Attachment A

ATTACHMENT A

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

MCPB
Item No
Date: 4-12-12

Preliminary Plan Amendment in Response to a Violation No. 11998096B, Kaufman Property - Lot 11, Block A

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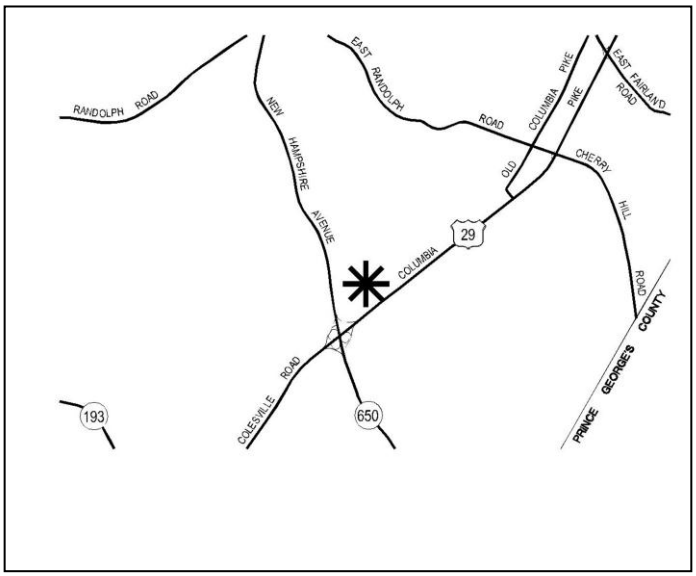
Completed: 03/29/12

Description

Limited Amendment to Preliminary Plan 11998096B for **the** purpose of amending the Final Forest Conservation Plan to replace the existing 0.086-acre Category I Conservation Easement with a Category II Conservation Easement

- Request is in response to a Notice of Violation
- 1020 Heartfields Drive, Silver Spring, MD 20904
- Lot 11, Block A of the Kaufman Property Subdivision
- 0.25 acres, R-90
- 1997 White Oak Master Plan
- Applicant – Christopher M. and Robin Pirtle
- Filing date: 9/30/2011



Summary

- Staff recommends **denial**.
- Staff does not support this Preliminary Plan Amendment because:
  - The Planning Board deliberately placed a Category I Conservation Easement on Lot 11 (Subject Property) and other lots in the 49-lot Kaufman Property subdivision (the Subdivision).
  - The conservation easement on the Subject Property is part of a larger, contiguous protected area; changing the designation to a Category II Conservation Easement would create a discontinuity.
  - The original purpose of Category I Conservation Easement–compatibility and forest preservation--will not be achieved by a Category II Conservation Easement.

Overview

The owners (the Applicant) of the Subject Property have requested a Limited Amendment to the Preliminary Plan in order to amend the approved Forest Conservation Plan (FCP) by replacing the existing Category I Conservation Easement with a Category II Conservation Easement. The Category I Conservation Easement on the Subject Property is part of a larger Category I Conservation Easement area that covers adjoining lots in this Subdivision. (See Figure 1)

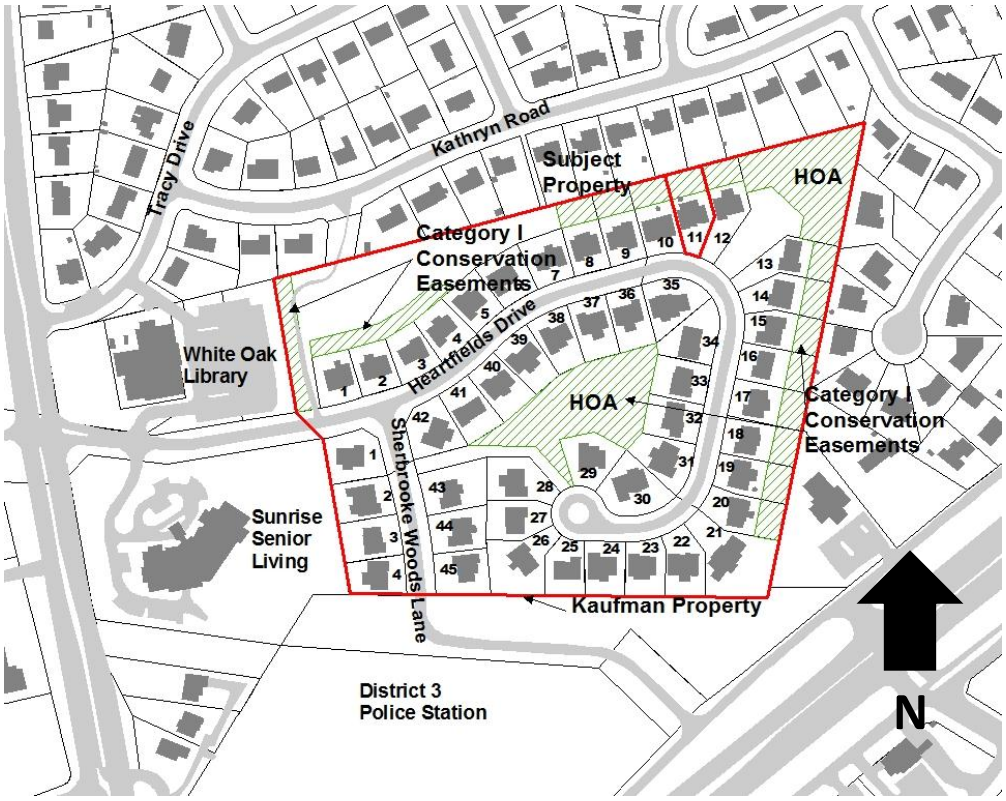


Figure 1 -- Existing Category I Conservation Easements on the Subject Property and the Subdivision

