjacent and confronting property owners of the Application to amend the Preliminary Plan. Staff received one letter on July 17, 2018 from Daniel J. Simons and Beverly A. Simons expressing concerns regarding traffic and development in the Agricultural Reserve (Attachment F). Staff left a voicemail with the Simons explaining that the subdivision had been approved in 2014 and this Application to amend the plan was related to phasing the proposed development. Staff did not receive any additional correspondence from the Simons.

SECTION 6 - CONCLUSION

Staff recommends approval of the Preliminary Plan Amendment subject to all previous conditions of Preliminary Plan No. 120100190 except as revised as described at the beginning of this report. The Amendment has been reviewed and found conforming to all applicable laws and sections of Code.

ATTACHMENTS

Attachment A – Preliminary Plan No. 120100190 Resolution No. 14-52

Attachment B– Preliminary Plan Amendment

Attachment C – MCFRS Correspondence

Attachment D – Preliminary Plan Validity Extension Request

Attachment E - Preliminary Forest Conservation Plan Amendment

Attachment F – Citizen Correspondence



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

JUL 29 2014

MCPB No. 14-52
Preliminary Plan No. 120100190
Cavanaugh Property
Date of Hearing: July 17, 2014

RESOLUTION

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

WHEREAS, on May 21, 2010, the Cavanaugh Family, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision that would combine four parcels, and subdivide the property into 14 lots, including two child lots, a farm remainder, and two outlots; located on the south side of Damascus Road (MD 650), approximately 2,000 feet east of Olney-Laytonsville Road (MD 108) ("Subject Property"); RDT zone; 305.80 acres within the 2005 Olney Master Plan and Preservation of Agriculture and Rural Open Space Functional Master Plan "AROS" ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100190 Cavanaugh Property ("Preliminary Plan" or "Application"); 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 July 3, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, the Planning Board held a public hearing on the Application, and at the hearing 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 as certified below;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120100190 to create fourteen lots, including two child lots, on the

Approved as to
Legal Sufficiency

Christina Soria 7/9/14
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

Subject Property, subject to the following conditions:¹

- 1) This Preliminary Plan is limited to 14 lots for 14 single family dwelling units, three of which are existing, a farm remainder, and two outlots.
- 2) The certified Preliminary Plan must contain the following note:
 - a. "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, and site circulation shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 3) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan dated March 17, 2014, including:
 - a. Prior to any clearing, grading or demolition on the Property, the Applicant must obtain M-NCPPC approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
 - b. The Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved Final Forest Conservation Plan.
 - c. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - d. Prior to any clearing, grading, or demolition on the Property, the Applicant must submit financial surety for the forest planting on the Property, as specified on the approved Final Forest Conservation Plan.
 - e. Prior to any clearing, grading or demolition on the Property, the Applicant must submit a Maintenance and Management Agreement for the forest planting on the Property as shown on the approved Final Forest Conservation Plan.
 - f. Prior to any clearing, grading, or demolition on the Property, the Applicant must place a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers as specified on the

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.

- approved Final Forest Conservation Plan. Conservation easements must be recorded in the Montgomery County Land Records.
- g. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of all forest conservation easements.
 - h. All proposed septic fields must be set back a minimum of 300 feet from the main stem of the Hawlings River and a minimum of 200 feet from all tributary streams.
 - i. Environmental buffers will be subject to re-delineation in the event that a new development application is submitted for the Property in the future.
 - j. The record plat must reflect a Category I Easement over all areas of stream valley buffers and forest conservation covered by the plat.
- 4) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 22, 2013, (with the exception of the latter part of Recommendation 8 recommending the establishment of private streets), and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, (with the above exception) which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 5) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 6) The Planning Board has accepted the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated January 10, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 7) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
 - 8) The Planning Board has accepted the recommendations of the Montgomery County Department of Fire and Rescue Services ("MCFRS") in its letter dated February 21, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by

MCFRS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 9) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated July 23, 2010, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Planning Board has accepted the recommendations of the MCDPS – Well and Septic Section in its memo dated June 29, 2010, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must dedicate and show on the record plat(s) all road rights-of-way to the full width mandated by the 2005 Olney Master Plan or as otherwise designated on the Preliminary Plan. These include the following:
 - a. 40 feet from the existing pavement centerline along the Subject Property frontage for Damascus Road (MD 650).
 - b. Dedication of Cavanaugh Farm Lane as a 60-foot wide open section tertiary street.
- 12) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
- 13) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 14) The record plats must reference that lots 13 and 14 are being created under Section 59-C-9.41.1 for use as a one-family residence only by the child or spouse of a child of the property owner.

