



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

MCPB No. 21-060
Preliminary Plan No. 120200180
Kilmain ETC (Parcel P440)
Date of Hearing: July 1, 2021

JUL 20 2021

RESOLUTION

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

WHEREAS, on July 27, 2020, William Rickman ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 9 lots and two agricultural remainder parcels on 355.35 acres of land in the Agricultural Reserve (AR) zone, identified as Parcel P440, on Tax Map BT63; located west of Poolesville, on the north side of Whites Ferry Road (MD 107), approximately 3,000 feet southeast of Wasche Road ("Subject Property"), in the Rural West Policy Area and the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120200180, Kilmain ETC (Parcel P440) ("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 June 18, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 1, 2021, 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, on July 1, 2021, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 4-0; Commissioners Cichy, Fani-González, Patterson, and Verma voting in favor, with Chair Anderson abstaining.

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200180 to create nine (9) lots and two (2) farm remainder parcels on the Subject Property, subject to the following conditions:¹

General Approval

1. This Preliminary Plan is limited to nine (9) lots for eight (8) new single detached dwelling units and one (1) existing single detached dwelling unit, and two (2) farm remainder parcels.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for ten (10) years from the date of mailing of this Planning Board Resolution.

Plan Validity Period

3. The Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 19, 2021, and incorporates them as conditions of the Preliminary Plan approval, except to clarify that as to MCDOT Condition 1, Condition 12 below provides compliance with the *2018 Bicycle Master Plan*. The Applicant must otherwise comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.

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.

7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 3, 2021 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated June 14, 2021 and incorporates them as conditions of the Preliminary Plan approval. 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated April 16, 2021 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Environment

Forest Conservation

10. The Applicant must comply with the following conditions of approval of Preliminary/Final Forest Conservation Plan 120200180, approved as part of this Preliminary Plan.
 - a. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b. 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 Inspection Staff.
 - c. Prior to recordation of the plat(s) for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary/Final Forest Conservation Plan ("FFCP"). The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the

Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.

- d. Prior to recordation of the record plat(s), the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- e. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance credited toward meeting the requirements of the FFCP.
- f. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 12 caliper inches as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- g. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FFCP.
- h. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.
- i. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must record a binding Maintenance and Management Agreement ("MMA") as specified in Section 22A-21(e) of the Forest Conservation Law for the variance tree mitigation plantings. This MMA will remain in full force and effect until such time that the associated required financial surety has been fully released by M-NCPPC.

Transportation

Existing Frontage Improvements

11. With the exception of the farm remainder parcels, the Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate forty (40) feet from the existing pavement centerline along the Subject Property frontage for White's Ferry Road.
 - b) All land necessary to accommodate thirty-five (35) feet from the centerline along the Subject Property frontage for West Hunter Road.

12. Prior to issuance of each building permit for the eight (8) new dwelling units, the Applicant must pay a fee-in-lieu of \$16,000 (sixteen thousand dollars), for each building permit, in lieu of constructing bikeable shoulders along the Property frontage on Whites Ferry Road. This Condition satisfies the requirements of the *2018 Bicycle Master Plan*.

Record Plats

13. There shall be no clearing or grading of the site prior to recordation of plat(s).

Easements

14. The record plat must show necessary easements.
15. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
16. The Applicant must provide a Public Improvement Easement (PIE) along Whites Ferry Road for a future bikeable shoulder, as shown on the Certified Preliminary Plan.

Notes and Labels

17. Any record plat for the Subject Property must contain the following note:

Agriculture is the preferred use in the Agricultural Reserve Zone. All agricultural 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.

Developments with TDR's

18. The record plat(s) must reflect serialization and book/page reference for all TDRs utilized by the development.
19. The Applicant must include with the submission of each record plat an affidavit to verify the availability of a TDR for each lot shown on that plat, and include a note referencing the affidavit on the record plat.

Certified Preliminary Plan

20. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks 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.

21. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a. Show resolutions and approval letters on the Certified Preliminary Plan.
 - b. Add the following APF 10-year phasing/development schedule:
 - i. Phase I – Within 5 years obtain building permits for at least two (2) dwelling units on two lots.
 - ii. Phase II – Within 10 years obtain building permits for the remaining six (6) dwelling units on six lots.

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 layout of the subdivision, including size, width, shape, orientation and density of 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 Preliminary Plan meets all applicable sections of the Subdivision Code. The lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*, and the intent of the AR zone, to preserve and support agriculture. In this case, by permitting single family detached dwelling units for members of the family, it promotes the continuation of intergenerational transfer of farmed property.