This application was submitted in response to a violation of the Category I Conservation Easement; the violation consisted of clearing of understory and the construction of a swing set. The Administrative Law Judge heard the case on December 8, 2010, and recommended an administrative civil penalty and corrective action. On March 10, 2011, the Planning Board reviewed the Administrative Law Judge's recommendations and decided that:

1. *Respondent must pay an administrative civil penalty of $2,697.50 to the Commission within 60 days of the mailing date of this Resolution; and*
2. *Respondent must do one of the following:*
    a. *Respondent must file a preliminary plan amendment to modify the Category I Conservation Easement located on Respondent's property modified to a Category II Conservation Easement (herein "Conservation Easement Modification") subject to the following conditions:*
        i. *Respondent must submit a complete application for the Conservation Easement Modification no later than 60 days after the mailing date of this resolution; and*
        ii. *Respondent's application for the Conservation Easement Modification must be approved no later than 6 months after the mailing date of this Resolution.*

If Respondent timely complies with this condition he is not required to perform the corrective actions required by the Recommended Order.

b. *If Respondent does not timely comply with each of the requirements of condition (a) above, he must perform the corrective actions required by the Recommended Order no later than 60 days after failing to comply.*

The Applicant paid the administrative civil penalty on September 30, 2011 and has chosen to follow condition 2(a). After analyzing the regulatory history, the intent of the Planning Board's decision to place a Category I Conservation Easement, and site-specific factors involved in this case, staff recommends denial of this amendment and recommends that the Applicant follow the Administrative Law Judge's corrective action, as outlined in 2(b).

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 Planning Board has established a policy that the removal of, or change to, any recorded conservation easement warrants consideration in a public forum with a final decision by the Planning Board.

Figure 2 -- Vicinity map

Background

The Planning Board approved Preliminary Plan No. 119980960 for the Subdivision and the associated Preliminary Forest Conservation Plan, on December 17, 1998. This approval created 49 lots on 18.5 acres using the cluster method of the R-90 Zone. The Subdivision is located in the northeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Columbia Pike (US 29). (See Figure 2)

At the time of Preliminary Plan approval, the Subdivision site was forested and contained the intermittent remnant of a headwater stream. The topography of the Subdivision is characterized by an abrupt hill along the northern property line, which makes the backyards of the Subdivision lots along Heartfields Drive between 10 and 18 feet higher than the adjacent properties. Category I Conservation Easements were placed along the northern and eastern

borders of the Subdivision and on the HOA property to ensure community compatibility and protect the surrounding communities from adverse effects of development, exacerbated by the elevation differential. (See Figure 1)

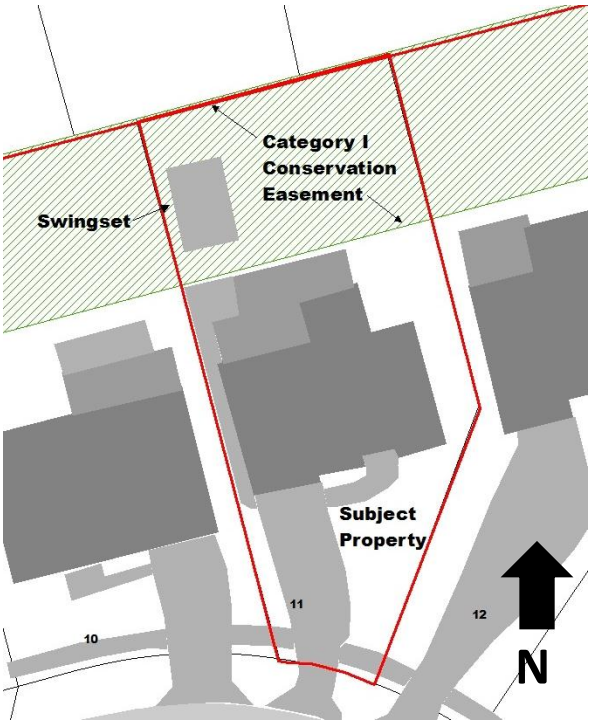


Figure 3-- Subject Property with conservation easement area in the rear

Site Description

The 0.25-acre Subject Property is located at 1020 Heartfields Drive, and backs up to single-family residences on comparably-sized lots. It sits between 14 and 16 feet higher than the adjacent properties in the rear (fronting on Kathryn Road, see Figure 2), and generally slopes to the north with stormwater draining to the northeast corner of the property. The Category I Conservation Easement was placed in the rear of the Subject Property, along with other properties in the Subdivision, to protect existing forest and to provide compatibility with the existing adjacent properties. (See Figure 3)