- 15) The Applicant must provide split rail fencing or staff approved equivalent along the Category I Easement line adjacent to Lot 7. This may be done via a covenant with the owner of lot 7 requiring construction and maintenance of the fence.
- 16) The Applicant must include with the submission of the record plats an affidavit to verify the availability of TDRs for the lots shown on that plat and include a note referencing the affidavit on the record plat.
- 17) The record plats must contain the following note:

"Agriculture is the preferred use in the Rural Density Transfer Zone. All agriculture operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 18) The record plat must show necessary easements.
- 19) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

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:

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

The Property is located in the Northern Olney area of the 2005 Olney Master Plan. The 1980 Functional Master Plan for Preservation of Agriculture and Open Space expanded the original 1980 Olney Master Plan's concept of agricultural and open space conservation to the rest of the County's agricultural area. The 2005 Olney Master Plan recommends agriculture and rural open space as the primary land use in the area west of Georgia Avenue and focuses on protection of sensitive environmental resources and support of agricultural preservation through the Transfer of Development Rights (TDR) program.

The Property is located in the area recommended for agriculture and rural open space as the primary use and is considered one of the large tracts of land to be maintained by the use of Transferable Development Rights. The Applicant has a sufficient number of

TDRs on the Property to develop the land for 12 residential lots and two child lots. The residential lots range in size from 2.0 acres to 3.0 acres. The original farmhouse will have a 20 acre lot, while the two child lots will each be 10-acres. The limited lot sizes and location of the development clusters will minimize disturbance to agricultural operations on the Property and will create locations for farm equipment to access the fields.

225.8 acres of contiguous farmland will be retained in perpetuity. This area contains prime farm soils, PMA buffers, Category I Conservation Easements, and is subject to an adopted Soil and Water Conservation Plan, and a Nutrient Management Plan. The two deeded parcels proposed as child lots are grazed by cattle and are classified as small farms. The original farm house and outbuildings will be on 20-acres and will create an opportunity to constitute a smallholding or equestrian operation. With the exception of the farm house and child lots, the lots shown on the Preliminary Plan are the minimum sizes that can be created while still providing for on-lot septic and well requirements.

The Preliminary Plan protects agriculture to the extent feasible and minimizes fragmentation by creating small residential lots and clustering their locations. There are access points built into the development to ensure that farmer access is retained, reducing future potential agricultural and residential conflicts.

The Cavanaugh Property, at 305 acres, is a large farm, exceeding the average size of a Montgomery County farm by 180 acres. The Property has 61 TDRs, of which 47 are eligible for transfer and 14 are residual development rights (now referred to as Building Lot Terminations (BLT)). With the exception of the farm house and child lots, the lots shown on the Preliminary Plan are the minimum sizes that can be created while still providing for on-lot septic and well requirements.

Damascus Road (MD 650) is classified as a Country Arterial. It is proposed to have a minimum of 80 feet of right-of-way with two lanes. 2.8-acres will be dedicated towards right-of-way. In addition, a 12-foot shoulder will be added going southbound beyond the new road and a 16-foot deceleration lane will be added northbound.

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

Local Area Transportation Review ("LATR") guidelines require a traffic study to be performed if the development generates 30 or more peak-hour trips. The Application is expected to generate 14 morning peak hour trips (6:30 a.m. to 9:30 a.m.) and 16 evening peak hour trips (4:00 p.m. to 7:00 p.m.), which is below the 30-trip threshold. Therefore, no LATR is required.

The Application was submitted prior to the 2012-2016 Subdivision Staging Policy and therefore is subject to review under the Policy Area Mobility Review ("PAMR"). The Property is located in the Rural Policy Area where there is no PAMR mitigation requirement; therefore, the Application satisfies LATR and PAMR requirements.