The Planning Board has historically sought to reduce the size of new residential lots in the AR zone to be the minimum necessary to accommodate the house and an on-site well and septic, in order to maximize agricultural opportunities elsewhere on farmed properties. Generally, that has resulted in lots that are under three acres in size. Lots 6-9 will exceed 3 acres with the largest of the lots

being 4.76 acres, which is the minimum land area necessary to accommodate the proposed sand mounds, a well, stormwater management and a suitable house location while respecting the setbacks in the AR zone.

The location and shape (flag lots) of the proposed lots is largely the result of the soil conditions. The two main factors include the ability of the soil to percolate and the desire to preserve as much contiguous land as possible containing prime agricultural soils. Due to the soil conditions, the proposed houses have been located on flag lots where the soils are suitable to support sand mound systems. The lots were reviewed for compliance with the dimensional requirements for the AR zone as specified in the Zoning Ordinance. The Applicant has provided documentation to verify that an adequate number of Transfer Development Rights (TDRs) remain on the Property to record the proposed subdivision. In 1980, the Property was approximately 355.36 acres when the Property was rezoned RDT (now AR). The 355-acre Property was granted 71 TDRs (1 TDR per 5 acres). To date 61 TDRs have been sold, leaving 10 available TDRs.

This Application requires 9 TDRs, which will be recorded during the record plat process. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 1.

Table 1 – AR Zone

Standard	Required/Permitted	Proposed
Max. Density	1 unit/25 acres	1 unit/39.44 acres - 9 DU total (1 existing)
Minimum lot size	40,000 sq ft	40,000 sq ft or larger
Min. lot width at front building line	125 ft.	125 ft. or more
Min lot width at front lot line	25 ft.	25 ft. or more
Front setbacks	50 ft. min.	50 ft. or more
Side setbacks	20 ft. min.	20 ft. ft. or more
Rear setbacks	35 ft. min.	35 ft. or more
Max Lot Coverage	10%	Not to exceed 10%
Max Building Height	50 ft.	50 ft.
TDR Required	9	9 min. available

2. The Preliminary Plan substantially conforms to the Master Plan.

The Preliminary Plan substantially conforms to the recommendations within the 1980 Preservation of Agriculture and Rural Open Space (AROS) Functional Master Plan.

1980 Preservation of Agriculture and Rural Open Space Functional Master Plan (AROS)

The AROS Plan, which makes recommendations for land in the AR Zone, has as its primary objectives the preservation of farmland and the creation of policies that encourage the continuation of farming and associated activities. This objective has generally been implemented by encouraging preservation of large contiguous blocks of farmable land when subdivision occurs. This proposal creates nine (9) lots and 2 remainder parcels. The parent tract is approximately 355 acres of which approximately 91.5% will remain in agriculture and 8.5% will become residential lots.

1996 Rustic Roads Functional Master Plan and 2018 Master Plan of Highways and Transitways.

The Subject Property is located at 21131 Whites Ferry Road and has frontage on three public roads: West Hunter Road, Whites Ferry Road and Wasche Road.

The 2018 *Master Plan of Highways and Transitways* and 1996 *Rustic Roads Functional Master Plan* identify West Hunter Road (R-44) as a 2-lane Rustic Road with a 70-foot wide right-of-way between Wasche Road and Darnestown Road; Wasche Road (R-43) is identified as 2-lane Rustic Road with a 70-foot right-of-way between Martinsburg Road and Whites Ferry Road. Whites Ferry Road (CA-35) is identified by the 2018 *Master Plan of Highways and Transitways* as a 2-lane Country Arterial with an 80-foot right-of-way between Wasche Road and the western boundary of Poolesville.

No access is proposed to Wasche Road as part of this Application. Lot 8 and 9 will access West Hunter Road via a 20-foot-wide shared driveway, located approximately 550 feet west of the northeast Property line. The 1996 *Rustic Roads Functional Master Plan* states that the significant features of West Hunter Road in this location are open fields with tree hedgerows lining both sides (north and south).

The new driveway and house locations are located to preserve the existing viewshed and minimize tree or hedge row clearing required to construct the driveway. As such, the new driveway will not adversely affect the views described and is consistent with the intent of the *1996 Rustic Roads Functional Master Plan*.

