

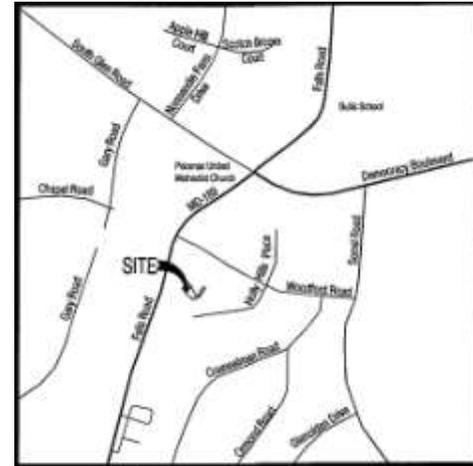


**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item # 5**  
**6/2/11**

**MEMORANDUM**

**DATE:** May 20, 2011  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief *JAC*  
Area 3 Planning Team  
**FROM:** Josh Penn, Senior Planner  
Area 3 Planning Team  
**REVIEW TYPE:** Limited Amendment to the Preliminary Plan,  
including associated Final Forest Conservation  
Plan (FCP) in response to a Forest Conservation  
Violation  
**APPLYING FOR:** Amendment to a Preliminary Plan and Final Forest  
Conservation Plan (FCP)  
**PLAN NAME:** Srour Falls  
**PLAN NUMBER:** 11994094A  
**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:** R-200  
**LOCATION:** Located on Woodford Road 400 feet east of the intersection with Falls  
Road (MD-189) in Potomac.  
**APPLICANT:** Daniel Ball and Riva Mirvis  
**ATTORNEY:** Steve Robbins  
**HEARING DATE:** June 2, 2011



**STAFF RECOMMENDATION:** Approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan, subject to 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.
2. All plantings as shown on the 3/31/11 plan must occur within one (1) year of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan.
3. All other conditions of Preliminary Plan and Forest Conservation Plan No. 120021190 that were not modified herein, as contained in the Planning Board's Resolution dated February 6, 2003, remain in full force and effect.

## BACKGROUND

The Montgomery County Planning Board originally approved Preliminary Plan #119940940 “Srou Falls”, on June 15, 1995. That approval was for four (4) lots on 1.94-acres of land in the R-200 zone. The property was subject to the forest conservation law (Chapter 22A of the County Code) and a forest conservation plan (FCP) was required.



**Figure 1: Srou Falls Subdivision**

The original approved FCP showed no existing forest on-site and generated a 0.28 acre afforestation requirement which was met on-site. In 1998, the previous property owner was given a civil citation of \$1,000 for clearing in the conservation easement and was required to mitigate for the area of forest removed. The mitigation was taken off-site to a forest conservation bank, but the easement was intentionally left in place to protect the floodplain and stream buffers in that area. The property was subsequently sold to Mr. Ball, the current applicant and at that time there was an open area within the conservation easement due to the previous violation.

The subject property now has a new violation of the Category I conservation easement. The applicant constructed a play structure and has been maintaining turf grass in the aforementioned open area of the Category I conservation easement preventing it from naturally regenerating. An M-NCPPC forest conservation inspector issued a Notice of Violation (#EPDNOV0001) on June 23, 2010 for the encroachments (see Attachment A). This limited preliminary plan amendment is the applicant’s response to the violation.

## SITE DESCRIPTION

The subject property is located on Woodford Road 400 feet east of the intersection with Falls Road (MD-189) in Potomac and is identified as Lot 9, Block A, Srou Falls. The site is a 20,422 square foot developed single family residential lot which contains 7,443 square feet of Category I conservation easement or 36% of the lot area. The lot gently slopes downhill from the northwest to the southeast. The south and southeast portion of the site contains an intermittent stream and an associated 100 year floodplain. The property is located within the Rock Run watershed, which is a Use I designation. The Countywide Stream Protection Strategy (CSPS) rates this watershed as poor.

