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HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■

Amy Gowan, Director

May 21, 2020

TECHNICAL STAFF REPORT

Planning Board Meeting of June 4, 2020

Case No./Petitioner: ZRA-190 / John P. McDaniel

Request: To amend Section 104.0.G. and 105.0.G to allow the merger of adjoining parcels under specific conditions.

I. BACKGROUND AND HISTORY OF EXISTING ZONING REGULATIONS

The RC and RR zoning districts were created through Zoning Board Case 928R&M in the purpose "to preserve natural features and the rural landscape, while allowing residential development". These districts require a three-acre lot size for standard residential development. To encourage preservation of natural features and the rural landscape, smaller lots are approved under the cluster subdivision provisions, which allow one cluster lot for every acre with the remaining area held in a preserved area. To ensure that the preservation area maintains natural features and agricultural use, future subdivision of the preserved area was prohibited as shown below in Sections 104.1.F.7.a and 104.2.F.7.a of the initial RC and RR zoning districts.

7. The following requirements and restrictions shall apply to the preserved area of a cluster subdivision.

a. The preserved area may be divided into more than one lot only at the time that the area is originally recorded and only if the lots are designated for different principal uses in accordance with the purposes of the RC district. The lot or lots which constitute the



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Amy Gowan, Director

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May 21, 2020

TECHNICAL STAFF REPORT

Planning Board Meeting of June 4, 2020

Case No./Petitioner: ZRA-190 / John P. McDaniel

Request: To amend Section 104.0.G. and 105.0.G to allow the merger of adjoining preservation parcels under specific conditions.

I. BACKGROUND AND HISTORY OF EXISTING ZONING REGULATIONS

The RC and RR zoning districts were created through Zoning Board Case 928R&M in 1992 with the purpose “to preserve natural features and the rural landscape, while allowing low density residential development”. These districts require a three-acre lot size for standard lots. To encourage preservation of natural features and the rural landscape, smaller lots sizes can be approved under the cluster subdivision provisions, which allow one cluster lot for every 4.25 acres with the remaining area held in a preserved area. To ensure that the preservation area remains as natural features and agricultural use, future subdivision of the preserved area was prohibited as shown below in Sections 104.1.F.7.a and 104.2.F.7.a of the initial RC and RR zoning districts.

7. The following requirements and restrictions shall apply to the preserved area of a cluster subdivision.

a. The preserved area may be divided into more than one lot only at the time that the preserved area is originally recorded and only if the lots are designated for different principal uses in accordance with the purposes of the RC district. The lot or lots which constitute the preserved area of a cluster subdivision shall be referred to as preservation parcels.

In 2001, DPZ staff drafted ZRA 33 which proposed several revisions to Sections 104.0.F and 105.0.F (formerly 104.1.F and 104.2.F) based on experience with cluster subdivision over the previous 9 years. The purpose of the revisions was to encourage larger preservation parcels and discourage smaller fragmented preservation parcels as well as minor procedural and organizational

Case No.ZRA-190
Petitioner: John P. McDaniel

Page | 2

changes. Section 7.a was reworded as shown below and moved to F.1.b of 104.0 and 105.0. The amendments were approved through CB-50-2001.

b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC/RR Districts.

In 2006, DPZ staff recognized that prohibition on future subdivision caused unintended consequences and prevented reconfiguration that better facilitates the purpose of the preservation parcel and better ensures its protection. DPZ proposed the highlighted text in 104.0.F and 105.0.F below in ZRA-74 to allow the transfer of land between abutting preservation parcels subject to preservation easements held by Howard County or a State Agency. The amendments were approved through CB 55-2006.

b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District with the following exception:

- (1) Subdivision of a preservation parcel after recordation of the preservation parcel easement may only be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; and*
- (2) Involves the transfer of land to one adjoining parcel that is entirely protected by an agricultural, environmental or historic preservation easement held by Howard County or a State Agency; and*
- (3) Such transfer may not:
 - (a) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or*
 - (b) Undermine the original agricultural, environmental, or historic preservation purpose for creating the preservation parcel; or*
 - (c) Reduce the preservation parcel to less than 20 acres; and**
- (4) Such land transfer requires consent of all easement holders. All deed(s) of easements shall be amended to reflect the land transfer.*

In the 2013 Comprehensive Zoning, Sections 104.0.F/105.0.F became 104.0.G/105.0.G and were amended to provide additional flexibility to encourage larger preservation parcels for better

Case No.ZRA-190
Petitioner: John P. McDaniel

Page | 3

protection of natural resources. As shown below, the amendments allow an equal exchange of land between preservation parcels and adjacent parcels, including non-preservation parcels, if the exchange better facilitates the purpose of the preservation parcel and better ensures its protection.