The Rustic Roads Advisory Committee ("RRAC") has reviewed the Application to determine if it has any effect on West Hunter Road. In a letter dated April 22, 2021, the RRAC determined that the committee generally supports the Application. The Application has also been reviewed by the MCDOT, who

determined that the new driveways have adequate sight distance as shown on the Preliminary Plan.

2018 Bicycle Master Plan

The *2018 Bicycle Master Plan* recommends a 6-foot-wide bikeable shoulder along Whites Ferry Road. Constructing a 6-foot wide bikeable shoulder along approximately 1,100 linear feet of Property frontage on Whites Ferry Road would require significant grading, relocation of a farm pond, realignment of at least one stream, significant impact to a wetland, reconstruction of a 48-inch box culvert and headwall and the removal of existing forest. If constructed, the shoulder would not connect to any existing bikeable shoulders, nor is there a CIP project indicating construction of the remaining bikeable shoulder in this area. Due to the site constraints, Staff supports the Applicant's request to pay a fee in lieu of constructing the bikeable shoulder.

As conditioned, in order to meet the Applicant's responsibility to conform with the *2018 Bicycle Master Plan* requirements, the Applicant is making a contribution in the amount of \$16,000 per net new vehicle trip to the MCDOT Annual Bikeway Capital Improvements Program based on the monetized value of vehicle trips set forth in the 2017 Local Area Transportation Review (LATR) Guidelines (Page 42). The 2017 LATR Guidelines set a monetized value of non-auto facilities at \$16,000 per net new vehicle trip. The Subject Property is developed with a single detached house, and this subdivision will generate 8 net new vehicle trips during the peak hour (one (1) trip per new lot), resulting in a total fee of \$128,000. Typically, in-lieu payments are paid in a lump sum; however, the Applicant requested that they be able to pay the fee individually at the time of building permit. The request is based on the long-term vision of this inter-generational farm and the non-commercial nature of this development with limited funding upfront. The Applicant's request is approved because not all family members are prepared to build at this time.

The Applicant is not required to construct the bikeable shoulder as part of this Application, and dedication is not required along the frontage of the farm remainder parcels (only being required along the frontage of the new buildable lots). However, to accommodate the future construction of the bikeable shoulder, where dedication is not being provided, the Applicant is providing a Public Improvement Easement with an equivalent width that will accommodate the future construction if funded as part of a Capital Improvement Project.

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

Request for Extended Adequate Public Facilities Validity Period

The Applicant requested additional time for the Adequate Public Facilities (APF) validity period. The normal validity period under the Section 4.3.J.5 of the Subdivision Regulations is 5 years; however, the Planning Board can approve up to 10 years.

The Applicant requested extending this time to 10 years (120 months) due to the unique nature of the subdivision. As required by Section 4.3.J.5.b, the Applicant submitted a development schedule (phasing plan) showing the minimum percentage of the project the Applicant expects to complete within 5 years after the Preliminary Plan is approved.

To allow the extended validity period, the Planning Board “must find that the size or complexity of the subdivision warrant the extended validity period and would not be adverse to the public interest. The Board must condition a validity period longer than the specified minimum on adherence to the proposed development schedule or phasing plan and may impose other improvements or mitigation conditions if those conditions are needed to assure adequate levels of transportation or school service during the validity period.”

The Planning Board finds, based upon the Applicant’s Statement of Justification, that the 10-year validity period is necessary to plan for the future of agricultural production on the farm. At this time, one of the lots is being created for Applicant’s existing home and two family members are prepared to build on two (2) of the proposed lots in the next couple of years. The remaining six (6) lots are intended to be developed by the Applicant’s children and grandchildren, some of whom are not at an age to make a final determination on if they want to live on the farm and some of whom aren’t yet financially able to build new homes.

a. Roads and Other Transportation Facilities

The transportation Adequate Public Facilities test is satisfied under the 2020-2024 Growth and Infrastructure Policy. Transportation access is adequate to serve the proposed development by this Preliminary Plan. Access to the proposed subdivision will be to/from Whites Ferry Road via one shared 20-foot driveway that will serve Lots 4, 5, 6, and 7; one shared 20-foot driveway that will serve Lots 2 and 3; and 1 private driveway that will serve Lot 1. Access along West Hunter Road will be provided via a shared driveway that serves Lot 8 and 9. As part of this Application, the Applicant is dedicating approximately 13,386 square feet of right-of-way, including approximately 4,568 square feet along Whites Ferry Road and 8,818 square feet on West Hunter Road.

b. Local Area Transportation Review (LATR)

The Property is located in the Rural East Policy Area. The estimated impact of the proposed 9 lot subdivision is 7 peak-hour person trips in the AM peak hour and 10 peak-hour person trips in the PM peak hour, as shown in Table 2. As a result, this Application is exempted from additional Local Area Transportation Policy Review (LATR) because the proposed land use generates fewer than 50 peak-hour person trips. The Applicant included a Transportation Statement as part of this Application.

