

**MEMORANDUM**

**DATE:** September 11, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Catherine Conlon, Supervisor *CC*  
Development Review Division *DK*

**FROM:** Dolores Kinney, Senior Planner (301) 495-1321  
Development Review Division

**REVIEW TYPE:** Request for an Extension of the Preliminary Plan Validity Period

**PROJECT NAME:** Spencer Farm Parcel B

**CASE #:** 120010600 (Formerly 1-010600)

**REVIEW BASIS:** Chapter 50, Section 50-35 (h)(3)(d), Montgomery County  
Subdivision Regulations

**ZONE:** RE-1 and RC

**USE:** Religious educational institution previously approved

**LOCATION:** Located on the north side of Spencerville Road, approximately  
1,000 feet east of the intersection with Peach Orchard Road

**MASTER PLAN:** Cloverly

**APPLICANT:** Spencerville Seventh Day Adventist Church

**ENGINEER:** Oyster, Imus & Petzold, Inc.

**FILING DATE:** August 7, 2006

**HEARING DATE:** October 5, 2006

**STAFF RECOMMENDATION:** Grant one-year extension of the validity period to March 25, 2007, pursuant to Section 50-35(h)(3)(d), Montgomery County Subdivision Regulations.

## **PROJECT DESCRIPTION**

The Subject Property is located on the north side of Spencerville Road, approximately 1,000 feet east of the intersection with Peach Orchard Road (Attachment A). It is within the Paint Branch Watershed Special Protection Area and contains 31.40 acres. The Subject Property is zoned RE-1 and RC. The Planning Board approved Preliminary Plan #120010600, entitled Spencer Farm Parcel B, for the Subject Property, on December 6, 2001 for a religious educational institution (Attachment B).

## **BACKGROUND**

The Planning Board Opinion for the approval of the subject preliminary plan was mailed on February 19, 2002 (Attachment C). As a condition of that approval the validity period of the preliminary plan was set at 37 months from the opinion date, or March 19, 2005. By letter dated February 25, 2005, (Attachment D), the Applicant requested an extension of the validity period for an additional six-month period. The reasons for the request were: 1) delays in the procedure pertaining to the transfer of ownership to the current owners; 2) delays due to impacts of the ICC alignments on the adjacent property; and 3) continued negotiations with potential shared users of the proposed sewer. By letter dated August 10, 2005, (Attachment E), the Planning Board granted a one-year extension until March 25, 2006.

By letter dated July 27, 2006, (Attachment F), the applicant is requesting further extension of the validity period of the preliminary plan for another year. The current request was not submitted in a timely manner, due to the Applicant's misunderstanding regarding the expiration of the extension previously granted by the Planning Board. The Applicant thought that the extension would expire one year from the date of the extension approval letter, dated August 10, 2005. Although the extension request was not submitted prior to the expiration of the validity period, the Applicant is requesting reinstatement of the preliminary plan, and further extension based upon unusual and unanticipated events, beyond the applicant's control, which delayed the completion of the terms of the plan approval.

### **Section 50-35(h)(3)(d)**

#### **Grounds for Extension of the Validity Period of a Preliminary Plan**

The Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant's ability to perform terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or

- ii. the occurrence of significant, unusual, and unanticipated events, beyond the applicant's control and not facilitated or created by the applicant, have substantially impaired the applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate it plan) would result to applicant if the plan were not extended.

### Applicant's Position

There were a number of events, which occurred concurrently, that prevented the preliminary plan from moving forward. First, provision of sewer, which is a prerequisite to recordation of a record plat, was problematic. According to the information provided by the Applicant, from 2001 through 2005, a period of four years, the Applicant was attempting to design and implement a sewage disposal system.

As part of the Spencer Farm approval, an option to connect to a planned gravity sewer extension in the nearby Peach Orchard Heights subdivision was identified. However, the property within the Peach Orchard Heights Subdivision was acquired by SHA as one of the alternative routes for the Inter-County Connector (ICC), which put on hold construction of the planned sewer. In June 2001, the Applicant was granted permission by the State Highway Administration (SHA) to construct the sewer outfall in the public rights-of-way in the Peach Orchard Heights Subdivision.

The sewer outfall and the grading elevation right-of-way plans were being prepared when the Applicant entered into negotiations with other possible users of the proposed sewer to determine the shared cost. The negotiations began in 2001 and continued into 2003, but failed when the users refused to contribute. In August of 2004, it was determined that the estimated construction cost to the Applicant for a gravity sewer was \$400,000. The shared cost was \$200,000. Therefore, the sewer service was too costly to pursue.

In October 2004, the Applicant began to pursue a temporary septic system, which required water table testing. But the option to use septic failed in September 2005 when it was determined in that the soils in the Paint Branch Watershed Special Protection Area were not suitable. The test results indicated that a septic system in this area was not environmentally safe.

After the Applicant resumed work on the gravity sewer plan, in November 2005, it was determined that a dedicated pressure sewer could be used to serve the Subject Property. This option is currently under review by the Washington Sanitary Sewer Commission (WSSC). The Applicant believes that once the sewer system is approved by WSSC, there should be no further delays to prevent recordation of the plat.