- b. *The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District with the following exception:*
- (1) Subdivision of a preservation parcel after recordation of the preservation parcel easement may only be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; and*
 - (2) ~~Involves the transfer of land to one adjoining parcel that is entirely protected by an agricultural, environmental or historic preservation easement held by Howard County or a State Agency; and~~*
 - (2) Involves either:*
 - (a) The transfer of land between adjoining parcels that are both entirely protected by an agricultural environmental or historic preservation easement held by Howard County or a State agency; or*
 - (b) The exchange of equivalent acreage between adjoining parcels, one of which is a preservation parcel, created in accordance with section 104.0, 105.0 or 106.0 of these Regulations, wherein the resulting configuration will better facilitate the purpose of the preservation parcel and better ensure its protection; and*
 - (3) Such transfer may not:*
 - (c) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or*
 - (d) Undermine the original agricultural, environmental, or historic preservation purpose for creating the preservation parcel; or*
 - (c) Reduce the preservation parcel to less than 20 acres; and*
 - (4) Such land transfer requires consent of all easement holders. All deed(s) of easements shall be amended to reflect the land transfer.*

There have been no changes to these sections of the Zoning Regulation since the 2013 amendments

II. DESCRIPTION AND EVALUATION OF PROPOSAL

This section contains the Department of Planning and Zoning's (DPZ) technical evaluation of ZRA-190. The Petitioner's proposed amendment text is attached as Exhibit A, Petitioner's Proposed

Case No.ZRA-190
Petitioner: John P. McDaniel

Text. DPZ's proposed amendment text is attached as Exhibit B, DPZ Proposed Text.

The Petitioner asserts that Sec 104.0.G.1.b and Sec. 105.0.G.1.b create unintended consequences that impede the enlargement of preservation parcels and constrain farm expansions, which conflicts with the purpose of the RC and RR zoning districts to "preserve agricultural land" and "to encourage agricultural activities, thereby helping to ensure that commercial agriculture will continue as a long term land use and a viable economic activity within the County". Specifically, the 20 acre lot size requirement impacts the merger of a preservation parcel with an adjacent preservation parcel that has a dwelling or development right.

The Petitioner contends that under current regulations, a farm that wants to expand onto adjacent farmland can only acquire the portion in excess of 20 acres. For example, if the adjacent property is 25 acres, only 5 acres can be purchased, since 20 acres will remain for the existing house. A farm expansion over 5 acres would require the purchase of the entire 25 acres. The Petitioner claims that this can make expansion cost prohibitive and prevent the growth of successful farm operations within the County. Additionally, this prevents creation of a larger preservation parcel, which is more conducive to farming and can result in a configuration that better serves the preservation purpose.

The proposed amendment allows for expansion of farm land or preserved land only in the situation where the adjacent preserved land has an existing principal dwelling or a development right exists. Therefore, no additional density is gained and the resulting preserved residual parcel can be less than 20 acres

Petitioner's proposed amendments to the existing Zoning Regulations (Sec 104.0.G.1.b and Sec. 105.0.G.1.b Cluster Subdivisions):

New Section 104.0.G.1.b.2 and 105.0.G.1.b.2:

The proposed amendments allow the combination of adjoining preservation parcels and subsequent subdivision to create a separate lot for an existing dwelling or residential development right. This will enable farm expansion by allowing existing houses/development rights to subdivide or be transferred onto separate lots, which will allow for a larger parcel to be farmed. The minimum lot size for a residential lot subject to

Case No.ZRA-190
Petitioner: John P. McDaniel

Page | 5

an Agricultural Preservation Easement will be 3 acres and for other dedicated easements, the lot size will be in accordance with the cluster subdivision requirements. These lot sizes are consistent with minimum lot size requirements in the RC/RR zoning districts and will not result in an increase of density.