Regulatory History

- May 11, 1998 – Preliminary Plan No. 119980960 filed by Elm Street Development.
- December 10, 1998 and December 17, 1998 - Planning Board Hearing on the Preliminary Plan, staff recommended Preliminary FCP with modified Category II Conservation Easements. After substantial testimony from the public, the Planning Board required Category I Conservation Easements to ensure compatibility and preserve environmental quality. Preliminary Plan and Preliminary FCP approved with conditions. (Attachment 1 – Preliminary FCP, Attachment 2 – Opinion)
- June 22, 1999 – Preliminary FCP revised at the staff level to reflect Planning Board's conditions, with Category I Conservation Easements placed on the plan. (Attachment 3 – Revised Preliminary FCP)
- September 28, 1999 –Planning Board Hearing in response to reconsideration request. The specific issue involved a traffic signal but the hearing was broadened to reconsider all issues. The Planning Board reconfirmed the use of Category I Conservation Easements. (Attachment 4 – Opinion, Attachment 5 – Minutes)
- April 21, 2000 – Staff approved Final FCP. (Attachment 6 – Final FCP)
- March 21, 2001 – Record plats recorded with Category I Forest Conservation Easements clearly shown. (Attachment 7 – Record plat for Lot 11, Block A)
- October 12, 2001 – Applicant bought the Subject Property.
- March 7, 2002 – Elm Street Development sent letter to the HOA and all homeowners, informing owners of easements. (Attachment 8 – Letter to Applicant from Elm Street)
- September 3, 2002 – Montgomery County Department of Permitting Services issued a permit to the Applicant to build a deck on rear of home, outside of the Category I Conservation Easement, constraining the usable yard area. (Attachment 9 – Approved deck plans)

- June 16, 2003 – The Subdivision Home Owners Association (Sherbrooke HOA) wrote letter to Planning Department inquiring about changing Category I Conservation Easements to Category II Conservation Easements. (Attachment 10 – Letter from Sherbrooke HOA)
- July 17, 2003 - Staff responded with explanation of process, but stated staff opposition due to the history of the easements. (Attachment 11 – Letter from staff to Sherbrooke HOA)
- August 7, 2008 – The Planning Department received a complaint from a neighboring property owner about clearing of understory and grading that occurred within the Category I Conservation Easement on the Subject Property.
- August 7, 2008 – Planning Department inspection staff visited the Subject Property to verify the complaint. Additionally, staff observed a 15'x20' patch of ground marked by 6x6 timber box frame installed in the easement area. Staff issued a $500 administrative citation to the Applicant for removing the understory, grading, and planting and maintaining grass in the easement area, with remedial action to be completed by September 26, 2008 to satisfy the violation.

Figure 4 --Swing-set installed within the Category I Conservation Easement Area

- August 7, 2008 – Inspection staff advised the Applicant not to install a swing-set. (Attachment 12 – Administrative citation)
- February 17, 2010 – On a follow-up site visit to check remedial action, inspection staff noted that a swing-set was installed inside the timber box frame.
- February 19, 2010 – Inspection staff issued a Notice of Violation (NOV) to the Applicant with a compliance date of March, 31, 2010 to remove the encroachments. (Attachment 13 – Notice of Violation)
- April 6, 2010 – Staff met with the Applicant to discuss the violation and remedial action.
- May 26, 2010 – Staff issued another administrative citation to the Applicant for failing to comply with NOV remedial action requirements, with a compliance date of June 25, 2010. (Attachment 14 – Administrative citation)
- October 5, 2010 – The Planning Department issued a formal Notice of Hearing to the Applicant to be held on November 3, 2010. The Applicant requested a postponement due to a scheduling conflict.
- November 16, 2010 – The Planning Department issued a formal Notice of Hearing to the Applicant to be held on December 8, 2010.
- December 8, 2010 – Hearing held by Maryland Office of Administrative Hearings.
- The Administrative Law Judge found that a violation did occur and ordered an administrative civil penalty of $2,697.50 and directed the Applicant to take corrective actions, which included: removing the swing set and associated timbers; replacing grass with wildflower mix or mulch;

and planting of ten native shrubs. (Attachment 15 – Administrative Law Judge Recommended Order)

- March 10, 2011 – Planning Board Hearing to review the Recommended Order. The Planning Board reviewed the Administrative Law Judge's recommendations and heard presentations from the M-NCPPC Legal Counsel and the Applicant and their legal representative, as well as testimony from a neighboring property owner. The Applicant argued that changing the Category I Conservation Easement to a Category II Conservation Easement would be an appropriate remedy. Testimony from a neighboring property owner alleged an increase in stormwater runoff on their property because of the removal of forest understory, and supported the Hearing Examiner's recommendations. While the Planning Board and Planning staff recognized the Applicant's right to submit an Amendment to the Preliminary Plan, there was extensive conversation signifying that such an application would be considered on its own merit, and that submission of such an application did not guarantee, or favor, approval or support. (Attachment 16 – Opinion, Attachment 17 – Transcript of discussion).
- On September 30, 2011, the Applicant submitted an application to amend the Preliminary Plan of Subdivision and Forest Conservation Plan No. 11998096 by removing 0.086 acres of Category I Conservation Easement and replacing it with a Category II Conservation Easement over the same area. The Applicant proposed to mitigate the removal of Category I Conservation Easement by buying credits in an off-site forest conservation bank. (Attachment 18 – Submitted Amended FFCP)

Analysis

After reviewing the history, regulatory implications, and environmental issues, staff does not support the applicant's request to change the Category I Conservation Easement to a Category II Conservation Easement for the following reasons.