Table 2: Site Vehicle & Person Trip Generation

Use	Application	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Existing (Credit) Single Family (ITE 210)	1 unit	0	1	1	1	0	1
Proposed: Single Family (ITE 210)	8 units	1	5	6	5	3	8
Net New Vehicle Trips				(5)			(7)
Total Peak Hour Person Trips				7			10

Transportation access is safe and adequate for the proposed use. As conditioned, this Preliminary Plan is consistent with the 2018 *Master Plan of Highways and Transitways*, the 2018 *Bicycle Master Plan* and the Agricultural and Rural Open Space Master Plan.

c. Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize a new on-site private well and sand mound system, consistent with the current service categories.

Percolation testing performed on the Subject Property concluded that much of the land, outside of the prime agricultural soils does not adequately percolate and is not suitable to support new conventional septic systems. Sand mound systems are being proposed in lieu of traditional septic leach fields because this area has a high-water table, approximately 4 feet below the surface. The Application has been reviewed by MCDPS – Well and Septic Section, who

determined the proposed well and septic locations are acceptable as shown on the approved well and septic plan dated June 14, 2021.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section, who determined that the Property has adequate access for fire and rescue vehicles. The Application has received an approved Fire Access Plan based on the letter dated April 16, 2021.

Electric service is provided by Potomac Edison, and Verizon is the telephone service provider. Natural gas is not available in this area.

School Adequacy

The FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021, is applicable to this Application proposing eight (8) new single-family detached units.

The Property is served by Poolesville ES, John Poole MS and Poolesville HS. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 3: Applicable FY2022 School Adequacy.

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Poolesville ES	539	513	95.2%	+26	No UPP	111	134	215
John Poole MS	468	406	86.8%	+62	No UPP	188	213	232
Poolesville HS	1,508	1,373	91.0%	+135	No UPP	315	437	663

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY22 Annual School Test, development approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in Table 3. However, if the application is estimated to generate more students than the identified ceilings, then partial payments may still be required.

Calculation of Student Enrollment Impacts

To calculate the number of students generated by the Application, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 8 units that are not age-restricted, the Application is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

Table 4: Estimated Student Enrollment Impacts.

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	8	0.185	1.480	0.108	0.864	0.154	1.232
SF Attached	0	0.225	0.000	0.123	0.000	0.159	0.000
MF Low-rise	0	0.107	0.000	0.058	0.000	0.070	0.000
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
TOTALS	8		1		0		1

As shown in Table 4, on average, this Application is estimated to generate one elementary school student, zero middle school students and one high school student. These estimates do not exceed the adequacy ceilings in Table 3; therefore, no partial Utilization Premium Payments are required.

Analysis Conclusion and Condition of Approval

Based on the school capacity analysis performed, using the updated FY2022 Annual School Test, this Application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

Other utilities, public facilities and services, such as, police stations, firehouses and health services are currently operating within the standards set by *2020-2024 Growth and Infrastructure Policy*. The Application can be adequately served by all other public facilities and services.

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

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420201300 for this Property was approved in May 2020. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The

NRI/FSD calls out the Site to be a total of 355.36 acres of which 104.78 acres are high priority existing forest separated into nineteen (19) distinct forest stands. The Site also contains ten (10) perennial and intermittent streams, three (3) springs, floodplains, 26.98 acres of wetlands separated into thirteen (13) wetlands, and 80.56 acres of stream/environmental buffers. The majority of the Subject Property is within the Broad Run Watershed with approximately 0.61 acres of the far northwest corner of the Subject Property in the Quarry Branch Watershed. The Subject Property contains approximately 0.45 acres of steep slopes located in small isolated pockets along the forested stream channels of the perennial streams.

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law and the Montgomery County Planning Department's Environmental Guidelines.

This Subject Property is 355.36 acres in size in the AR Zone. The AR Zone is assigned a Land Use Category of Agricultural Resource Area as defined in Section 22A-3 of the Forest Conservation Law and in the Land Use Table of the Trees Technical Manual. This results in an afforestation requirement of 20% and a conservation threshold of 50% of the Net Tract Area.

