



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

Item # **7**
MCPB 7-30-09

MEMORANDUM

DATE: July 20, 2009
TO: Montgomery County Planning Board
VIA: Catherine Conlon, Supervisor, Development Review Division
Mark Pfefferle, Acting Chief, Environmental Planning **MP**
FROM: Richard A. Weaver, Planner Coordinator, Development Review Division **RAW**
Josh Penn, Senior Planner, Environmental Planning **JP**
REVIEW TYPE: Limited Amendment to the Preliminary Plan, including associated Final Forest Conservation Plan (FCP)
APPLYING FOR: Amendment to a Preliminary Plan and Final Forest Conservation Plan (FCP)
PLAN NAME: Camberwell Property (Lot 12, Block B)
PLAN NUMBER: 11995016A
PLAN TYPE: Preliminary Plan and Final Forest Conservation Plan
REVIEW BASIS: Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-01AM (COMCOR) 18-01AM
ZONE: RE-2
LOCATION: Located on Iron Gate Road south of the intersection of Democracy Boulevard and Iron Gate Road in Potomac.
APPLICANT: Curtis Polk
ATTORNEY: N/A
HEARING DATE: July 30, 2009

STAFF RECOMMENDATION: Staff recommends approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan with the following conditions.

1. Applicant must record a new record plat within nine (9) months of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan. The record plat must reference the standard Category I (liber 13178 folio 412) conservation easement as recorded in the Land Records for Montgomery County, Maryland. Applicant may obtain permits and finish construction of the proposed pool house prior to the recordation of the record plat.
2. Applicant must receive staff approval of the certificate of compliance for an offsite forest conservation mitigation bank prior to Planning Board approval of the record plat.
3. All on-site planting must be completed and approved by the M-NCPPC forest conservation inspector by December 15, 2009.
4. Financial security to cover the cost of the on-site plantings, site preparation, and control of non-native and invasive vegetation must be submitted and accepted for review prior to the pre-planting meeting.
5. A Maintenance and Management agreement for the on-site planting must be submitted and accepted for review prior to the pre-planting meeting.

6. All other conditions of Preliminary Plan and Forest Conservation Plan No. 119950160 that were not modified herein, as contained in the Planning Board's Resolution dated February 23, 1995, remain in full force and effect.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan #119950160 "Camberwell", on February 9, 1995. The original approval was for 8 lots on 17.54-acres of land in the RE-2 zone. The forest conservation law of Montgomery County (Chapter 22A of the County Code) applied to this plan; thus, a forest conservation plan (FCP) was required. This limited amendment to the Preliminary Plan and associated Final Forest Conservation Plan is not for the entire subdivision, but only applies to Lot 12, Block B of Camberwell (89,733 square feet or 2.06 acres), or 10222 Iron Gate Road in Potomac

The original approved FCP showed 10.34 acres of existing forest onsite, with 5.62 acres retained, and 4.72 acres cleared. The original FCP did not generate a planting requirement. The FCP was subsequently revised on January 29, 1998 and March 4, 1999. The final revised FCP showed 10.34 existing forest on-site, 5.38 acres being retained and 4.96 acres being cleared, generating a 0.25 acre reforestation requirement.

The subject property is currently in violation of the Category I conservation easement. The applicant has partially constructed a pool house in the Category I conservation easement and filled /graded within the Category II easement. The M-NCPPC Inspector issued a Stop Work Order on September 25, 2008 and subsequently issued Civil Citation #DRD0000398 on September 26, 2008 (see Attachment A).

The applicant requests the Planning Board revise the approval of the preliminary plan of subdivision and the forest conservation plan to remove a portion of the conservation easement on the lot with appropriate compensation, so that construction of the partially built pool house located within the existing Category I conservation easement can be completed. The proposed amendment is to remove 1,388 square feet (0.032 acres) of Category I conservation easement and to replace this easement by adding 1,563 square feet of wooded area to be supplementally planted and placed into Category I conservation easement on site and 3,989 square feet off site forest planting or equivalent off site mitigation.

SITE DESCRIPTION

The subject property is located on Iron Gate Road south of the intersection of Democracy Boulevard and Iron Gate Road in Potomac. The subject property is a developed single family residence with a swimming pool. The site contains 52,816 square feet (1.21 acres) of forested Category I conservation easement and 1,188 square feet (0.03 acres) of Category II conservation easement.