1. *The Planning Board deliberately placed a Category I Conservation Easement on the Subject Property and other lots in the Subdivision. There has been no change in the issues and consideration that formed the basis for the Board's decision to place Category I Conservation Easements on the subject property and the Subdivision to justify the requested modification.*

   The Planning Board placed the Category I Conservation Easements on properties in the Subdivision after considerable testimony and discussion. Staff had initially recommended a modified Category II Easement on the north side of the Subdivision (which includes the Subject Property) due to site-specific conditions including the zoning; Master Plan recommendations; the proposed use; and the location, configuration, age and character of on-site forest and tree stands. However, after significant public testimony, the Planning Board decided that a Category I Conservation Easement was more appropriate for compatibility purposes, and to balance the needs of existing development against the requirements of new development. The elevation difference between the new development and existing communities was a major factor. The Category I Conservation Easements on the 12 residential lots are uniformly 50 feet deep for compatibility reasons, in excess of the minimum depth of 35 feet required for forest conservation purposes at the time. (Chapter 22A was amended in 2001 to increase the minimum easement depth to 50 feet.) The designation of the forested and planted areas as protected in a Category I Conservation Easement was reconfirmed in a subsequent reconsideration hearing. None of these conditions and considerations have changed since the

Board originally placed Category I Easement on the Subdivision; consequently, there is no justification to change the Category I Conservation Easement.

2. *The conservation easement on the Subject Property is part of a larger, contiguous protected area. Changing the designation to a Category II Conservation Easement on the Subject Property would undermine the goal of creating and preserving a naturally regenerating forest through a continuous Category I Conservation Easement around this edge of the Subdivision.*

   The Category I Conservation Easement on the Subject Property is part of a contiguous easement that crosses 12 residential lots and one HOA parcel. The Category I Conservation Easements on the 12 residential lots are uniformly 50 feet deep. Changing the easement on the Subject Property would create an inequitable solution without regard to the Category I Conservation Easement's function. Essentially, the Applicant would be rewarded for violating the terms of the easement.

   The change in this one easement would also make it easier for the other property owners and the HOA to request easement changes on their properties. While some property owners may prefer the Category II Conservation Easements, others might prefer to retain a Category I Conservation Easement. The net effect would be a community with no uniformity in easement application, and the areas retained in Category I Conservation Easement would no longer meet the definition of forest due to size requirements (minimum 10,000 square feet).

3. *The Category I Conservation Easement provides environmental compatibility that a Category II Conservation Easement does not.*

   A Category I Conservation Easement protects forest and is intended to maintain a naturally regenerating forest while a Category II Conservation Easement protects only the tree cover on a property and does not ensure canopy regeneration since any tree less than 6 inches in diameter can be removed. Forest provides more environmental benefits than tree cover, such as improved air quality, stormwater runoff reduction, improved soil quality, erosion reduction, wildlife habitat, carbon sequestration, and groundwater recharge.

   The Planning Board specified the Category I Conservation Easements due to the steep hill to the north and east of the Subdivision. These slopes exceed 36% in the area directly adjacent to the Subject Property. While the slope is primarily on the adjoining properties, the conversion from forest to tree cover on the Subject Property has a substantial effect on the slope due to an increase in stormwater runoff. The Subject Property slopes to the north and east, directing the runoff down the slope. While tree cover (over grass lawn areas) does decrease the amount of runoff, forest does a much better job of decreasing the runoff because the understory and forest floor both intercept and retain water. The addition of impervious area combined with the clearing of understory and brush on the subject property has apparently increased runoff causing erosion and damage on the adjoining properties. (Attachment 19 – Correspondence)

Mitigation

The Applicant has proposed to mitigate for the permanent removal of the Category I Conservation Easement by purchasing credits in an off-site forest mitigation bank at a ratio of 2:1, and convert the Category I Conservation Easement to a Category II Conservation Easement. The 2:1 mitigation proffered meets the Planning Board's mitigation policy, as articulated on October 30, 2008 and supported by numerous Planning Board cases. If the Planning Board were to approve this Amendment to the Preliminary Plan, the proposed mitigation would be acceptable.

Notification and Outreach

The Subject Property was properly signed with notification of the proposed Preliminary Plan amendment prior to the September 30, 2011 submission. All adjoining and confronting property owners, civic associations, and other registered interested parties have been notified of the public hearing on the proposed amendment. All correspondence received is attached and addressed. (Attachment 19 – Correspondence)

Conclusion

Based on a review of the history of this development, the specific purpose and siting of the Category I Conservation Easement on the Subject Property, and the analyses contained in this report, staff recommends:

1. Denial of this application; and
2. Implementation of the recommendations of the Administrative Law Judge (Attachment 15 – Administrative Law Judge Recommended Order).