New Section 104.0.G.1.b.3 and 105.0.1.b.3

An amendment is included to prohibit any additional residential development rights. This provision acts as a safeguard to ensure the shifting of property lines does not result in additional density.

New Section 104.0G.1.b.4 and 105.0.G.1.b.4:

This proposed amendment adds text that that requires the consent of all easement holders to allow for the transfer. Amended deeds of easement must be created to reflect the transfer. The Petitioner proposes that the portions of the property subject to each easement, shall retain the same easement terms under the amended easement. While the ZRA changes the Zoning Regulations to allow a new lot for the existing dwelling or development right, it does not change the terms of the preservation easement, which may prohibit residential development.

However, it is unclear exactly how easements will be amended if the terms of the original easements differ or conflict. Also, the Petitioner's proposed text amendment only allows the existing easement terms to apply but there may be circumstances that the existing terms are no longer valid or both parties desire to change the terms. The proposed language does not appear to permit any changes. Clarification and flexibility are needed to facilitate implementation.

DPZ's proposed modifications:

DPZ concurs that the proposed amendments will provide flexibility for the creation of larger preservation parcels in certain situations, without reducing the amount of preserved land or increasing residential density. However, DPZ is proposing some modifications to the Petitioner's text to ensure the Zoning Regulations reflect the intent of the ZRA.

Case No.ZRA-190
Petitioner: John P. McDaniel

Exhibit B contains DPZ's proposed modifications to the Petitioner's text amendment. DPZ proposes a different organizational structure for the regulations in Sections 104.G.1 and 105.G.1. Additionally, since these sections of the Zoning Regulations only apply to preservation parcels created through the cluster subdivision process, DPZ proposes to also amend Sec. 106.0 Density Exchange Option Overlay so that it is clear these amendments also apply to preservation parcels created through the density sending option. Finally, DPZ proposes minor revisions to the Petitioner's text as shown in Exhibit B.

III. GENERAL PLAN

The Petitioner asserts that ZRA-190 is in harmony with the PlanHoward 2030 General Plan that promote greater flexibility for agriculture operations and protection of natural areas.

Policy 4.5

"Refine the Rural Conservation (RC) and the Rural Residential (RR) zoning regulations to provide greater flexibility for the agricultural community as well as appropriate protections for rural residents."

Policy 4.6

"Formalize a Green Infrastructure Network Plan in Howard County."

Implementing Action a.

"Green Infrastructure Network. Define, protect, and enhance a Green Infrastructure Network that includes and links the most ecologically significant natural areas in Howard County."

DPZ concurs that the proposed amendments are in harmony with the General Plan policy 4.5 since they provide greater flexibility for the agricultural community by relaxing restrictions on farm expansions on preservation parcels.

Case No.ZRA-190
Petitioner: John P. McDaniel

V. RECOMMENDATION

For the reasons noted above, the Department of Planning and Zoning recommends that the ZRA-190 be **APPROVED WITH AMENDMENTS**, as shown in Exhibit B.

Approved by:

DocuSigned by:
Amy Gowan 5/21/2020
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Amy Gowan, Director Date

Case No.ZRA-190
Petitioner: John P. McDaniel

ZRA 190 – Exhibit A
Petitioner’s Proposed Text
Howard County Zoning Regulations.

(CAPITALS indicate text to be added; text in [[brackets]] indicates text to be deleted.)