The Application has a tract area of 355.36 acres. The Applicant is agriculturally exempting off 323.76 acres which will be kept in active commercial agriculture and is covered with an Agricultural Document of Intent. This results in a Net Tract Area of 33.42 acres for the nine (9) proposed lots and includes additions of 2.10 acres for offsite work associated with this Application. There is a total of 104.76 acres of forest on the Subject Property, but only 0.18 acres of forest on the Net Tract Area. The Applicant proposes to remove the 0.18 acres and retain 0.00 acres of forest. This results in a reforestation requirement as shown on the FFCP Worksheet of 6.86 acres. However, under Section 22A-12(f)(2)(A) the onsite forest retention within the AR Zone must equal 25% of the Net Tract Area. The Net Tract Area for FFCP purposes is 33.42 acres, so the onsite forest retention requirement is 8.36 acres. The Applicant is unable to save this amount of forest within the Net Tract Area, so this requirement must be taken offsite at a 2:1 rate. The Applicant is proposing to save and place within a Category I Conservation Easement, 16.72 acres of existing forest on the overall Subject Property.

A driveway currently exists from White's Ferry Road that allows access to the existing house on the Property. This driveway will also be used for access to the proposed Lots 4, 5, 6 and 7. No new construction is proposed for the length of the driveway from White's Ferry Road to the existing house except for the widening of the driveway at the entry point on White's Ferry Road. This widening of the driveway at the entry point is required by the Montgomery County Fire and Rescue Fire Access Plan to allow access by fire trucks. This existing driveway is approximately 1,465 feet long and runs back to the existing house. Beyond the house, the driveway will be constructed to provide access to Lots 4, 5, 6 and 7. The existing portion of the driveway runs through approximately 1,030 feet of stream buffer and approximately 350 feet of floodplain on its way back to the existing house. The Environmental Guidelines allow certain encroachments into stream buffers with mitigation measures. Since this driveway encroachment is seen as necessary access to the existing house and Lots 4, 5, 6 and 7, and it is not being altered, then the stream buffer encroachment is allowed, but must be mitigated by saving additional stream buffer at a 2:1 rate elsewhere on the Subject Property. The Applicant is mitigating for the stream buffer encroachment by placing 2.84 acres of stream buffer on the agriculturally exempted portion of the Subject Property in a Category I Conservation Easement. The encroachment into the floodplain is also allowed since the driveway is not considered an erected building which would impede the flow of water within the floodplain.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of one (1) Protected Tree and CRZ impact to one (1) Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for eight (8) new single-family homes and maintaining over 300 acres of farmland, without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance does not confer a special privilege on the Applicant as the impacts or removal of the two (2) Protected Trees is due to the location of the trees and necessary site design requirement. The location of the entry driveway and house on Lot 5 were dictated by the location of the proposed sand mound septic system, wells and the stream buffer. The CRZ of these trees will be impacted by the initial sand mound septic system and are near the reserve sand mound locations. This Property was thoroughly tested for acceptable septic areas, but adequate test results were not obtained on other areas of the Property. The Applicant proposes removal of Tree #1 with mitigation, and impact to Tree #2. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon the existing site conditions and necessary design requirements of this project.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The Board finds that the variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree being removed is not located within a stream buffer, wetland or special protection area. The Application proposes mitigation for the removal of this tree by planting larger caliper trees on-site.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approved replacement of the one Protected Tree with four 3-inch caliper (minimum) overstory trees totaling 12 caliper inches as shown on the approved FFCP. No mitigation is required for the Protected Tree impacted but retained.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a Stormwater Management Concept approval from MCDPS Water Resources Section on March 3, 2021. The Application will meet stormwater management goals through a variety of techniques including micro bioretention, planter boxes, non-roof disconnects, and infiltration berms.

In a letter dated April 20, 2021, MCDPS accepted the Applicants Floodplain Study and recommended that Planning Board approve the proposed lots after considering the following: Lot 4 and 5 will contain a small segment of floodplain, and per the Montgomery County Regulation 19.45.01.04 A1, recording lots "in a floodplain" is prohibited, however, Chapter 50 Section 4.3.K.2.b.iv. gives the Planning Board the authority to allow lots to contain floodplain because the lots do contain sufficient safe ground outside of the floodplain in which a building can be constructed, while respecting the applicable zoning setbacks. The Planning Board approves Lot 4 and 5 based on the fact that the lots do have adequate safe ground to build dwelling units outside the floodplain.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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 20 2021 (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 (30) days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, July 15, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board