Other public facilities and services are available and will be adequate to serve the lots. A well and septic system is proposed to serve each dwelling unit on each lot. Lots 13 and 14 are served by septic easements on the farm remainder, approved by MCDPS – Well and Septic Section. Gas, electrical, and telecommunication services are available to serve the lots. The underground cistern will be located in an easement on Outlot A. The Application was reviewed by the MCFRS, which approved the submitted plans on February 21, 2012, finding that the Application has adequate access for emergency vehicles. Other public facilities and services, such as schools, police stations, and health services are currently operating within the standards set by the 2012 – 2016 Subdivision Staging Policy currently in effect. The Application is located in the Damascus School Cluster, which is operating at acceptable classroom levels. The Application is not subject to the School Facilities Payment.

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

The lots were reviewed for conformance to the Subdivision Regulations, which require that lots must be of the appropriate size, shape, width and orientation for the location of the subdivision taking into account the recommendations of the applicable master plan and for the type of development proposed or use contemplated, in order to be approved by the Planning Board. The lots approved under this Preliminary Plan were each reviewed for a particular use; either residential use where lot dimensions were minimized or larger lots for agricultural uses with an associated residence. The orientation of the lots and the clustering of the developed areas address the goals of the AROS Functional Master Plan to minimize fragmentation of the agricultural resource and to maximum agricultural opportunities. The Planning Board finds that the lots are appropriate for the location of the subdivision.

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

Environmental Guidelines:

The Property is located in the Patuxent River Primary Management Area (PMA). The Applicant has requested a variance to the stream buffer requirements due to the agricultural use of the Property. The "loss of stream buffer" means that these areas will not be protected in a Category I Conservation Easement. On this Property, the

reduction in stream buffer width from 125 feet to 100 feet is permitted as long as there is an approved soil and water conservation plan for the Property; however, a request for a reduction to the 100-foot stream buffer requirement must be approved by the Planning Board. The Environmental Guidelines state that the *"Planning Board may grant a variance to the PMA 100-foot stream buffer requirement on agricultural portions of plans when the applicant can demonstrate to the satisfaction of staff and the Planning Board that water quality would not be degraded by agricultural activities"* (p. 53).

The Planning Board finds that the Applicant has demonstrated to its satisfaction that water quality would not be degraded by agricultural activities. In order to retain existing agricultural land in production, to continue a successful apiculture operation that consists of five honey bee hive colonies, and to maintain three existing stream crossings necessary to access agricultural fields, the Planning Board grants a variance to the Patuxent River Primary Management Area 100-foot stream valley requirement on 6.02 acres of the agricultural portion of the Subject Property, as per the Environmental Guidelines.

Forest Conservation:

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. No forest clearing is proposed and 36.90 acres of existing forest will be protected in a Category I Conservation Easement.

A total of 65.47 acres of land will be in a Category I Conservation Easement that will protect existing forest, new forest plantings, and environmentally sensitive features, including tributary streams, the Hawlings River main stem, wetlands, seeps, springs, and an existing farm pond. The easement includes 36.90 acres of forest retention, 9.15 acres of forest planting within the stream buffers, and protection of more than 27 acres of wetlands.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The MCDPS-Water Resources Section approved a stormwater management concept for the Application by letter dated July 23, 2010.

6. *Finding regarding over-length cul-de-sac*

The Applicant proposes a new tertiary residential cul-de-sac (Cavanaugh Farm Lane) to access 12 of the 14 proposed lots on the 305.08-acre Property. Cavanaugh Farm Lane will be approximately 1,550 feet in length, 1,050 feet in excess of the design standard.

Under Chapter 50-26(a), A cul-de-sac or a street that would end in a turnaround must not be longer than 500 feet, measured on its centerline, unless, because of property shape, size, topography, large lot size, or improved street alignment the Board approves a greater length.

The Property is oriented in a north-south direction with about 700 feet of frontage on Damascus Road (MD 650). The length of Cavanaugh Farm Lane is minimized to the extent possible while still creating adequate access to the small cluster of lots on the north side of the Property, and preserving a large contiguous tract of farmland. Given the significant distance to the nearest public street, there are no opportunities to extend the cul-de-sac in order to make it a through street, thereby avoiding a cul-de-sac entirely. To do so would fragment the agricultural fields in conflict with the goals of the AROS Master Plan. The Board finds that the size and shape of the property is sufficient justification to approve the over-length cul-de-sac.

7. Finding regarding waiver of frontage

Chapter 50-29(a)(2) states: Except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.....

The board may approve more than two (2) lots on private roads or driveways if such private roads and driveways are needed for the creation of new lots to be used as a one-family residence by a child of the property owner or the spouse of a child or by the parents of the property owner. This provision shall apply to only one (1) lot for each child, whether created for one (1) or both parents.