AL:ha: n:\area 2 division\lindsey\Kaufman property 11998096B Denial final

List of Attachments

Attachment 1 –Preliminary FCP (12/10/98 & 12/17/98 Planning Board Hearing)

Attachment 2 – Planning Board Opinion (12/10/98 & 12/17/98)

Attachment 3 – Revised Preliminary FCP (6/22/99)

Attachment 4 – Planning Board Opinion (9/28/99 Reconsideration Hearing)

Attachment 5 – Planning Board Minutes (9/28/99 Reconsideration Hearing)

Attachment 6 – Final FCP (4/21/00)

Attachment 7 – Record plat for Lot 11, Block A

Attachment 8 – Elm Street letter to Applicant

Attachment 9 – Approved deck plans

Attachment 10 – Sherbrooke HOA letter

Attachment 11 – Staff response letter to Sherbrooke HOA

Attachment 12 – Administrative citation (8/07/08)

Attachment 13 – Notice of Violation

Attachment 14 – Administrative citation (5/26/10)

Attachment 15 – Administrative Law Judge Recommended Order

Attachment 16 – Planning Board Opinion (3/10/11)

Attachment 17 –Transcript of discussion

Attachment 18 – Amended FFCP submitted for Lot 11, Block A

Attachment 19 – Correspondence

Attachment 1

TREE PROTECTION OR REFORESTATION SIGN

REFORESTATION AREAS

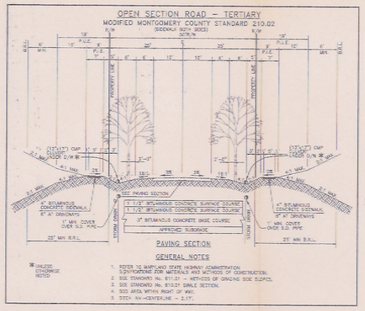
FOREST TO BE RETAINED

LANDSCAPE STOCK 1"–2" CAL.

TREE PROTECTION FENCE & SEDIMENT CONTROL

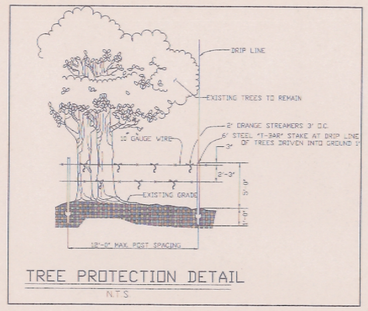
CRITICAL ROOT ZONES OF TREES 24" OR GREATER

OPEN SECTION ROAD – TERTIARY
MODIFIED MONTGOMERY COUNTY STANDARD 210.02
(SIDEWALK BOTH SIDES)

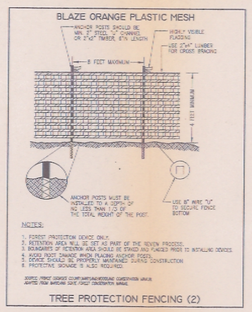


PAVING SECTION
GENERAL NOTES
1. REFER TO MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.
2. SEE STANDARD No. 611.01 – METHODS OF GRADING SIDE SLOPES.
3. SEE STANDARD No. 615.01 SWALE SECTION.
4. SOD AREA WITHIN RIGHT OF WAY.
5. DITCH R/W=CENTERLINE + 2.0'.

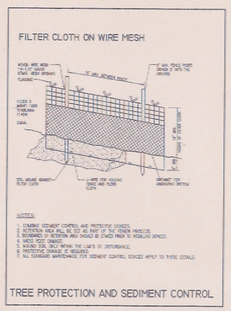
TREE PROTECTION DETAIL
N.T.S.



TREE PROTECTION FENCING (2)



TREE PROTECTION AND SEDIMENT CONTROL



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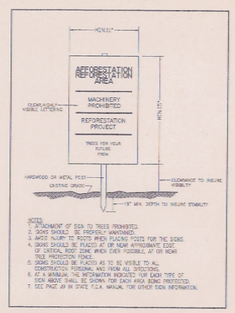
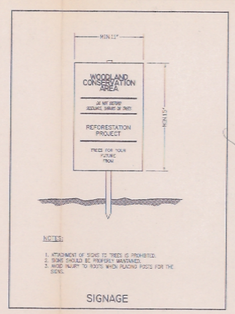
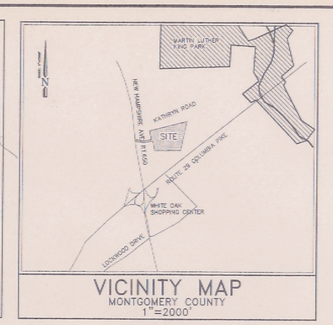


SIGNAGE





VICINITY MAP
MONTGOMERY COUNTY
1"=2000'

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAN IS PREPARED IN ACCORDANCE WITH MONTGOMERY COUNTY FOREST CONSERVATION REGULATIONS.

12-8-98
DATE

SAUL S. STEWART
REGISTERED LANDSCAPE ARCHITECT
MD. #912

Charles P. Johnson & Associates, Inc.
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS
1751 ELTON ROAD SILVER SPRING, MARYLAND 20903
(301)434-7000 Fax(301)434-8594 FREDERICK, MD FAIRFAX, VA

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PRELIMINARY FOREST CONSERVATION PLAN
CONDITIONAL APPROVAL
Plan No. 1980096
SIGNATURE
12/7/98
DATE

Planning Board approved revised layout. This FCP needs to be revised

Suspended by 6/22/99 approved plan.

20 YEAR CANOPY COVERAGE

A. Quercus rubra – Red oak — 35' DIAMETER (962 S.F.)
101 Trees along street A (Total area= 97,162 S.F.) = 2.23ac.

B. Acer saccharum 'Bonfire'– Sugar Maple — 30' DIAMETER (707 S.F.)
19 Trees along street B (Total area=13,433 S.F.)

BOTH SPECIES APPROVED BY MCDOT AS BEING USED AS MAJOR STREET TREES.
SPECIES DESIGNATED ARE FAIRLY TOLERANT TO DEICING SALTS AND POLLUTANTS.