Nearly all the developable, unrestricted area on Lot 12 has been built out, and the construction of a pool house within the Category I conservation easement was initiated in the fall of 2008.

Exhibit 1: Partially Constructed Building in the Category I Conservation Easement

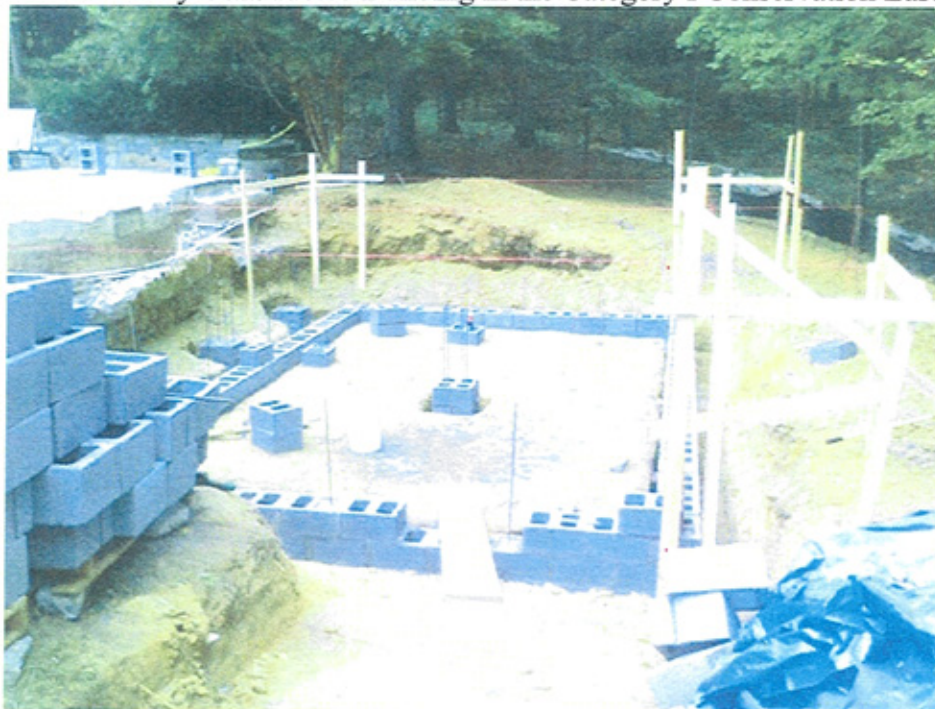


Exhibit 2: Vicinity Map



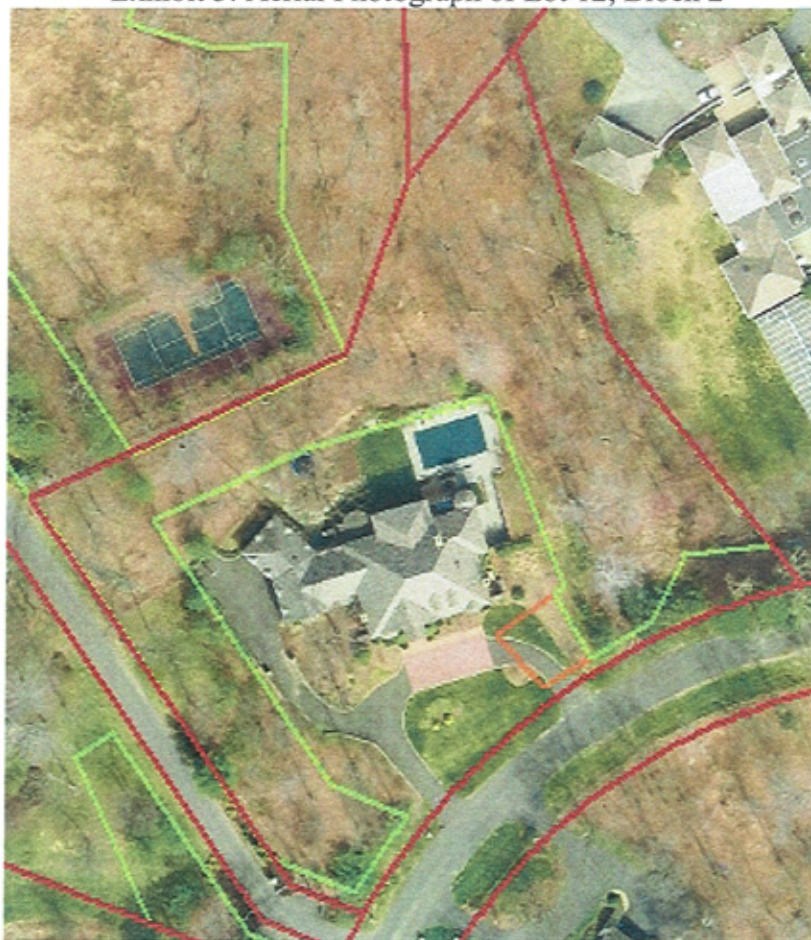
PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. Section 113.A.(1) of the Forest Conservation Regulation states:

Minor amendments which do not result in more than a total of 5000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis...

Although the total modification is below the 5000 square foot threshold, staff believes that the removal of, or significant change to, the recorded conservation easement warrants consideration in a public forum with a final decision from the Planning Board.

Exhibit 3: Aerial Photograph of Lot 12, Block 2



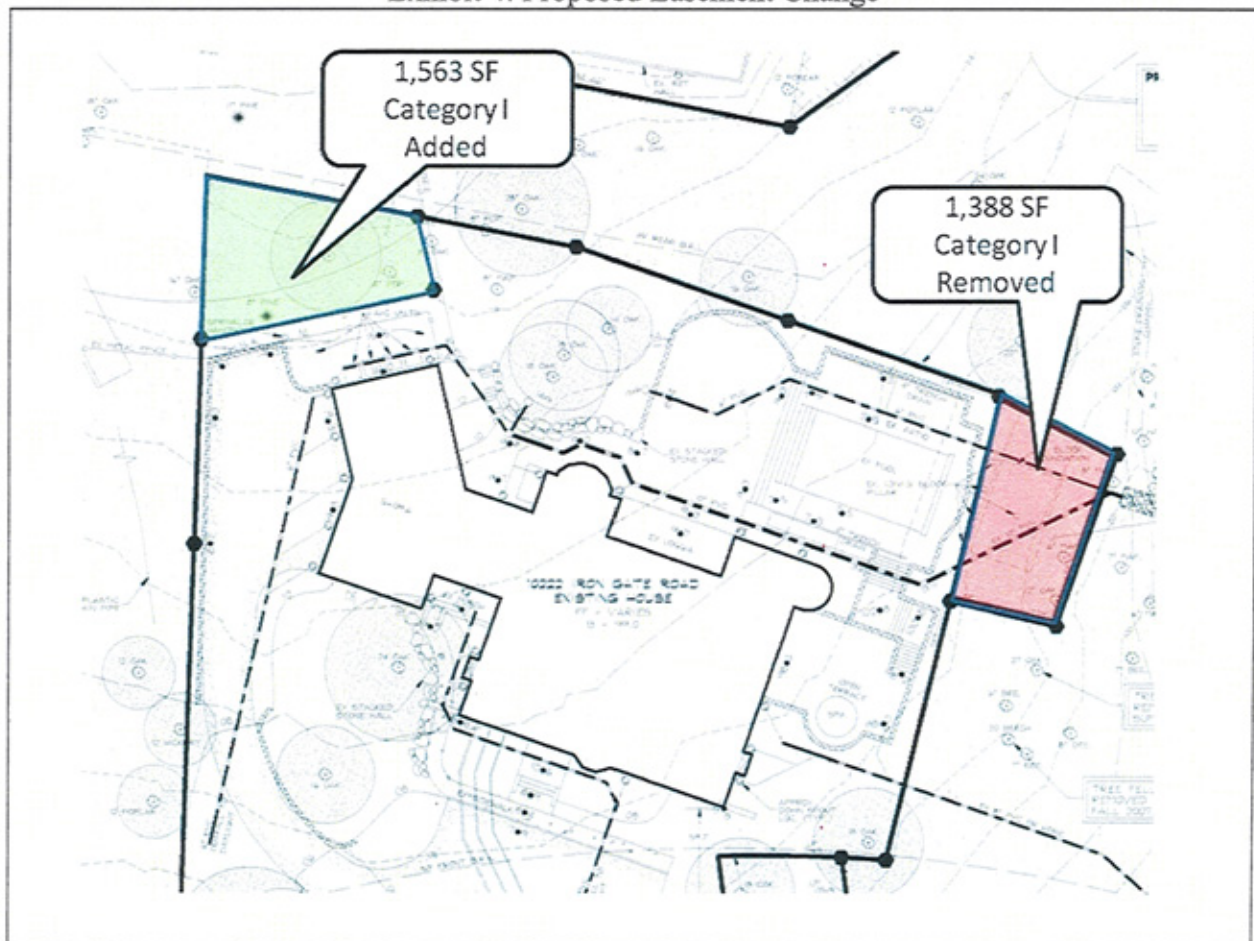
Red Line = Property Line Green Line = Cat I easement Orange = Cat II easement