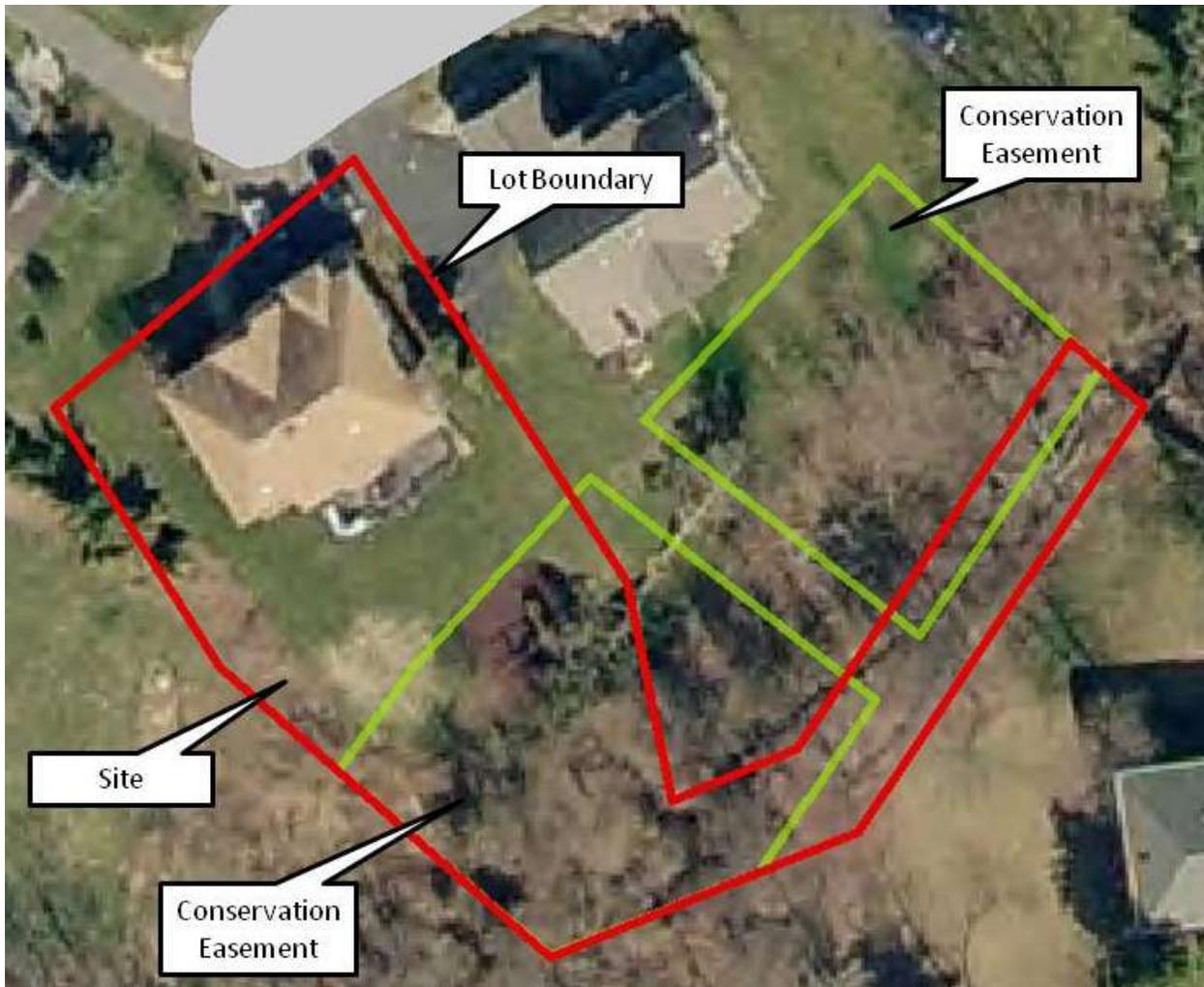


Figure 2: Srou Falls, Lot 9 Block A

## PROPOSAL

On February 3, 2010 the applicant submitted an application to amend the Preliminary Plan of Subdivision and Forest Conservation Plan #119940940 by removing and adjusting the location of the Category I easement on Lot 9. The amendment proposes to remove 1,781 square feet of Category I conservation easement where the owner currently maintains turf grass and a play area, and to add 1,213 square feet of Category I conservation to a previously unprotected 100 year floodplain area. This new area of easement is adjacent to the existing easements on the lot and will protect environmentally sensitive portions of the Property. To account for the other 568 square feet of easement area removed, the applicant proposes to provide supplemental planting of the forest within the stream valley buffer.

## PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. Section 22A.00.01.13.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, the Board has stated in other cases that the removal of, or change to, a recorded conservation easement warrants consideration in a public forum with a final decision from the Planning Board.



Figure 3: Proposed Amendment

## **REVIEW**

The limited amendment to the preliminary plan in this case is a retroactive process to resolve a violation and not a proactive attempt to bring the site into compliance. However, the applicant has been working with staff since issuance of the Notice of Violation in June of 2010 to come to a mutually supportable mitigation package that meets the statutory requirements of the Planning Board and the needs of the Homeowner.

The proposed mitigation for the easement encroachment and subsequent easement removal is to replace much of the easement on-site over the previously unprotected and unforested section of 100 year floodplain. The plans calls for 1,213 square feet to be planted as forest with supplemental on-site planting within other portions of the Category I conservation easement to offset the remaining 568 square feet of easement removed.

The mitigation proffered by the applicant and reviewed by staff was based only on conservation easement removal and not in association with requirement of the forest conservation law. The previous landowner had already removed the forest, in violation of the law, and subsequently mitigated for that violation by taking forest conservation requirements off-site. This applicant is only required to mitigate for easement removal and re-location.

The Planning Board policy for the removal of conservation easement, as determined in November of 2008, is a ratio of 2:1 if taken off-site. However, if the easement can be rearranged onsite, the Board has found this to be acceptable at a ratio of 1:1. On-site mitigation is generally preferable to off-site mitigation because it provides in-kind and in-place benefits for what is being removed. Staff believes that with the protection of 1,213 square feet of planted easement in a previously unprotected environmentally sensitive area and in conjunction with the supplemental planting within the existing easement, the application satisfactorily meets the Planning Board's mitigation policy of 1:1 on-site.

## **NOTIFICATION and OUTREACH**

The subject property was signed with notification of the upcoming preliminary plan amendment prior to the February 3, 2011 submission. All adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the upcoming public hearing on 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

## **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.