SECTION 104.0

G. Cluster Subdivision Requirements

1. Subdivision and Density Requirements

- a. A cluster subdivision consists of cluster lots, which are located on a portion or portions of the parcel being subdivided, and a preserved area, which is the entire residual area of the parcel being subdivided.
- b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District with the following exceptionS:
 - (1) Subdivision of a preservation parcel after recordation of the preservation parcel easement may [only] be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; and INVOLVES EITHER:
 - [[2) Involves either:]]
 - (a) The transfer of land between adjoining parcels that are both entirely protected by an agricultural environmental or historic preservation easement held by Howard County or a State agency; or
 - (b) The exchange of equivalent acreage between adjoining parcels, one of which is a preservation parcel, created in accordance with Section 104.0, 105.0 or 106.0 of these Regulations, wherein the resulting configuration will better facilitate the purpose of the preservation parcel and better ensure its protection; [[and]]
 - (2) THAT TWO OR MORE ADJOINING PRESERVATION PARCELS MAY BE COMBINED TO CREATE A PRESERVATION PARCEL, WHEREIN THE RESULTING CONFIGURATION WILL BETTER FACILITATE THE PURPOSE OF THE PRESERVATION PARCEL, PROVIDED THAT:
 - (a) AT THE TIME OF THE COMBINATION, IF A DEVELOPMENT RIGHT OR AN EXISTING PRINCIPAL DWELLING UNIT EXISTS, A LOT MAY BE CREATED TO ACCOMMODATE THE EXISTING HOUSE OR A PROPOSED HOUSE ON A PRESERVATION PARCEL.

1. FOR PARCELS WITH AN AGRICULTURAL PRESERVATION EASEMENT, THE MINIMUM LOT SIZE SHALL BE 3 ACRES
2. FOR PARCELS WITH OTHER DEDICATED EASEMENTS, THE MINIMUM LOT SIZE SHALL COMPLY WITH THE CLUSTER LOT SIZE REQUIREMENTS

(3) Such transfer may not:

- (a) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or
- (b) Undermine the original agricultural, environmental, or historic preservation purpose for creating the preservation parcel; or
- (c) Reduce the preservation parcel to less than 20 acres; ~~[[and]]~~ UNLESS OTHERWISE PERMITTED IN SECTION 104.0.G.1.b.
- (d) ACHIEVE ANY ADDITIONAL RESIDENTIAL DEVELOPMENT RIGHTS; AND

~~[[4) Such land transfer requires consent of all easement holders. All deed(s) of easements shall be amended to reflect the land transfer.]]~~

(4) SUCH LAND TRANSFER REQUIRES CONSENT OF ALL EASEMENT HOLDERS. ALL DEED(S) OF EASEMENTS SHALL BE AMENDED TO REFLECT THE LAND TRANSFER AND ALL OF THE PROPERTY SHALL REMAIN SUBJECT TO THE PROVISIONS OF THE EASEMENT TO WHICH IT WAS SUBJECT PRIOR TO THE TRANSFER.

4. Requirements for Preservation Parcel Easements

- a. The easement agreement for each preservation parcel shall be approved by the County and executed by the property owner prior to recordation. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
 - (1) The location and size of the preservation parcel.
 - (2) Existing improvements on the preservation parcel.
 - (3) A prohibition on future residential, commercial or industrial development of the preservation parcel, other than the uses listed in Section 106.1. The easement must specify the primary purpose of the preservation parcel and prohibit the use of the preservation parcel for incompatible uses.
 - (4) A prohibition on future subdivision of the preservation parcel, EXCEPT AS PERMITTED IN SECTION 104.0.G.1.b
 - (5) Provisions for maintenance of the preservation parcel.
 - (6) Responsibility for enforcement of the easement.
 - (7) Provisions for succession in the event that one of the parties to an easement agreement ceases to exist.

SECTION 105.0

G. Cluster Subdivision Requirements

1. Subdivision and Density Requirements

- a. A cluster subdivision consists of cluster lots, which are located on a portion or portions of the parcel being subdivided, and a preserved area, which is the entire residual area of the parcel being subdivided.
- b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District with the following exceptions:

- (1) Subdivision of a preservation parcel after recordation of the preservation parcel easement may [only] be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; and INVOLVES EITHER:

[[(2) Involves either:]]

- (a) The transfer of land between adjoining parcels that are both entirely protected by an agricultural environmental or historic preservation easement held by Howard County or a State agency; or
- (b) The exchange of equivalent acreage between adjoining parcels, one of which is a preservation parcel, created in accordance with Section 104.0, 105.0 or 106.0 of these Regulations, wherein the resulting configuration will better facilitate the purpose of the preservation parcel and better ensure its protection; [[and]]

- (2) THAT TWO OR MORE ADJOINING PRESERVATION PARCELS MAY BE COMBINED TO CREATE A PRESERVATION PARCEL, WHEREIN THE RESULTING CONFIGURATION WILL BETTER FACILITATE THE PURPOSE OF THE PRESERVATION PARCEL, PROVIDED THAT:

- (a) AT THE TIME OF THE COMBINATION, IF A DEVELOPMENT RIGHT OR AN EXISTING PRINCIPAL DWELLING UNIT EXISTS, A LOT MAY BE CREATED TO ACCOMMODATE THE EXISTING HOUSE OR A PROPOSED HOUSE ON A PRESERVATION PARCEL.