### Staff's Position

An initial extension request was granted based on a finding that there were a number of obstacles that contributed to the initial delay of the preliminary plan completion. Some of the same obstacles, which precipitated those delays, have continued to prevent the recordation of the plat.

The Applicant has explored water table testing, which proved not to be a viable option. The Applicant also pursued installing gravity sewer, but could not achieve participation and shared costs from other users.

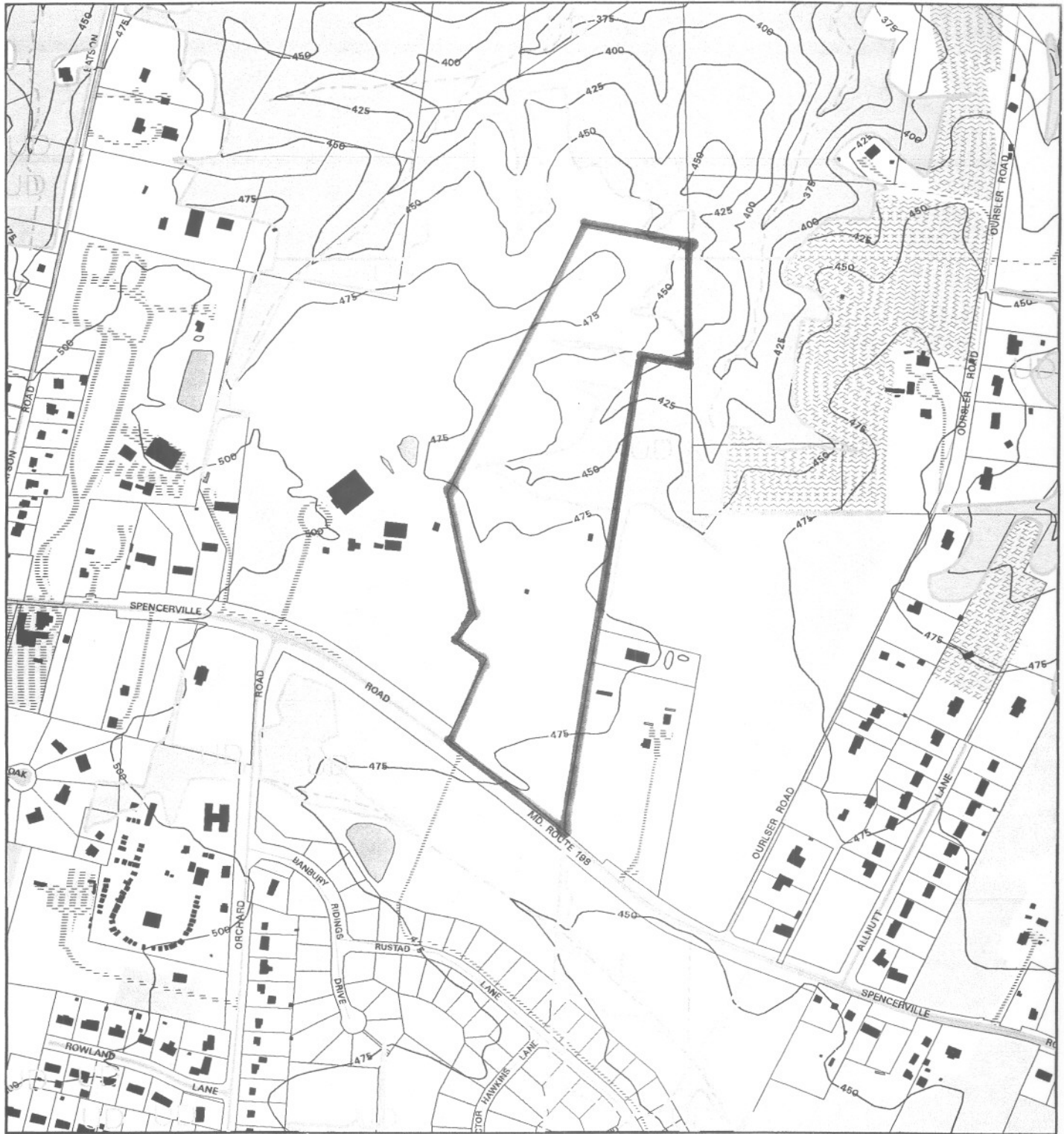
In accordance with Section 50-35(h)(d), Staff finds that failed negotiations with potential shared users of the sewer, and the failed water table testing constitute unusual and unanticipated events, beyond the applicant's control and not facilitated or created by the applicant, which have substantially impaired the applicant's ability to validate the preliminary plan.

It is evident that the Applicant has experienced difficulty in moving forward with the completion of the plan since the Board's approval on December 6, 2001. Given the time, effort and resources, financial and otherwise, undertaken to pursue the preliminary plan, the Applicant would suffer undue hardship if the plan were not extended. The applicant has attempted to pursue compliance with the conditions of the preliminary plan, but faced obstacles, which impaired the ability to validate the preliminary plan. The applicant has provided sufficient grounds to justify the extension of the validity period of the subject preliminary plan. As such, an additional one-year extension of the validity period to March 2007 should be granted.

