

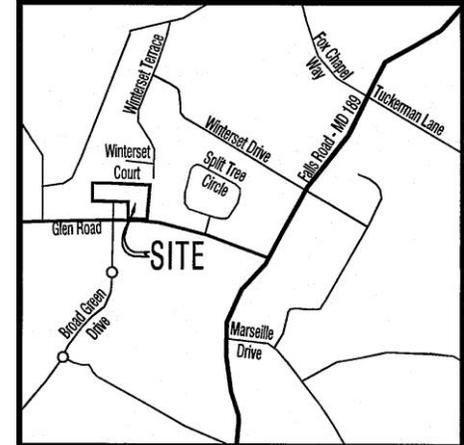


MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #
MCPB 6-9-11

MEMORANDUM

DATE: May 25, 2011
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Area 3 Planning Team
JAC
FROM: Josh Penn, Senior Planner, Area 3 Planning Team
JP
REVIEW TYPE: Limited Amendment to a Preliminary Plan, including associated Final Forest Conservation Plan (FCP)
APPLYING FOR: A revision to the forest conservation easements and planting requirements
PLAN NAME: Winterset
PLAN NUMBER: 11996019B
PLAN TYPE: Preliminary Plan and Final Forest Conservation Plan
REVIEW BASIS: Chapter 50, Subdivision Regulations and Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-01AM (COMCOR) 18-01AM
ZONE: R-200
LOCATION: Located on Winterset Terrace and Broad Green Court, west of the intersection of Falls Road / Md-189 and Glen Road in Potomac.
APPLICANTS: T. Chorvinsky; A. and S. Heller; N.T. and M. Umamaheswaran; F. Hoyos and C. Garcia; D. and B. Marcus
HEARING DATE: June 9, 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 II (liber 13178 folio 421) conservation easement as recorded in the Land Records for Montgomery County, Maryland.
2. All plantings as shown on the 3/31/11 revised forest conservation plan must occur within one (1) year of the mailing date 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. 119960190 that were not modified herein and as contained in the Planning Board's Resolution dated February 6, 2003, remain in full force and effect.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan #119960190 “Winterset”, on February 22, 1996. That approval was for the creation of 10 lots on 6.73-acres of land in the R-200 zone and platted as the Winterset Subdivision. The forest conservation law of Montgomery County (Chapter 22A of the County Code) applied to this plan, and a forest conservation plan (FCP) was required.

The approved FCP showed no existing forest on-site, as such, it resulted in an afforestation requirement of 1.02-acres. The applicant was to meet the afforestation requirements by planting on various areas of the 6.73 acre subdivision and placing these areas into category I conservation easements. The afforestation areas were planted but had low survivability rates after planting. The plantings however met the survivability rates at the end of the two year maintenance period. There is no indication in the record that the onsite afforestation areas were for any other purpose, such as a screening requirement or environmental buffer protection, than to meet the afforestation requirements.

On April 2, 2009 the Planning Board considered another amendment within the Winterset Subdivision, 11996019A. This application was submitted by the owner of Lot 46, Winterset, who had received a civil citation and was in the process of trying to obtain a building permit within the area covered by the easement. The Planning Board at that time agreed to release the Category I easement conditioned on it being mitigated for 2:1 off-site and a Category II easement was placed on certain area of the lot with supplemental planting required to provide for future canopy coverage.

As a result of the citation issued to the owner of Lot 46, the remainder of the same subdivision was checked by the forest conservation inspector for compliance. It was discovered that five additional lots and a HOA parcel within the Winterset subdivision were in various states of non-compliance; the most common violation being the continued maintenance of lawn/grass in areas designated Category I. On April 21, 2009 the five lot owners and the HOA president were mailed letters notifying them of the encroachment, thereby, officially informing them of the infractions.

The homeowners and their consultant met on numerous occasions with MNCPPC staff and discussed the options available to them and ultimately decided to amend the entire plan at once rather than coming in individually at different times. These discussions led to the September 27, 2010 submission of the limited amendment, 11996019B.

SITE DESCRIPTION

The subject property is located on Winterset Terrace and Broad Green Court, west of the intersection of Falls Road / Md-189 and Glen Road in Potomac. The total area of the lots subject to this application is 2.71 acres and contains 0.74 acres of Category I conservation easement or 27% of the lot area. The lots gently slope downhill from the south to the north. There are no intermittent streams, wetlands, 100 year floodplain, environmental buffers associate with these lots. The property is located within the Watts Branch watershed, which is a Use I designation. The Countywide Stream Protection Strategy (CSPS) rates this watershed as fair.



Figure 1: Winterset Neighborhood Aerial

PROPOSAL

On September 27, 2010 the applicants submitted an application to amend the Preliminary Plan of Subdivision and Forest Conservation Plan #119960190 by removing and adjusting the location of the Category I easement on Lots 23, 24, 25, 49, and 50. The applicants' mitigation plan provides 2:1 mitigation for the 0.74 acres of Category I conservation easement removed. The mitigation is in two parts:

- 1) Take 0.74 acres to an off-site mitigation bank and,
- 2) Convert the 0.74 acres of on-site Category I conservation easement to Category II conservation easement.

Additionally, some small areas of conflict are proposed to be relocated to alternate areas within each lot adjacent to the existing easements, the total amount of easement in question will remain at 0.74 acres.