1. FOR PARCELS WITH AN AGRICULTURAL PRESERVATION EASEMENT, THE MINIMUM LOT SIZE SHALL BE 3 ACRES
2. FOR PARCELS WITH OTHER DEDICATED EASEMENTS, THE MINIMUM LOT SIZE SHALL COMPLY WITH THE CLUSTER LOT SIZE REQUIREMENTS

- (3) Such transfer may not:

- (a) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or
- (b) Undermine the original agricultural, environmental, or historic preservation purpose for creating the preservation parcel; or

- (c) Reduce the preservation parcel to less than 20 acres; ~~[[and]]~~ UNLESS OTHERWISE PERMITTED IN SECTION 105.0.G.1.b.
- (d) ACHIEVE ANY ADDITIONAL RESIDENTIAL DEVELOPMENT RIGHTS; AND

[[4) Such land transfer requires consent of all easement holders. All deed(s) of easements shall be amended to reflect the land transfer.]]

- (4) SUCH LAND TRANSFER REQUIRES CONSENT OF ALL EASEMENT HOLDERS. ALL DEED(S) OF EASEMENTS SHALL BE AMENDED TO REFLECT THE LAND TRANSFER AND ALL OF THE PROPERTY SHALL REMAIN SUBJECT TO THE PROVISIONS OF THE EASEMENT TO WHICH IT WAS SUBJECT PRIOR TO THE TRANSFER.

4. Requirements for Preservation Parcel Easements

- a. The easement agreement for each preservation parcel shall be approved by the County and executed by the property owner prior to recordation. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
 - (1) The location and size of the preservation parcel.
 - (2) Existing improvements on the preservation parcel.
 - (3) A prohibition on future residential, commercial or industrial development of the preservation parcel, other than the uses listed in Section 106.1. The easement must specify the primary purpose of the preservation parcel and prohibit the use of the preservation parcel for incompatible uses.
 - (4) A prohibition on future subdivision of the preservation parcel, EXCEPT AS PERMITTED IN SECTION 105.0.G.1.b
 - (5) Provisions for maintenance of the preservation parcel.
 - (6) Responsibility for enforcement of the easement.
 - (7) Provisions for succession in the event that one of the parties to an easement agreement ceases to exist.

ZRA 190 – Exhibit B
Department of Planning and Zoning’s Proposed Text
Howard County Zoning Regulations.

(CAPITALS indicate text to be added; text in **[[brackets]]** indicates text to be deleted.)

SECTION 104.0 RC (Rural Conservation) District

G. Cluster Subdivision Requirements

I. Subdivision and Density Requirements

a. A cluster subdivision consists of cluster lots which are located on a portion or portions of the parcel being subdivided, and a preserved area, which is the entire residual area of the parcel being subdivided.

b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District. **[[with the following exceptions:]]**

[[1]] c. Subdivision of a preservation parcel after recordation of the preservation parcel easement may **[[only]]** be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; AND INVOLVES:

[[2) Involves either:]]

[[a)] (1)The transfer of land between adjoining parcels that are both entirety protected by an agricultural environmental or historic preservation easement held by Howard County or a State agency; or

[[b)] (2) The exchange of equivalent acreage between adjoining parcels, one of which is a preservation parcel, created in accordance with Section 104.0, 105.0 or 106.0 of these Regulations, wherein the resulting configuration will better facilitate the purpose of the preservation parcel and better ensure its protection; **[[and]]; or**

(3) THE COMBINATION OF TWO OR MORE ADJOINING PRESERVATION PARCELS TO CREATE A PRESERVATION PARCEL, WHEREIN THE RESULTING CONFIGURATION WILL BETTER FACILITATE THE PURPOSE OF THE PRESERVATION PARCEL, PROVIDED THAT:

(a) AT THE TIME OF THE SUBDIVISION, A LOT MAY BE CREATED TO ACCOMMODATE AN EXISTING OR A PROPOSED PRINCIPAL DWELLING, ON ONE OF THE PRESERVATION PARCELS.