### **ATTACHMENTS:**

Attachment A	Vicinity Map
Attachment B	Preliminary Plan
Attachment C	Preliminary Plan Opinion
Attachment D	February 25, 2005 Extension Request
Attachment E	August 10, 2006 Planning Board Extension Approval
Attachment F	July 27, 2006 Extension Request
Attachment G	Supplement to July 27 <sup>th</sup> Extension Request
Attachment H	July 29, 2005 Staff Report

# SPENCER FARM PARCEL B (120010600)



Map compiled on September 05, 2006 at 11:02 AM | Site located on base sheet no - 221NE03

### NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:144,000 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map



N



Research & Technology Center



1 inch = 600 feet  
1 : 7200

# SPENCER FARM PARCEL B (120010600)



Map compiled on September 05, 2006 at 11:08 AM | Site located on base sheet no - 221NE03

## NOTICE

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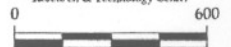
Key Map



N



Research & Technology Center



1 inch = 600 feet  
1 : 7200



Attachment C



VICINITY MAP  
Scale 1" = 2,000'

**LEGEND**

- Existing Contour
- Design Contour
- Drainage Divide
- Limit of Disturbance
- Proposed Storm Drain
- Ex Water Line
- Property Line
- Tree Canopy Line
- Fence
- S/D = Storm Drain
- E = Easement
- PH = Fire Hydrant
- W = Water Valve
- G = Gas line
- W = Water Line
- Stream Buffer

# PRELIMINARY PLAN SPENCER FARM PROPOSED PARCEL B

Montgomery County  
Liber 4026 folio 276

### NOTES:

- Boundary from survey by James M. Fowler, Jr. December 1999
- Topography from MNCPP&PC Photogrammetry as updated by OHP
- | Zone               | Per lot DE-1   | Per lot RC | Proposed          |
|--------------------|----------------|------------|-------------------|
| Min. lot size      | 40,000 sq. ft. | 25 feet    | 1,343,740 sq. ft. |
| Min. frontage      | 25 feet        | 25 feet    | 500 feet          |
| Min. front setback | 50 feet        | 50 feet    | 70 feet           |
| Min. side setback  | 17/25 feet     | 17/25 feet | 70 feet           |
| Min. rear setback  | 35 feet        | 35 feet    | 1,200 feet        |
| Min. width at EBL  | 125 feet       | 125 feet   | 449 feet          |
| Building coverage  | 15% max.       | 10% max.   | 2%                |
- Area Tabulations:
 

Deed area	31.40 acres
minus street dedication	0.55 acres
Net lot area	30.85 acres
- Water and Sewer categories: W-3 and S-6 for RC zone, W-1 and S-6 for RE-1 zone, conditional on prelim. plan approval per MC Council Resolution 93-451
- Proposed use is a private school
- This site is in the Cloverly Planning Area
- This site is in the Rural Transportation Policy Area
- This site is in the Lower Patuxent River watershed (24.82 acres) as a Class II stream and in the Paul Branch Watershed (7.20 acres) as a Class II stream
- The property is shown on Tax Map MC 32 as P-246 described in a deed recorded in Liber 4382 at folio 556
- The property is shown on WSSC Map 22 1NE3 and 22NE3
- There are currently no improvements on the property
- The site is in Election District 5
- On-Site Forest Conservation Elements are proposed.
- A Stormwater Management Concept Plan has been filed with the Department of Permitting Services.
- |                 |               |
|-----------------|---------------|
| Water and Sewer | WSSC          |
| Electricity     | BGE           |
| Telephone       | Bell Atlantic |
| Gas             | Wash          |

11. The Adequate Public Facility (APF) Review for this preliminary plan will remain valid for six (6) months from the date of mailing of the Planning Board opinion.

12. Lighting and Landscaping plans must be submitted as part of the record plat application for review and approval by staff prior to recording of plat.

13. Necessary Easements

Topical Staff Recommendation made to MNCPP&PC by Robert H. ...

Approved Preliminary Substitution Plan No. 141185

At its meeting of 1/20/06

MNCPP&PC

Approved subject to the following conditions:

- Prior to record plat, the applicant shall enter into an agreement with the Planning Board to limit disturbance to no more than 10 percent within the Upper Patuxent Special Protection Area, as shown on the revised preliminary plan.
- Enter in release of building permits, applicant to demonstrate conformance to impervious surface limits as shown on the revised preliminary plan. Any modifications to these plans that increase site imperviousness may require Planning Board action.
- Compliance with the conditions of approval for the preliminary forest conservation plan dated September 18, 2003 and revised November 20, 2003. (The final forest conservation plan must be approved prior to the recording of plat. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permits, as appropriate. Conditions include, but are not limited to, the following:
  - Category I conservation elements to be placed over non-wooded buffers, forest-edge areas, and riparian areas. Elements to be shown on record plat.
  - As part of the final forest conservation plan, show measures to prevent fish-leak other maps. This may include reorienting a proposed equipment building in its outside the lot's critical root zone.
- If sewer service to be provided by a gravity line that is located within the approved, but outside, Peach Orchard Heights subdivision, the sewer line is to be located within the recorded Street Lane right-of-way. If there are setbacks of the sewer line that occur outside the road right-of-way in order to connect to the existing sewer system or to the subject property, location of the line must be fully located and recorded and approved by MNCPP&PC.
- Conformance to the conditions as issued in DTS' water quality plan approval letter dated August 14, 2004.
- Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- AS road right-of-way shown on the approved preliminary plan shall be dedicated by the applicant in the field within mandated by the County Master Plan, unless otherwise designated on the preliminary plan.
- Limit the preliminary plan as a private weekday educational facility on the new site for learning centers through teaching, a maximum of 60 students, and a weekday child-care program for up to 40 children.
- Conclude with and submit a plan to the Maryland State Highway Administration (SHA) regarding the site access from Spencerville Road (MD 198) based on the current weekday peak-hour of the site with 300 children and the projected arrival and departure patterns for the proposed 450 children, in conformity with SHA's requirements for construction, operation, and bypass lanes. Review and approval to be first prior to record plat and agreement to limit impervious surfaces.
- Provide sufficient on-site parking space that vehicles waiting in drop-off and pick-up vehicles will not impede main Spencerville Road. Review and approval to be first prior to record plat and agreement to limit impervious surfaces.
- Provide final parking facilities plan to be followed by local staff.
- Coordinate with SHA, MD 28-MD 198 Planning Study (e.g., contact the project manager, Shava Bennett, at 1-410-565-9531).
- Record plat to show delineation of a Category I or II (as appropriate) conservation easement over the stream buffer(s) and all forest conservation areas.
- Compliance with conditions of MCDPS storm water management approval.
- Access and improvements as required to be approved by MSHA prior to issuance of access Permits.
- This preliminary plan will remain valid for thirty (30) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for its extension must be filed.

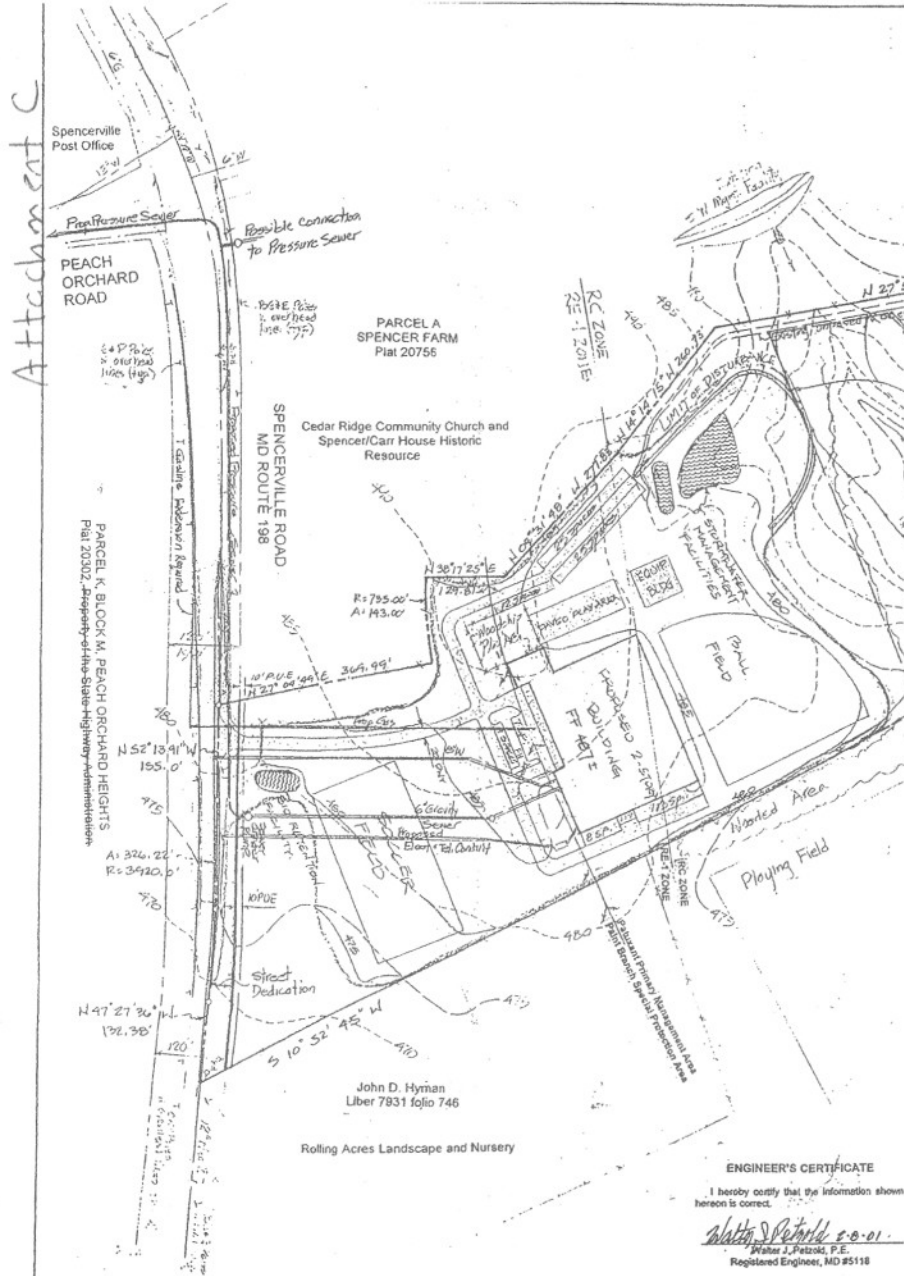
**ENGINEER'S CERTIFICATE**

I hereby certify that the information shown hereon is correct.