Further, this provision shall apply only upon a finding by the board that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, and the lot is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.

The history of the two deeded child parcels constitutes an exceptional circumstance. As they currently have dwellings, the creation of recorded lots will not add any additional traffic to the existing private driveway. The Preliminary Plan was approved by the Fire Marshall on February 12, 2012 and the access is adequate to serve the lots for emergency vehicles. The Board recognizes these exceptional circumstances and finds that proper showing has been made that access is adequate to serve the lots for emergency vehicles, for installation of public utilities, and for other public services, and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, or a request for an extension must be filed; and

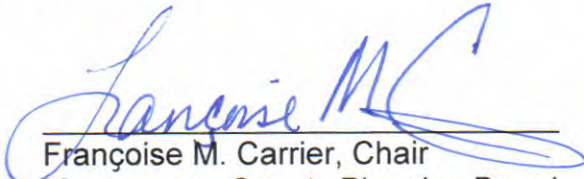
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 29 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor, at its regular meeting held on Thursday, July 17, 2014, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY
MCDPS-ZONING
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON MPDU
MANAGER, DHCA
100 MARYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850

JAMES CLIFFORD, ESQ.
JAMES R. CLIFFORD, SR
316 EAST DIAMOND AVENUE
GAITHERSBURG, MD 20877

MR. GREG LECK
MCDOT
100 EDISON PARK DRIVE
4TH FLOOR
GAITHERSBURG, MD 20878

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ALAN SOUKUP
MCDDEP-WATER RESOURCE
PLANNING
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

RACHEL CAVANAUGH ROUSE
316 EAST DIAMOND AVENUE
GAITHERSBURG, MD 20877

MR. RICHARD BRUSH, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

DAVID MCKEE
BENNING & ASSOCIATES, INC.
8933 SHADY GROVE COURT
GAITHERSBURG, MD 20877

CHUCK ROUSE
316 EAST DIAMOND AVENUE
GAITHERSBURG, MD 20877

No.	Name & Phone Number	Email	Organization & Address	Time
1	James Clifford, Esq. Rachel Cavanaugh Rouse Chuck Rouse David McKee Applicants		316 East Diamond Avenue Gaithersburg, MD 20877 Benning & Associates, Inc. 8933 Shady Grove Court Gaithersburg, MD 20877	15
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				27
12				

From: [David McKee](#)
To: [Kishter, Mary Jo](#)
Subject: Fwd: Cavanaugh Property 120100190
Date: Wednesday, July 25, 2018 4:37:43 PM

Mary Jo,

Please see below regarding the matter we discussed yesterday.

Thanks,
Dave

David W. McKee
Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240
(301)948-0241 fax

----- Forwarded message -----

From: **LaBaw, Marie** <Marie.LaBaw@montgomerycountymd.gov>
Date: Wed, Jul 25, 2018 at 4:31 PM
Subject: Re: Cavanaugh Property 120100190
To: "dmckee@benninglandplan.com" <dmckee@benninglandplan.com>

If no new construction is proposed at this time and the homes are occupied with valid use and occupancy certificates, no FD access review is required.

Sent from my iPhone

> On Jul 25, 2018, at 4:12 PM, David McKee <dmckee@benninglandplan.com> wrote:
>
> Hi Marie,
>
> We need your assistance on a matter for an old project already approved. You approved our plan for this project in 2012 (letter attached). The plan involved subdividing a large farm into 14 lots so that 11 new homes could be built along with a new street. There are 3 existing homes including 2 which are located on separate deed parcels accessed by way of an existing private lane. These 2 homes on lots 13 and 14 are owned and occupied by family members.
>
> We are working now with MNCPPC to amend the original approval so that the 2 "child lots" already occupied can be recorded first without all of the subdivision requirements such as forest conservation and road improvements kicking in. If and when the other 12 lots get recorded, all those other requirements would be met including the recording of a cistern easement which was proposed on the attached plan along the new road near New Hampshire Avenue.
>
> MNCPPC is asking if we need to record a cistern easement in the meantime with the phase

one recording of lots 13 and 14. My opinion on this is that this would not be needed since the 2 homes already exist. It's possible the 12 lots might never get recorded and developed and in that case the other requirements including cistern easement would not come about.

