



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

JUL 29 2014

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

**RESOLUTION**

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

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

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100190 Cavanaugh Property ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 3, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, the Planning Board held a public hearing on the Application, and at the hearing heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below;

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

Approved as to  
Legal Sufficiency:

 7/9/14

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

Subject Property, subject to the following conditions:<sup>1</sup>

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

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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

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

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

- 15) The Applicant must provide split rail fencing or staff approved equivalent along the Category I Easement line adjacent to Lot 7. This may be done via a covenant with the owner of lot 7 requiring construction and maintenance of the fence.
- 16) The Applicant must include with the submission of the record plats an affidavit to verify the availability of TDRs for the lots shown on that plat and include a note referencing the affidavit on the record plat.
- 17) The record plats must contain the following note:  
  
"Agriculture is the preferred use in the Rural Density Transfer Zone. All agriculture operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 18) The record plat must show necessary easements.
- 19) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Environmental Guidelines:

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

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

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

#### Forest Conservation:

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

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

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

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

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

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

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

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

#### *7. Finding regarding waiver of frontage*

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

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

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

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

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

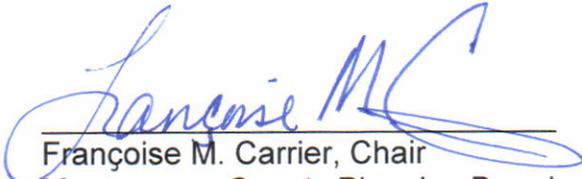
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 29 2014 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor, at its regular meeting held on Thursday, July 17, 2014, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board