*Walter J. Petzold 5-0-01*

Walter J. Petzold, P.E.  
Registered Engineer, MD #5118

Impervious Area Tabulation	
Plant Search EPA	Palmetto PMA
Buildings, parking lot, driveway and pavement totaling = 0.72 acres	Buildings, parking lot, driveway and total = 2.30 acres
Watershed area in subdivision = 7.20 acres	Portion of tract in PMA = 24.32 acres
Percent Impervious = 10	Percent Impervious = 10



<p>Prepared for: Chesapeake Conference, Assoc. of Seventh Day Adventists 15820 Good Hope Road Spencerville, MD 21086</p> <p>Contact Person: Diane Jacobson 301-774-4846</p>	<p><b>OYSTER, IMUS AND PETZOLD, INC</b> 20300 BRADDOCK MONTGOMERY COUNTY, MARYLAND</p>	<p><b>PROPOSED PARCEL B SPENCER FARM MONTGOMERY COUNTY MARYLAND</b></p>	<p>DATE: FEBRUARY 2006 SCALE: 1" = 100'</p>
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ATTACHMENT B

Date Mailed: February 19, 2002

Action: Approved Staff Recommendation

Motion of Comm. Bryant, seconded by  
Comm. Robinson with a vote of 5-0;Comms. Bryant, Holmes, Perdue,  
Robinson and Wellington  
voting in favor

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan 1-01060

NAME OF PLAN: SPENCER FARM, PARCEL B

On 03/15/01, SPENCERVILLE SEVENTH DAY ADVENTIST CHURCH submitted an application for the approval of a preliminary plan of subdivision of property in the RE-1/RC zone. The application proposed to create 1 lot on 31.40 acres of land. The application was designated Preliminary Plan 1-01060. On 12/06/01, Preliminary Plan 1-01060 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-01060 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-01060.

Approval, subject to the following conditions:

1. Prior to record plat, applicant to enter into an agreement with the Planning Board to limit impervious surfaces to no more than 10 percent within the Upper Paint Branch Special Protection Area, as shown on the revised preliminary plan.
2. Prior to release of building permits, applicant to demonstrate conformance to impervious surface limits as shown on the revised preliminary plan. Any modifications to these plans that increase site imperviousness may require Planning Board action.
3. Compliance with the conditions of approval for the preliminary forest conservation plan dated September 28, 2001 and revised November 29, 2001. The final forest conservation plan must be approved prior to the recording of plat. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to, the following:
  - a. Category I conservation easements to be placed over environmental buffers, forest-save areas, and afforestation areas. Easements to be shown on record plats.
  - b. As part of the final forest conservation plan, show measures to protect 62-inch silver maple. This may include relocating a proposed equipment building to lie outside the tree's critical root zone.



4. If sewer service is to be provided by a gravity line that is located within the approved, but unbuilt, Peach Orchard Heights subdivision, the sewer line is to be located within the recorded Rustad Lane right-of-way. If there are sections of the sewer line that must lie outside the road right-of-way in order to connect to the existing sewer system or to the subject property, location of the line must be field-located and reviewed and approved by M-NCPPC.
5. Conformance to the conditions as stated in DPS' water quality plan approval letter dated August 14, 2001.
6. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits
7. All roads rights-of-way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Cloverly Master Plan, unless otherwise designated on the preliminary plan
8. Limit the preliminary plan to a private weekday educational institute on the new site for kindergarten through twelfth grade, a maximum of 450 students, and a weekday child daycare program for up to 60 children.
9. Coordinate with and submit a plan to the Maryland State Highway Administration (SHA) regarding the site access from Spencerville Road (MD 198) based on the current weekday peak-hour of the site with 300 children and the projected arrival and departure pattern for the proposed 450 children, to satisfy SHA's requirements for acceleration, deceleration, and bypass lanes. Review and approval to be done prior to record plat and agreement to limit impervious surfaces.
10. Provide sufficient on-site queuing area so that vehicles waiting to drop-off and pick-up students will not spill over onto Spencerville Road. Review and approval to be done prior to record plat and agreement to limit impervious surfaces.
11. Provide final parking facilities plan to be reviewed by technical staff
12. Dedicate 25 feet of additional right-of-way for 120 feet along Spencerville Road.
13. Coordinate with SHA's MD 28-MD 198 Planning Study (e.g., contact the project manager, Shawn Burnette, at 1-410-545-9531)
14. Record plat to show delineation of a Category I or II (as appropriate) conservation easement over the stream buffer(s) and all forest conservation areas
15. Compliance with conditions of MCDPS storm water management approval
16. Access and improvements as required to be approved by MDSHA prior to issuance of access Permit
17. This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed
18. The Adequate Public Facility (APF) Review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
19. A Lighting and Landscaping plan must be submitted as part of the record plat application for review and approval by staff prior to recording of plat
20. Necessary Easements