>

> Please let me know your thoughts on this. If easier, I can stop in to see you with a plan to describe more clearly what we are trying to accomplish.

>

> Thanks,

> Dave

>

> David W. McKee

> Benning & Associates, Inc.

> Land Planning Consultants

> 8933 Shady Grove Court

> Gaithersburg, MD 20877

> (301)948-0240

> (301)948-0241 fax

> <Fire & Rescue approval memo.pdf>

> <Cavanaugh Plan.pdf>

Benning & Associates, Inc.

Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240
(301) 948-0241 fax
dmckee@benninglandplan.com

October 11, 2018

Mr. Richard Weaver, Chief
MNCPPC Area 3 Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Cavanaugh Property - MNCPPC File No. 12010019A
Request to Extend Validity Period

Dear Mr. Weaver,

The letter is being submitted concurrent with a request to amend the approved Preliminary Plan for the Cavanaugh Property. At this time, we would also like to request an additional 2 years to complete the recordation of the 14 proposed lots.

The Planning Board Resolution which approved the subdivision of the Cavanaugh Property is dated July 29, 2014. The Resolution provided 60 months from the initiation date for recording of the lots. Furthermore, another 2 years was granted by the County Council for all plans valid as of March 31, 2015. This means that the validity period of the currently approved Preliminary Plan will expire on or around July 29, 2021.

While more than 2 years still remains on the current validity period and this is more than enough time to address the technical matters needed to complete the recording of the 14 lots, there are extenuating circumstances in this case which warrant an extension of time.

The subject property is a family-owned farm where agricultural activities continue to occur on an on-going basis. The owner's of the farm are the children of and heirs to the original Cavanaugh land owners. Some of the children still live on the farm (the 2 child lots) and they are involved in the on-going farm activities. Others have moved away and are no longer involved with the farm.

The property was proposed to be subdivided into lots so that lots could be sold and each

heir could be compensated for their fair share of the farm. However, there is still an interest in keeping the farm intact by selling all of it (minus the child lots) to one of the local farmers with a large-scale farming operation in the County. To make this work financially for the farmer and the family, the Building Lot Termination (BLT) program would need to be utilized for some or all of the lots.

Keeping the farm intact and undeveloped is also in keeping with the primary intent of the AR zone. With this in mind, the family has explored the option of utilizing the BLT program to reduce the number of lots or to eliminate the development altogether. But, so far, there has not been a market or any public funds available which would guarantee the family the compensation needed to forgo the development.

Rather than rush ahead with the recording of the lots during the validity period which requires engineering, permits, and bonds for the public street which is planned, the family would like more time to keep the option of participating in the BLT program open to them. The farther out the validity period is the more likely that the market for BLT lots will open up. If this does occur, the Cavanaugh family will jump at the opportunity to keep their family farm intact.

Per Chapter 50-4.2.H.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:

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 significant, unusual and unanticipated events are outlined above. The BLT program was not available when the applicant began the process of subdividing the property. The unanticipated development of the BLT program provides a second option for compensating the heirs who have moved away from the farm while allowing the farm to remain intact.

Because the BLT option is not a financially available option at this time (due to it being market driven or supported by public funds not currently available), the applicant has taken the necessary steps to implement the terms and conditions of the approved Preliminary Plan and in fact could continue on this path towards recordation of all of the lots during the current validity period. This would make participation in the BLT program