PROPOSAL

Applicant's Position

On January 5, 2009 the applicant submitted an application proposing to amend the Preliminary Plan of subdivision and Forest Conservation Plan #119950160 by removing a portion of the Category I conservation easement from Lot 12, Block B, Camberwell. The proposed amendment includes the removal of 1,388 square feet (0.032 acres) of Category I conservation easement. The area proposed for removal from the conservation easement is based on the applicant's currently disturbed area. The amendment proposes 4:1 mitigation for area removed from the Category I easement. At a 4:1 mitigation ratio for the area removed, the mitigation proposed by this amendment is 5,552 square feet (0.13 acres). 1,563 square feet of new, on-site, Category I easement will be created and enhanced with supplemental planting. (See Exhibit 4) This in-kind mitigation provides compensation on the subject property which increases the overall easement area and slightly exceeds the area of existing encroachment on the lot. The remaining mitigation, 3,989 square feet, will be met off-site using credits at an existing forest conservation bank. The applicant further agreed to remove approximately 540 square feet of asphalt and concrete curb from the Category I easement in the northwest section of the property.

Exhibit 4: Proposed Easement Change



Notification and Outreach

The subject property was signed with notification of the upcoming preliminary plan amendment prior to the January 5, 2009 submission. All adjoining and confronting property owners and people of interest will be notified of the proposed amendment. As of the date of this report, staff has received no inquiries. Any comments received hereafter will be forwarded to the Board.

REVIEW

Staff Analysis/Position

Per the existing record plat, Lot 12, Block B of the Camberwell Subdivision contains 52,816 square feet (1.21-acres) of forested Category I conservation easement and 1,188 square feet (0.03 acres) of Category II conservation easement. The conservation easements are shown on record plat #21390. The record plat references the Category I Conservation Easement and the Category II conservation easement.

Unlike many 1990's forest conservation plan approvals, the Category I conservation easement meets all the more stringent current standards for forest dimensions, and is contiguous to adjacent Category I conservation easements on the northwest and northeast sides of the property. The conservation easement was placed over retained forest. However, this forest is not in an environmentally sensitive area such as a stream buffer.

Since the advent of the forest program in the early 1990's, staff's priority has been to retain existing forest but also, where appropriate, create forest that can be sustained in perpetuity. On this 2.06 acre lot, there is 29,719 square feet (0.68 acre) of buildable area outside the conservation easement. The footprint of the existing house is approximately 6,050 square feet. The existing house and pool area are surrounded by conservation easements. Staff believes this easement to be both sustainable and valuable due to its size, shape, and proximity to other adjoining protected forest. Furthermore, the area of forest where the structure is being built was determined to be high priority forest per the approved NRI/FSD, dated May 24, 1994. However, the approved final forest conservation plan indicates the area of the pool house was previously disturbed for the construction of two private storm drains. The forest conservation plan did not require this area to be replanted.

The Montgomery County Department of Permitting Services (DPS) issued permits to the property owner for the construction of the pool house on July 21, 2008. DPS issued permits for the construction of the pool house in contradiction to the conservation easement restriction on the record plat. The building permit application included a drawing of the property which showed the location of proposed and existing structures, the property line, and the Building Restriction Lines. The drawing did not show the conservation easements. All information was readily available in the land records regarding the development envelope of the lot, including details of the easement and its restrictions to the owner, their predecessors and successors.