**OYSTER, IMUS & PETZOLD, INC.**  
**CIVIL ENGINEERS ♦ LAND PLANNERS ♦ SURVEYORS**  
11230-B GRANDVIEW AVENUE ♦ WHEATON, MARYLAND 20902  
voice (301) 949-2011 ♦ fax (301) 949-2013

2557-B-1

February 25, 2005

Ms. Rose G. Krasnow, Chief  
MNCP&PC Development Review Division  
8787 Georgia Avenue  
Silver Spring MD 20910

Re: Preliminary Plan 1-01060  
Spencer Farm Parcel B

Dear Ms. Krasnow:

On behalf of my clients, the Spencerville Seventh Day Adventist Church, we request a six month time extension for the above cited Preliminary Plan to allow time for the processing of the Record Plat that is being filed concurrently with this request.

The record plat was prepared by our firm in August 2002 (eight months after approval of the Preliminary Plan by the Planning Board and six months after the Opinion was mailed). The church was unable to sign the plat at that time since they had not yet obtained title to the property (although the deed was signed on May 15, 2001, it was not recorded until April 2004). When the deed was recorded, the necessary follow through to sign the plat was overlooked, even though the building committee was involved in evaluating the feasibility of construction on the site.

Before the property was purchased, the extension of public sewer through the Peach Orchard Heights development was anticipated. That development is in abeyance due to its designation as part of a route alternate for the Inter-County Connector. A 3,500-foot extension of the sanitary sewer in the dedicated public rights-of-way will be required if construction is begin soon (see attached WSSC letter). The Spencerville Seventh Day Adventist Church has been unable to obtain the financial commitment from the other potential users of the sanitary sewer to pay for the costly extension of the public sewer from its present terminus. In order for this project to go forward, an assured sewage disposal system must be in place. An investigation of the use of an interim septic system for phased development is being conducted at this time.

Although the Record Plat for Parcel B, Spencerville Farm is being filed a month prior to the expiration of the Preliminary Plan expiration date, it is unlikely that it can be recorded before the plan approval expires. We are asking for this extension in order to allow sufficient time for the normal processing of the record plat.

We trust the Planning Board will grant this extension and save all the parties involved in a Preliminary Plan re-approval the time and expense that would be involved in re-addressing the many issues surrounding the project. As far as I am aware, there are no new issues related to this project, and there was no opposition to the granting of the original approval.

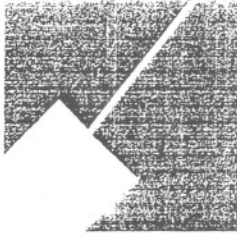
Thank you for your attention to this matter.

Sincerely yours,

Walter J. Petzold, P.E.

Enclosure: WSSC letter  
cc: Spencerville Academy

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

August 10, 2005

Spencerville Seventh Day Adventist Church  
15930 Good Hope Road  
Silver Spring, MD 20905

Preliminary Plan No. 1-01060E

Request for an extension of the validity date for the **SPENCER FARM, PARCEL B -  
EXTENTION**

This is to inform you that the Montgomery County Planning Board considered your request for an extension to the validity period of the above-mentioned plan at its regularly scheduled meeting of **August 4, 2005**. At that time, the Planning Board voted 3-0 to grant an extension to ~~March 25, 2006.~~ (Commissioner Perdue made the motion; Commissioner Wellington seconded; Chairman Berlage, and Commissioners Perdue and Wellington voted in favor; Commissioners Bryant and Robinson absent.

If you have any questions concerning this Planning Board action, please call me at (301) 495-4544.

Sincerely,

Richard Weaver, Planner Coordinator  
Development Review Division

cc:

**OYSTER, IMUS & PETZOLD, INC.**  
CIVIL ENGINEERS ♦ LAND PLANNERS ♦ SURVEYORS  
11230-B GRANDVIEW AVENUE ♦ WHEATON, MARYLAND 20902  
voice (301) 949-2011 ♦ fax (301) 949-2013

2557-B-1

July 27, 2006

Ms. Rose G. Krasnow, Chief  
MNCP&PC Development Review Division  
8787 Georgia Avenue  
Silver Spring MD 20910

Re: Preliminary Plan 1-01060  
Spencer Farm Parcel B

Dear Ms. Krasnow:

On behalf of my clients, the Spencerville Seventh Day Adventist Church, we a reinstatement of the Preliminary Plan cited above and request a one year time extension to allow time for meeting the last Preliminary Plan condition necessary for the approval of the Record Plat for Spencer Farm Parcel B.