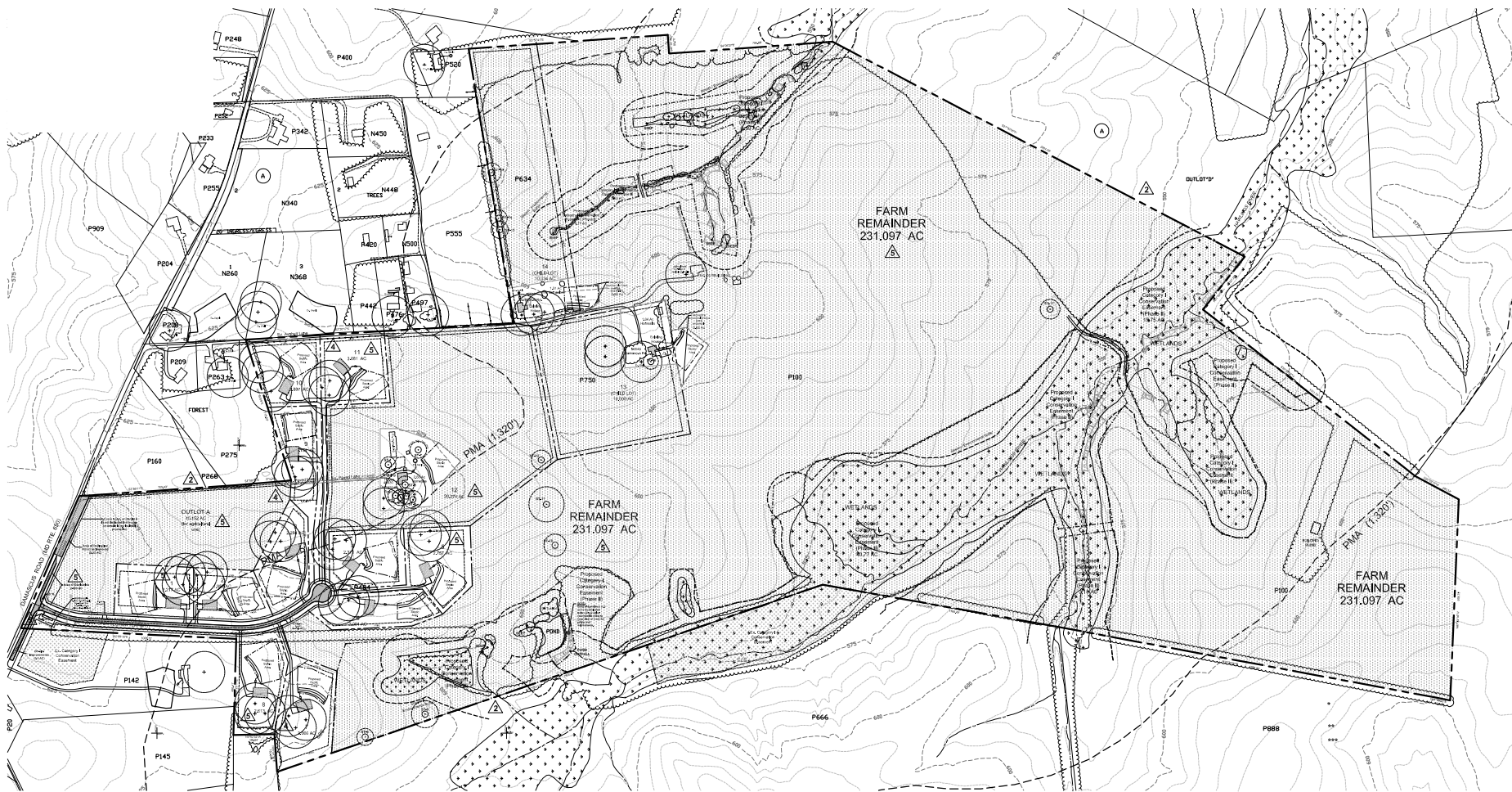
highly unlikely. Instead, the applicant wishes to receive more time (with a 2 year extension) to see if the BLT program becomes financially available.

Your consideration and support of this extension request would be greatly appreciated. If any additional information is needed, please let me know at your earliest convenience.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'David W. McKee', with a stylized flourish at the end.

David W. McKee, Principal



6220 Damascus Road
Gaithersburg, MD 20882-2624
301-253-4385
Tuesday, July 10, 2018



Development Applications and Regulatory
Coordination Division (DARC)
M-NCPPC
8787 Georgia Avenue
Silver Spring MD 20910-3760

Subject: 12010019A Plan Number – Cavanaugh Property

To Whom It May Concern:

As next door neighbors, we have to question the proposal to build a street road to accommodate 12 new dwelling and 2 child exceptions to develop the property adjacent to our home.

Nibbling away at the edges of the County Agricultural Reserve will gradually defeat its original goals, to maintain a farm community in Montgomery County. More important however, the addition of another two dozen or more automobiles communing through the already traffic stressed light in Laytonsville will only make an already bad situation worse. The creation of the roundabout at Warfield Road simply increases the long lines of back-up during the evening rush hour. What this part of the county needs at this time is not more suburban development.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Simons".

Daniel J. Simons

Beverly A. Simons

A handwritten signature in black ink, appearing to read "Beverly A. Simons".

xc: David W. McKee/B&A Inc.

m&k left v.m. 7/31/18