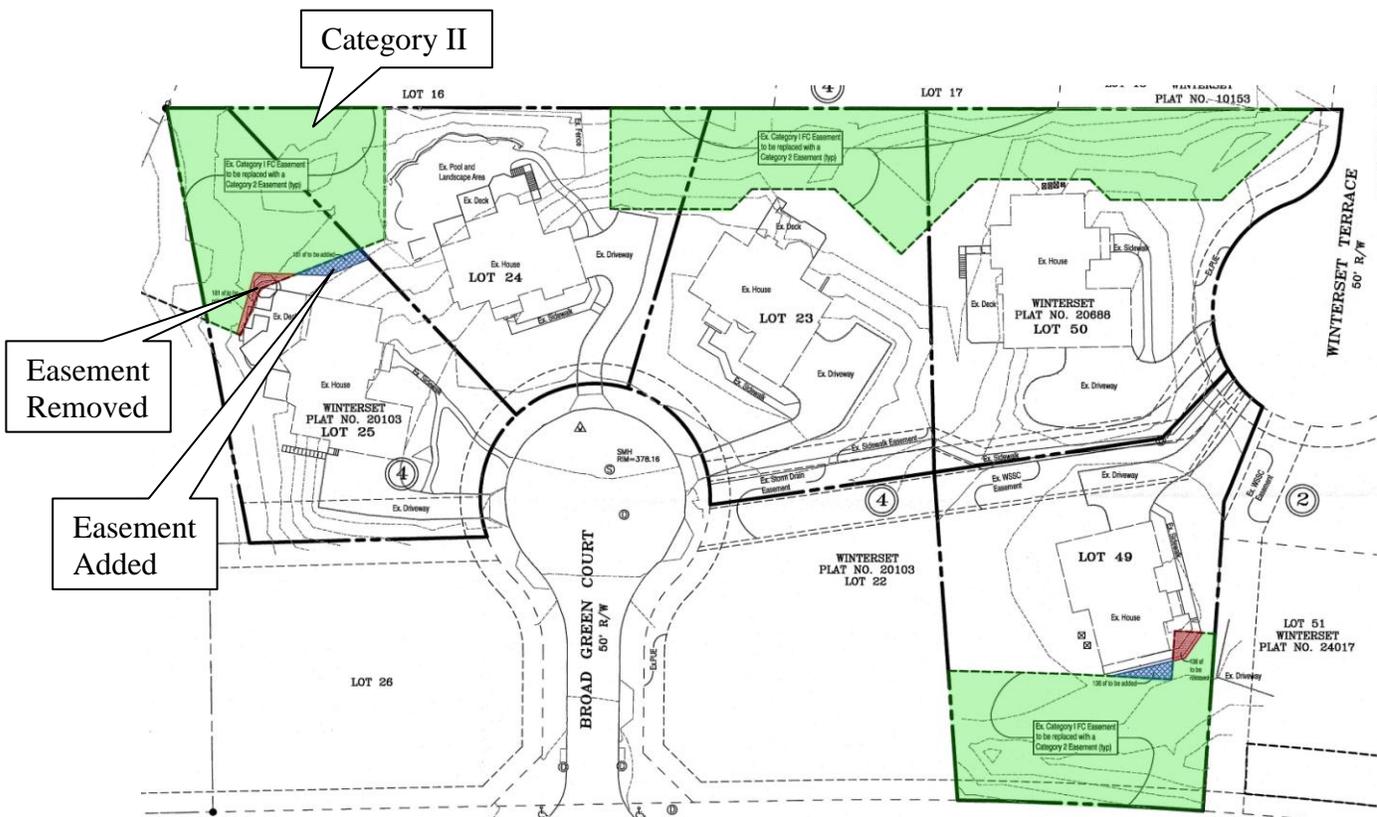


Figure 2: Rendered Plan View of Proposal

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.

REVIEW

This limited amendment to the preliminary plan is a proactive response to Staff's letter notifying the homeowners of the encroachment issues and will bring the site into compliance. The applicants have been working with staff since issuance of the April 21, 2009, letters and have developed a supportable mitigation package that meets the statutory requirements of the forest conservation law and Planning Board.

The proposed mitigation for the easement encroachment and subsequent easement removal is to replace all 0.74 acres of Category I conservation easements with Category II conservation easements. The Forest Conservation Law provides the ability to count large landscaped areas as afforestation credit at the full 1:1 credit ratio if certain qualifiers are met. In the R-200 zone (high density) the easement areas meet the area and dimensional requirements and can be used to

meet this demand. A Category II conservation easement would allow the homeowners the ability to maintain turf grass while protecting tree canopy coverage on-site. Staff believes a Category II easement is appropriate here and is acceptable as 1:1 mitigation. In addition to the 0.74 acres of Category II conservation easement, the applicants have proposed to purchase 0.74 acres of credit in an off-site forest conservation mitigation bank. The combination of the 0.74 acres of category II conservation easement and the 0.74 acres of off-site mitigation equals a total mitigation 1.48 acres or a 2:1 ratio of the Category I conservation easement being removed. Staff believes that the mitigation proposed is consistent with Board policy and direction on similar circumstances.

NOTIFICATION and OUTREACH

The subject property was signed with notification of the upcoming preliminary plan amendment prior to the September 27, 2010 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 accept the proffered mitigation package and to approve this limited preliminary plan of subdivision to revise the forest conservation plan with the conditions specified above.