An option does physically exist to locate the pool house along the west side of the pool outside the conservation easement. However, this location would have eliminated the only useable lawn space in the back yard. Although located within the conservation easement, the proposed pool

house location does not require tree removal due to the fact that two private storm drains traverse the same area.

In summation, a 4:1 planting requirement is a reasonable penalty and would provide additional protected canopy and forest, both onsite and in the county, above what was originally to be retained on the property. The provision of in-kind onsite compensation which is at the least equivalent to, and in this case, slightly exceeds (net gain of +175 square feet) the area of contiguous Category I conservation easement on the lot is justified. A 4:1 mitigation ratio was chosen over the minimum 2:1 mitigation due to the property being in violation, the structure/permanent impact to the easement, and the fact the applicant did not come forward of their own volition; the applicant and this plan are here as part of a civil citation. The Limited Amendment to the Preliminary Plan is a retroactive process to resolve the violation not a proactive attempt to bring the site into compliance.

RECOMMENDATION

Staff recommends that the Planning Board approve this limited preliminary plan of subdivision to revise the forest conservation plan with the conditions specified above.

Attachment A: Violation Documentation

Civil Citation
The Maryland-National Capital Park and Planning Commission

vs.

Name:

CurtisPolk

First

Middle

Last

Company/Position:

lot owner

Address:

10222 Iron Gate ROAD Potomac MD 20854

Phone Number:

Fax Number:

Email:

Location and Description of Violation:

Address/location of site:

10222 Iron Gate Road Potomac MD 20854
category 1 and category 2 conservation easements

Pursuant to the M-NCPPC's authority under Article 28 of the Annotated Code of Maryland and Chapter 50 of the Montgomery County Code, it is formally charged that the above named defendant on 09/25/08 (date) at the stated site location did commit the following:

Cleared, excavated and graded portions of a category 1 conservation easement and category 2 conservation easement. Began construction of a pool house with a conservation easement. Burned and injured live trees with conservation easement. Building permit # 489116

In violation of:

☒ Montgomery County Code, Chapter 22A
☒ Approval of Final Forest Conservation Plan No. 119950160

☐ Montgomery County Code, Chapter 59☐ Other:**Civil Fine and Compliance:**

1. (a) ☒ You shall pay a fine of \$ 500.00 by 10/17/08 (date) and complete the remedial action listed below, if any, to avoid trial.
 (b) ☒ You shall pay a daily fine of \$ 25.00 if the original fine has not been paid and/or the remedial action has not been completed by 04/17/09 (date). The daily fine shall accrue until the original fine is paid and all remedial action is completed.
2. ☐ You shall pay a daily fine of \$ _____ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the Information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, Maryland 20910, 301-495-4610. Failure to comply with this citation may result in formal court action or issuance of additional citations including additional fines. You may also elect to stand trial. If you elect to stand trial, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910, within 15 days of date of citation. The District Court will thereafter notify you of the trial date.

Remedial Action:

1. ☐ 1) Conditions of posted stop work order still apply
2) Plant 4 native trees in graded portion of category 1 conservation easement
Schedule inspection to verify by 11/15/08
3) Either remove all concrete and all evidence of construction of the pool house and plant 3 native trees in category 1 conservation easement OR Submit an amendment to the forest conservation plan - proposing removal/abandonment of portion of the easement by 04/17/09
2. ☒ You have violated Chapter 22A of the Montgomery County Code, and maybe subject to an Administrative Civil Penalty, which may include an additional monetary fine in addition to corrective measures. **You must contact Environmental Planning Department of M-NCPPC at 8787 Georgia Avenue, 1st Floor, Silver Spring, Maryland 20910, 301-495-4540, within 15 days of issuance of this citation.**

Acknowledgement:

I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to stand trial for the offense(s) charged. If I do not exercise my right to stand trial, I agree to entry by the court of judgment on affidavit for the amount of the fine.

Refused to sign

Defendant's Signature

Date

Affirmation:

I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters. The defendant is not now in the military service, as defined in the Soldier's and Sailor's Civil Relief Act of 1940 with amendments, nor has been in such service within thirty days hereof.

Inspector's Signature

Print name:

Stephen Peck

Phone number:

301 495 4564

Date

09/26/08

District Court to send notices to M-NCPPC, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

white=District Court; green=Office of General Counsel; yellow=Defendant

stephen.peck@mncppc-mc.org