A.	TOTAL AREA OF TRACT:	18.5 Acres
B.	AREA WITHIN 100 YEAR FLOODPLAIN: (>400 Ac. D.A. OR USE III/II–P WATERS)	0 Acres
C.	AREA OF LAND TO BE USED FOR AGRICULTURE:	0 Acres
D.	AREA WITHIN ROW/EASEMENT FOR WHICH MSSC OR MCDOT/SHA WILL BE RESPONSIBLE:	Acres
E.	NET TRACT AREA: A–B–C–D=	18.4 Acres
F.	LAND USE CATEGORY (FROM TABLE 2):	HIGH DENSITY RESIDENTIAL
G.	AFFORESTATION THRESHOLD: (.15)= FROM TABLE 3 x E)=	2.8 Acres
H.	CONSERVATION THRESHOLD: (.20)= FROM TABLE 3 x E)=	3.7 Acres
I.	EXISTING FOREST COVER:	18.0 Acres
J.	FOREST COVER ABOVE AFFORESTATION THRESHOLD: (I–G)=	15.2 Acres
K.	FOREST COVER ABOVE CONSERVATION THRESHOLD: (I–H)=	14.3 Acres

CALCULATION OF BREAK–EVEN POINT

L.	IF K <= O AND I >= G, BREAK EVEN POINT EQUALS I: (IF I <= G, THERE IS NO BREAK–EVEN POINT AND AFFORESTATION PLANTING IS REQUIRED. REFER TO P. BELOW)	0 Acres
	IF K > O, BREAK–EVEN POINT EQUALS: (K x 2.0)= +H =	6.6 Acres
M.	FOREST COVER TO BE RETAINED: =	7.8 Acres
N.	TOTAL AREA OF FOREST TO BE CLEARED: (IF N IS GREATER THAN I – L, REFORESTATION PLANTING IS REQUIRED. SEE O – W, BELOW)	16.5 Acres

CALCULATION OF REFORESTATION REQUIREMENT

O.	AREA OF FOREST ABOVE CONSERVATION THRESHOLD TO BE CLEARED: (IF K >= N, USE N; IF K <= N, USE K)=	14.3 Acres
R.	AREA OF FOREST BELOW CONSERVATION THRESHOLD TO BE CLEARED: N–O=	2.2 Acres
S.	FORESTED AREA ABOVE CONSERVATION THRESHOLD TO BE SAVED: M – H=	0 Acres
T.	PLANTING REQUIRED FOR CLEARING ABOVE THRESHOLD: O x 1/4=	3.6 Acres
U.	PLANTING REQUIRED FOR CLEARING BELOW THRESHOLD: R x 2=	4.4 Acres
V.	CREDIT FOR FOREST SAVED ABOVE CONSERVATION THRESHOLD: S=	0 Acres
W.	TOTAL REFORESTATION REQUIREMENT: T + U – V=	8.0 Acres

TOTAL PLANTING REQUIREMENT

X.	REFORESTATION: W=	8.0 Acres
Y.	CREDIT FOR TREES AND LANDSCAPING[3] = 20% x W	1.6 Acres
Z.	TOTAL FOREST PLANTING REQUIREMENT: X + Y=	9.6 Acres

ON SITE REFORESTATION:	.88 Acres
OFF SITE REFORESTATION:	5.92 Acres

* MODIFIED CATEGORY II CONSERVATION EASEMENT (TO ENSURE PRESERVATION OF ALL TREES, NOT JUST THOSE OVER 6" DBH)

1.50 .88 2.38 .20 2.58 3.54

PRELIMINARY FOREST CONSERVATION PLAN
PARCEL 626

KAUFMAN PROPERTY

COLESVILLE (5th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

CLIENT : ELM STREET DEVELOPMENT
6820 ELM STREET SUITE 201
MCLEAN, VA 22101

COPYRIGHT © LATEST DATE HEREON
CHARLES P. JOHNSON & ASSOCIATES, INC.
ALL RIGHTS RESERVED UNPUBLISHED USE
OR REPRODUCTION IS PROHIBITED

DESIGN LWP
DRAFT GCL
APPROVED
DATE MAY '98
SCALE 1"=50'

SHEET 1 OF 1

FILE NO : 28-055-28 D

Plotted: Dec. 8, 1998

Acad Dwg: 28-00/05-01/53-00/PDS

1200
2400

NOTE: PB APPROVED SUBDIVISION WITH 49 lots

+ 50' tree save buffer along eastern + part of northern PL.

CONDITIONALLY APPROVED PREL. PLP DOES NOT REFLECT THIS. APPLICANT NEEDS TO RESUBMIT PREL. PLP.

C. BUNNAGE

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan No.: 1-98096
Project: Kaufman Property
Date of Hearing: December 10,1998 (continued on December 17, 1998 for Planning Board deliberation and action)

Action: ***APPROVAL SUBJECT TO CONDITIONS.*** (Motion to approve was made by Commissioner Perdue; duly seconded by Commissioner Holmes; with a vote of 3-1, Commissioners Perdue, Holmes and Hussmann voting in favor. Commissioner Richardson voted to deny. Commissioner Bryant was necessarily absent.)