The reinstatement is necessary due to a misunderstanding of the expiration date of the previous time extension. It was assumed that we had one year from the date of the extension approval letter, however the original approval had expired prior to that extension, so the plan approval has lapsed again. Please excuse our oversight in this matter. I can assure you that the church is anxious to move forward on this project as soon as possible, however there have been many problems with respect to the provision of sewer service to the proposed Parcel B, Spencer Farm.

Reference is made to the attached justification letter of February 2005. As pointed out in that letter, the provision of public sewer to the property has been complicated by state ownership of the downstream parcel (to preserve the R/W for an alternate alignment of the Inter-County Connector). In our last dealings with the WSSC a pressure sewer routing was given preliminary approval pending the submission of certain details.

Although this final condition of approval is close to being met, this cannot be accomplished for several months. We are therefore asking for an additional time extension so that the Record Plat that filed in February was can finish moving through the approval process to recordation.

Thank you for your attention to this matter.

Sincerely yours,



Walter J. Petzold, P.E.

Enclosure: Feb.5, 2005 letter.  
cc: Spencerville Academy



ATTACHMENT G

**OYSTER, IMUS & PETZOLD, INC.**  
CIVIL ENGINEERS • LAND PLANNERS • SURVEYORS  
11230-B GRAN DVIEW AVENUE • WHEATON, MARYLAND 20902  
voice (301) 949-2011 • fax (301) 949-2013

2557-B-1

August 13, 2006

Ms. Rose G. Krasnow, Chief  
MNCP&PC Development Review Division  
8787 Georgia Avenue  
Silver Spring MD 20910

Re: Preliminary Plan 1-01060  
Spencer Farm Parcel B

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At the time of approval of the Preliminary Plan sewer service was programmed to be provided by a connection to the sewer line that was planned to serve the Peach Orchard Heights development. The WSSC plans for this sewer were approved on December of 1996 and right-of-way grading commenced shortly thereafter. In June of 1998 the entire subdivision was purchased by the Maryland State Highway Administration to preserve an alternate route for the Inter-County Connector.

Since this route seemed to be blocked for the time being, a request was made to WSSC for a temporary pressure sewer connection to the existing sewer in Peach Orchard Road. This request was denied by the WSSC by a letter dated April 17, 2001. In June 2001 we were granted permission by the State Highway Administration to locate the outfall sewer in the public rights-of-way in the Peach Orchard Heights subdivision.

Work was done on the sewer outfall plans including survey work to obtain the rough graded elevations of the public rights of way. However, the projected costs for sewer service proved unreasonable when negotiations with two other possible users of the 4,600 feet of outfall sewer revealed that they were unwilling to pay their share of the costs.

Another avenue for sewer service was investigated in terms of a temporary septic system for the Spencerville Academy. Septic water table tests in early 2005 were followed up with percolation testing and re-testing that continued throughout the year until it became apparent that there was not enough septic system capacity at the site for the projected enrollment. A decision was made to resume work on the gravity sewer using the peach Orchard Heights rights-of-way.

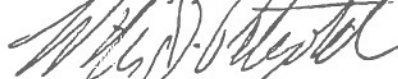
Under the new WSSC procedures it was necessary to re-submit for approval of the sewer outfall routing. This was done in the fall of 2005. After a number of communications with the WSSC staff, it became apparent that a routing entirely in the stream valley up to Spencerville Road that would serve a larger area was being studied. Finally in May 2006 we were instructed to re-apply for a pressure sewer connection to the sewer lines in Peach Orchard Road. This was done and we are now developing the data on the pump capacity and the size of the pressure sewer line.

As soon as final approval of this route is received through a letter from the WSSC, I believe we will have the key element for approval of the record plat. It should be noted that the Stormwater Management Concept is being re-submitted to conform to the changes in the state law since the initial approval in 2001. In order to allow time for these approvals a deadline of March 2006 seems appropriate.

Although this final condition of approval is close to being met, this cannot be accomplished for several months. We are therefore asking for an additional time extension so that the Record Plat filed in February 2005 can finish moving through the approval process to recordation.

Thank you for your attention to this matter.

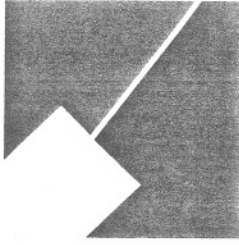
Sincerely yours



Walter J. Petzold, P.E.

cc: Spencerville Academy

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.orgMCPB  
ITEM # 5  
8/4/05MEMORANDUM

July 29, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief  
Development Review Division

Cathy Conlon, Supervisor *CC*  
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RAW*  
Development Review Division

SUBJECT: Request for an extension of the validity period – Preliminary Plan  
No. 1-01060 – Spencer Farm

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**STAFF RECOMMENDATION:** Approval of a one year extension of the validity period to March 25, 2006.

**BACKGROUND**

The preliminary plan for the Spencer Farm, preliminary plan No. 1-01060 was approved by the Planning Board at a regularly scheduled public hearing on December 6, 2001. The date of mailing of the Planning Board Opinion for the plan was February 19, 2002. As a condition of that approval the validity period of the preliminary plan was set at 37 months from the date of mailing of the Planning Board Opinion, or March 19, 2005. On February 25, 2005 staff received a request for an extension of the validity period for an additional six month period. (Attachment 1). The request was therefore, timely, as it was received prior to the date of expiration.

