



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

MCPB No. 18-122
Preliminary Plan No. 12010019A
Cavanaugh Property
Date of Hearing: November 15, 2018

NOV 20 2018

RESOLUTION

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

WHEREAS, on July 29, 2014, the Planning Board, by Resolution MCPB No. 14-52, approved Preliminary Plan No. 120100190, creating fourteen lots, including two child lots, a farm remainder, and two outlots on 305.80 acres of land in the RDT zone, located on the south side of Damascus Road (MD 650), approximately 2,000 feet east of Olney-Laytonsville Road (MD 108) ("Subject Property"), in the Olney Policy Area and the 2005 Olney Master Plan and the Preservation of Agricultural and Open Space Functional Master Plan ("AROS") ("Master Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, on June 29, 2018, Cavanaugh Family, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) 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 includes the remaining twelve lots, two outlots, and public street on the Subject Property. The application included a request to extend the preliminary plan validity period by two years and to update the Subject Property acreage to 312.61 acres based on recent survey information; and

Approved as to
Legal Sufficiency:

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WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12010019A, Cavanaugh Property ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on February 12, 2017; 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 November 2, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 15, 2018, 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. 12010019A to extend the preliminary plan validity period by two years, until August 2023, to update the Subject Property acreage to 312.61 acres, and to separate the project into two phases, including forest conservation requirements, to allow recordation of the two child lots as part of Phase I and allow the remaining twelve lots, two outlots, and public street to be included in Phase II by modifying conditions 3a, 3d, 3e, 3f, 3g, 11, and 12, and adding conditions 3k, 3l, 3m, 20, 21, and 22 as follows:¹

- 3) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan 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 Subject 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 Subject Property, the Applicant must submit financial surety for the remainder of

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.

the forest planting on the Subject Property, as specified on the approved Final Forest Conservation Plan.

- e. Prior to any clearing, grading or demolition in Phase II on the Subject Property, the Applicant must submit a Maintenance and Management Agreement for the forest planting on the Subject Property as shown on the approved Final Forest Conservation Plan.
 - f. Prior to any clearing, grading, or demolition in Phase II on the Subject 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 Subject 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 Subject 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, the Applicant must dedicate and show on the record plat(s) all road rights-of-way to the full width mandated by the 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, 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.

- 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.

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:

1. *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.*
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 Montgomery County Department of Permitting Services determined that since 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 was required. Therefore, 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.

The preliminary plan validity period is extended for an additional two years, until August 2023. 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, the Applicant, heirs to the family farm, has requested additional time to explore the option of utilizing the BLT Program to reduce the number of lots in the subdivision or to eliminate the development completely and allow the Subject Property to continue to be used for agricultural purposes.

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 the current 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. The Applicant needs additional time to determine the feasibility of utilizing the BLT program. Therefore, the Planning Board grants the Applicant's extension request for the preliminary plan validity period.

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

The Preliminary Forest Conservation Plan was updated to reflect necessary revisions based on an updated property survey and phasing of forest conservation requirements to coincide with the phasing of the Preliminary Plan. 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 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 in the original approval to 7.49 acres in the amendment.

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.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 20 2018 (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 Patterson, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, November 15, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board