1. FOR PARCELS WITH A HOWARD COUNTY AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, THE MINIMUM LOT SIZE SHALL BE 3 ACRES

2. FOR PARCELS WITH OTHER DEDICATED EASEMENTS, THE MINIMUM LOT SIZE SHALL COMPLY WITH THE CLUSTER LOT SIZE REQUIREMENTS

(4) Such transfer may not:

- (a) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or
- (b) Undermine the original agricultural, environmental or historic preservation purpose for creating the preservation parcel; or
- (c) Reduce the preservation parcel to less than 20 acres; ~~[[and]]~~ UNLESS OTHERWISE PERMITTED IN SECTION 104.0.G.1.c.
- (d) ACHIEVE ANY ADDITIONAL RESIDENTIAL DEVELOPMENT RIGHTS

~~[[~~(4) Such transfer requires consent of all easement holders. All deed(s) of easement shall be amended to reflect the land transfer.~~]]~~

(5) SUCH LAND RECONFIGURATIONS REQUIRE CONSENT OF ALL EASEMENT HOLDERS. ALL DEED(S) OF EASEMENT SHALL BE AMENDED TO REFLECT THE LAND RECONFIGURATION AND ALL OF THE PROPERTY SHALL REMAIN SUBJECT TO THE PROVISIONS OF THE EASEMENT TO WHICH IT WAS SUBJECT PRIOR TO THE RECONFIGURATION.

4. Requirements for Preservation Parcel Easements

a. The easement agreement for each preservation parcel shall be approved by the County and executed by the property owner prior to recordation. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:

- (1) The location and size of the preservation parcel.
- (2) Existing improvements on the preservation parcel.
- (3) A prohibition on future residential, commercial or industrial development of the preservation parcel, other than the uses listed in Section 106.1. The easement must specify the primary purpose of the preservation parcel and prohibit the use of the preservation parcel for incompatible uses.
- (4) A prohibition on future subdivision of the preservation parcel, EXCEPT AS PERMITTED IN SECTION 104.0.G.1.c
- (5) Provisions for maintenance of the preservation parcel.
- (6) Responsibility for enforcement of the easement.
- (7) Provisions for succession in the event that one of the parties to an easement agreement ceases to exist.

Section 105.0 RR (Rural Residential) District

G. Cluster Subdivision Requirements

I. Subdivision and Density Requirements

a. A cluster subdivision consists of cluster lots which are located on a portion or portions of the parcel being subdivided, and a preserved area, which is the entire residual area of the parcel being subdivided.

b. The preserved area should be retained as a single preservation parcel whenever possible. It may be divided into more than one preservation parcel only at the time that the preserved area is originally recorded and only in accordance with the purposes of the RC District [[with the following exceptions:]]

[[1)] C. Subdivision of a preservation parcel after recordation of the preservation parcel easement may [[only]] be permitted if the subdivision is necessary to establish a boundary line respecting agricultural, historical, or environmental features or patterns of use; AND INVOLVES:

[[2) Involves either:]]

[[a)] (1)The transfer of land between adjoining parcels that are both entirely protected by an agricultural environmental or historic preservation easement held by Howard County or a State agency; or

[[b)] (2) The exchange of equivalent acreage between adjoining parcels, one of which is a preservation parcel, created in accordance with Section 104.0, 105.0 or 106.0 of these Regulations, wherein the resulting configuration will better facilitate the purpose of the preservation parcel and better ensure its protection; [[and]]; or

(3) THE COMBINATION OF TWO OR MORE ADJOINING PRESERVATION PARCELS TO CREATE A PRESERVATION PARCEL, WHEREIN THE RESULTING CONFIGURATION WILL BETTER FACILITATE THE PURPOSE OF THE PRESERVATION PARCEL, PROVIDED THAT:

(a) AT THE TIME OF THE COMBINATION, IF A DEVELOPMENT RIGHT OR AN EXISTING PRINCIPAL DWELLING UNIT EXISTS, A LOT MAY BE CREATED TO ACCOMMODATE THE EXISTING HOUSE OR A PROPOSED HOUSE ON A PRESERVATION PARCEL.