**REQUIRED FINDINGS FOR AN EXTENSION OF THE VALIDITY PERIOD**

Section 50-35 (h)(3)(d) of the Montgomery County Code, Subdivision Regulations, states that the Planning Board may grant extension of the validity period of a preliminary plan if persuaded that:

- (i) Delays, subsequent to the plan approval by the government or some other party, central to the applicant's ability to perform the terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or
- (ii) the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by the applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.

### Applicant's Position

The applicant's letter of February 25, 2005 requests a six month extension and cites specific reasons why the applicant believes the extension is warranted. The applicant bases the justification on the occurrence of significant and unanticipated events, beyond the applicant's control and not facilitated or created by the applicant, that has substantially impaired the applicant's ability to validate its plan. The letters also cites undue hardship that would result if the plan expired.

The applicant outlines two main reasons why the plan should be extended. These reasons are:

- 1) The applicant, Spencerville Seventh Day Adventist Church, was not able to sign the plats until they had actually obtained title of the property. This did not occur until April 2004 when the deeds were actually recorded. It appears that once the deeds were recorded and the church did actually have title, the plats were "overlooked" by the church and did not get the plat submitted to the appropriate review agencies for signatures.
- 2) Public sewer service was always anticipated for this project. However, given the delays related to ICC alignments on the adjacent and unbuilt Peach Orchard Heights subdivision through which sewer service would be extended, the extension of that sewer system has also been delayed. The Church is unable to finance the sewer extension alone and has been working with MCDPS to design an interim septic system.

### Staff's Position

Staff believes that the applicant has submitted sufficient grounds to justify the extension of the validity period for the subject preliminary plan. The state has purchased the developable portions of the Peach Orchard Heights project, thereby, radically changing the public sewer extension schedule for the immediate area. The church has proceeded with water table testing in anticipation of actual

percolation testing this summer. They are hopeful to have an approved interim system by year's end at which time the plats would be amended to reflect the septic easement area.

## **CONCLUSION**

Staff believes that a sufficient argument has been made regarding the request to extend the validity period for preliminary plan 1-01060, Spencer Farm, as prescribed in Section 50-35(h)(3)(d). The statements made by the applicant in their letter lead staff to believe that significant and or unanticipated events have materially prevented the applicant from validating the plan. Staff concludes that the argument provided by the applicant is valid and recommends extending the validity period for one year to March 25, 2006.

## **Attachments**

Attachment A – Extension Request Letter

Attachment B - Approved Opinion

Attachment C – Approved Preliminary Plan



**OYSTER, IMUS & PETZOLD, INC.**  
CIVIL ENGINEERS ♦ LAND PLANNERS ♦ SURVEYORS  
11230-B GRANDVIEW AVENUE ♦ WHEATON, MARYLAND 20902  
voice (301) 949-2011 ♦ fax (301) 949-2013

2557-B-1

February 25, 2005

Ms. Rose G. Krasnow, Chief  
MNCP&PC Development Review Division  
8787 Georgia Avenue  
Silver Spring MD 20910

Re: Preliminary Plan 1-01060  
Spencer Farm Parcel B

Dear Ms. Krasnow:

On behalf of my clients, the Spencerville Seventh Day Adventist Church, we request a six month time extension for the above cited Preliminary Plan to allow time for the processing of the Record Plat that is being filed concurrently with this request.

The record plat was prepared by our firm in August 2002 (eight months after approval of the Preliminary Plan by the Planning Board and six months after the Opinion was mailed). The church was unable to sign the plat at that time since they had not yet obtained title to the property (although the deed was signed on May 15, 2001, it was not recorded until April 2004). When the deed was recorded, the necessary follow through to sign the plat was overlooked, even though the building committee was involved in evaluating the feasibility of construction on the site.

Before the property was purchased, the extension of public sewer through the Peach Orchard Heights development was anticipated. That development is in abeyance due to its designation as part of a route alternate for the Inter-County Connector. A 3,500-foot extension of the sanitary sewer in the dedicated public rights-of-way will be required if construction is begin soon (see attached WSSC letter). The Spencerville Seventh Day Adventist Church has been unable to obtain the financial commitment from the other potential users of the sanitary sewer to pay for the costly extension of the public sewer from its present terminus. In order for this project to go forward, an assured sewage disposal system must be in place. An investigation of the use of an interim septic system for phased development is being conducted at this time.

Although the Record Plat for Parcel B, Spencerville Farm is being filed a month prior to the expiration of the Preliminary Plan expiration date, it is unlikely that it can be recorded before the plan approval expires. We are asking for this extension in order to allow sufficient time for the normal processing of the record plat.

We trust the Planning Board will grant this extension and save all the parties involved in a Preliminary Plan re-approval the time and expense that would be involved in re-addressing the many issues surrounding the project. As far as I am aware, there are no new issues related to this project, and there was no opposition to the granting of the original approval.

Thank you for your attention to this matter.

Sincerely yours,

Walter J. Petzold, P.E.

Enclosure: WSSC letter  
cc: Spencerville Academy