INTRODUCTION

On May 11, 1998, Elm Street Development ("Applicant") filed a preliminary plan application seeking the subdivision of a residentially-zoned 18.5-acre parcel into 49 lots under the optional cluster method of development. The application was designated Preliminary Plan No. 1-98096.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on December 10, 1998, which was duly recessed to and concluded on December 10, 1998, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Code"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Montgomery County Department of Permitting Services ("MCDPS"), the Applicant, neighboring property owners and community and civic organizations, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information including a Staff report and analysis of the proposal, plan drawings and other information supplied by the Applicant, vicinity maps, summaries of traffic accidents on New Hampshire Avenue in the site area, and correspondence between Staff and Montgomery County Council member Marilyn Praisner, the Maryland Department of Transportation State Highway Administration ("SHA") and the community. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

THE SUBJECT PROPERTY

The subject property is located in White Oak on the northeast side of New Hampshire Avenue (MD Rt. 650), approximately 1,800 feet northwest of the intersection with Columbia Pike (US 29). The site is part of the "Milestone Tract" and is zoned R-90 (Residential Zone, with a minimum lot size of 5,000 square feet). The site is wooded and contains the intermittent remnant of an intermittent headwater stream and associated environmental buffer. The property lies within the Paint Branch watershed. The topography is characterized by an abrupt hill along the northern property line, which makes the site significantly higher than many of the adjoining lots.

The site is bordered on the north by the Springbrook Manor subdivision and on the east by 11 single-family residential lots that were developed in the early 1990's. A child day-care facility is located to the southeast. The property located immediately south of the site is undeveloped. On the west, the site is bordered by the White Oak Public Library and a parcel that recently received approval for an elderly care/assisted living center as Preliminary Plan No. 1-98088 ("Heartlands of White Oak").

The subject property is located within the area covered by the 1996 Approved and Adopted Fairland-White Oak Master Plan ("Master Plan"). To provide a compatible transition to the existing residential neighborhoods, the Master Plan recommends single-family, detached dwellings and R-90 zoning for the subject property. The Master Plan also supports a grade-separated interchange at US 29 and Stewart Lane. The Master Plan further recommends that the road network within the Milestone Tract (or Milestone Drive properties) provide access to New Hampshire Avenue and US 29, discourage cut-through traffic, and provide pedestrian and bicycle access to the library. In addition, the Master Plan recommends mitigation of noise impacts from US 29 and New Hampshire Avenue for the group of properties. Finally, the Master Plan identifies this part of the Paint Branch watershed as an Environmental Restoration Area, to which "existing guidelines and regulations for new development shall be applied . . . ."

The Applicant proposes the creation of 49 lots on 18.5 acres under the optional "cluster" method of development to allow the construction of 49 detached single-family houses. The proposed lot sizes range from 8,000 square feet to 20,000 square feet. Common open space is provided in three locations on the site: the forest save, open and recreational areas in the center; the landscaped area surrounding the stormwater management facility in the northwestern corner; and the forest save and planting area in the northeastern corner. A Category I Conservation Easement will be placed over the forest-save areas located in common open space, approximately 1.5 acres. In addition, linear

strips of mixed tree-save and planting areas are located along the eastern property line and part of the northern property line. These areas are not counted as forest preservation areas, but will be placed under a modified Category II Conservation Easement. Additional forest planting will be required as provided for in the final forest conservation plan at an off-site location, if possible within the Paint Branch watershed. Stormwater management and storm drain systems consist of a dry pond, a sand filter and a network of small earth berms, swales and yard inlets for on-site water quantity and quality control. Access will be provided from New Hampshire Avenue via an extension of the driveway that currently serves the White Oak Public Library. The plan also provides a connection for future alternative access to Stewart Lane and US 29 if further development occurs on the adjoining properties to the south.

THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Code. The Planning Board administers Chapter 50 of the Code, the Subdivision Regulations. The application must also meet the requirements of Chapter 59 of the Code, the Zoning Ordinance.

Section 50-35 of the Code provides the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Planning Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Code and all other applicable regulations.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Code. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road.

Section 50-35(k) also requires the Planning Board to determine "that public facilities will be adequate to support and service the area of the proposed subdivision . . . [including] roads and public transportation facilities . . . in accordance with the guidelines and limitations established by the County Council in its Annual Growth Policy."

The record on the subject application includes information about the lot size, width, shape and orientation of the proposed 49-lot subdivision and the relationship of the lots to public roads. The record also contains information as to the Preliminary Plan's conformance with the development standards for the R-90 Zone. In addition, the Applicant has submitted a traffic study that analyzes the existing conditions in the vicinity of the site and the traffic impacts and transportation needs that will be generated by the proposed development.

DISCUSSION OF ISSUES

In its report and through testimony at the public hearing, Staff described the subject property, the proposal, the surrounding neighborhood, existing traffic conditions and planned road improvements. Staff testified that it conducted a comprehensive review of the development of the entire northeast quadrant of the intersection of New Hampshire Avenue and US 29 during the recent review of the preliminary plan for Heartlands of White Oak. Staff also worked with the Applicant and adjoining property owners to develop a coordinated circulation pattern and concept for the Milestone Tract and the US 29/Stewart Lane interchange. Staff stated that all of the development proposals for the Milestone Tract have been and will be reviewed in the context of the Master Plan.