1. FOR PARCELS WITH AN AGRICULTURAL PRESERVATION EASEMENT, THE MINIMUM LOT SIZE SHALL BE 3 ACRES

2. FOR PARCELS WITH OTHER DEDICATED EASEMENTS,
THE MINIMUM LOT SIZE SHALL COMPLY WITH THE
CLUSTER LOT SIZE REQUIREMENTS

(4) Such transfer may not:

- (a) Result in a net increase in the number of farm tenant house rights for the parcel being enlarged; or
- (b) Undermine the original agricultural, environmental or historic preservation purpose for creating the preservation parcel; or
- (c) Reduce the preservation parcel to less than 20 acres; [[and]] UNLESS OTHERWISE PERMITTED IN SECTION 104.0.G.1.c.
- (d) ACHIEVE ANY ADDITIONAL RESIDENTIAL DEVELOPMENT RIGHTS

[[(4) Such transfer requires consent of all easement holders. All deed(s) of easement shall be amended to reflect the land transfer.]]

(5) SUCH LAND RECONFIGURATIONS REQUIRE CONSENT OF ALL EASEMENT HOLDERS. ALL DEED(S) OF EASEMENT SHALL BE AMENDED TO REFLECT THE LAND RECONFIGURATION AND ALL OF THE PROPERTY SHALL REMAIN SUBJECT TO THE PROVISIONS OF THE EASEMENT TO WHICH IT WAS SUBJECT PRIOR TO THE RECONFIGURATION.

4. Requirements for Preservation Parcel Easements

a. The easement agreement for each preservation parcel shall be approved by the County and executed by the property owner prior to recordation. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:

- (1) The location and size of the preservation parcel.
- (2) Existing improvements on the preservation parcel.
- (3) A prohibition on future residential, commercial or industrial development of the preservation parcel, other than the uses listed in Section 106.1. The easement must specify the primary purpose of the preservation parcel and prohibit the use of the preservation parcel for incompatible uses.
- (4) A prohibition on future subdivision of the preservation parcel, EXCEPT AS PERMITTED IN SECTION 105.0.G.1.c
- (5) Provisions for maintenance of the preservation parcel.

(6) Responsibility for enforcement of the easement.

(7) Provisions for succession in the event that one of the parties to an easement agreement ceases to exist.

Sec. 106.0 DEO (Density Exchange Option) Overlay District

B. Criteria

Residential density may be exchanged between properties which are eligible to be sending and receiving parcels based on the criteria given below.

1. Sending Parcels

Properties within the DEO Overlay District which meet the following criteria are eligible to be sending parcels:

- a. The underlying zoning shall be RC;
- b. The minimum preservation parcel easement area shall be 20 acres for all sending parcels
- c. The sending area shall not be subject to a forest conservation easement, Agricultural Land Preservation Easement, gasline easement or other recorded easement that reduces or removes its development rights. If a portion of a parcel is encumbered with such an easement, the encumbered area shall be subtracted from the acreage of the sending parcel for density calculations. After the encumbered acreage is deducted, the sending parcel must still fulfill the size criteria specified in paragraph 1.b of this subsection. When calculating density sending rights, floodplain easements and driveway/access easements do not need to be deducted.
- d. A property consisting of one or more contiguous parcels or lots may be eligible to be a sending parcel if the parcels, when combined meet the size criteria specified in paragraph 1.b. All parcels that do not meet the size criteria specified in paragraph 1.b of this subsection must be combined at the time that the preservation easement agreement for the sending parcel is recorded.

F. Requirements for Use of the Density Exchange Option or Cluster Exchange Option

10. SUBDIVISION OF PRESERVATION PARCEL AFTER RECORDATION

A RECORDED PRESERVATION PARCEL BE MAY SUBDIVIDED IN ACCORDANCE WITH SECTIONS 104.0.G.1.C AND 105.0.G.1.C.