Staff explained that the "cluster" method of development provides for flexibility in lot layout by allowing the variation of lot sizes and encourages the provision of community open space and tree preservation. The cluster method permits the same density as ordinarily allowed in the R-90 Zone. For the subject property, the maximum density allowed under the cluster provisions of Section 59-C-1.53 of the Zoning Ordinance is 66 dwelling units. However, if the Applicant proposed more than 49 units, the moderately-priced dwelling unit ("MPDU") provisions of Section 59-C-1.61 would apply. The MPDU provisions would allow a maximum of 81 dwelling units, of which 13 would be MPDUs. Because the Applicant has elected to limit development to 49 units, the MPDU provisions do not apply to the subject Preliminary Plan.

Staff testified that its comparison of the proposed 49-lot cluster plan with a 49-lot standard method plan, showed that development under the cluster method would provide larger and better protected forest and tree save and planting areas. Nevertheless, because of concerns that the plan did not provide enough open space in the northeastern corner of the site, Staff originally recommended approval of only 47 lots (deletion of two lots), subject to conditions. In response to Staff's concerns, the Applicant modified the plan to increase the open space in the northeastern corner of the site and to minimally reduce the central open area without loss of lots. To address additional concerns raised by the community, the Applicant also increased the width of the tree save and planting areas from 35-40 feet to 50 feet along the eastern and northern property lines where the site adjoins existing residences. Staff reviewed the modifications and found the revised Preliminary Plan, including setbacks and buffering, to be compatible with surrounding development and in conformance with the Subdivision Regulations and the Zoning Ordinance. Staff recommended approval of the modified plan, subject to conditions.

The Applicant testified that the proposed 49-lot plan meets the requirements of the Zoning Ordinance, the Subdivision Regulations, the Master Plan, the cluster method of development and the forest conservation law. The existing adjacent lots to the north and east range in size from 9,000 to

12,000 square feet. The proposed lots that abut existing homes average almost 12,000 square feet. The setbacks for the proposed lots along the northern boundary of the property are comparable to the setbacks of the abutting lots. On the eastern side of the property, the proposed setbacks significantly exceed the setbacks of the existing houses. Thus, the plan provides appropriate and desired detached single-family housing at a reasonable density, which is only 60% of the density allowed by the Zoning Ordinance. To further enhance compatibility, the plan includes a tree-save and tree planting buffer area around the perimeter of the property.

Neighboring property owners and community associations submitted extensive correspondence and a petition into the record detailing their concerns. Several neighbors and representatives of community organizations also testified at the public hearing. Many neighbors stated that they do not oppose residential development of the subject property, but that more consideration must be given to their concerns about traffic and site access, tree removal, wetlands disturbance, buffering, stormwater control and noise. They also contended that there has been insufficient coordination of the development of the subject site with the development of the other properties that comprise the Milestone Tract, as recommended by the Master Plan. Accordingly, the community recommended modifications to the proposed plan, including: (1) retention of a 100-foot tree buffer between existing homes and the new development; (2) relocation of the stormwater management pond away from existing homes; (3) review of the road configuration for this project in conjunction with proposals for development on adjoining properties; and (4) preservation of the most valuable forest and wetlands on the subject property.

These issues were discussed in greater detail, as follows:

Traffic

Adequacy of Public Facilities

Staff explained that a general moratorium exists for residential development in the Fairland/White Oak Policy Area because there is a negative net remaining traffic capacity for housing units. Therefore, the Applicant has requested approval under the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval ("Pay-and-Go"), which allows the payment of an excise tax to satisfy the adequate public facilities test.[1] The Applicant paid ten

[1] On May 13, 1998, the Montgomery County Council adopted Resolution 13-1271, which amended Resolution 13-1087, to limit the availability of the Pay-and-Go program to non-residential development. Resolution 13-1271 did not affect the applicability of the Pay-and-Go guidelines to the subject application which had already been submitted for Staff review.

percent of the total excise tax prior to the public hearing. Condition #1 requires payment of the balance of the tax prior to receipt of building permits. The Applicant has identified a potential improvement at the US 29/Oak Leaf Drive intersection, agreed to dedicate right-of-way or easement for the future construction of a grade-separated interchange at the US 29/Stewart Lane intersection, design and construct the extension of the access road, and improve the intersection of the access road and New Hampshire Avenue if that improvement has not been implemented by others prior to construction.

Site Access

Staff described the current and future circulation patterns for the site vicinity and testified that the subject Preliminary Plan addresses Master Plan concerns about cut-through traffic, provides access to the site from New Hampshire Avenue, provides for a future connection to US 29, and accommodates a proposed future grade-separated interchange at US 29 and Stewart Lane. Staff explained that access will be provided from New Hampshire Avenue via an extension of the driveway that currently serves the White Oak Public Library. Heartlands of White Oak will also access New Hampshire Avenue by way of the existing driveway, which will be widened to 36 feet in conjunction with the development of that facility. The Applicant will extend the access road into the subject subdivision as a 26-foot tertiary street, providing direct access to 42 lots and ending in a cul-de-sac. A connecting internal road will provide direct access to 7 lots and the potential for a future connection, reliant upon further development on the adjoining properties to the south, to Stewart Lane and US 29. In addition, the intersection with New Hampshire Avenue will be improved, with a right-in/right-out/left-in configuration. Staff noted that other access and circulation options were considered, but were not feasible.

Pursuant to Commissioners' requests, Staff also presented information regarding the number, type and location of accidents on New Hampshire Avenue, from Milestone Drive to Jackson Road (0.68 miles), for 1994, 1995 and 1996. Staff testified that the accident rate for this road segment was significantly lower than the average accident rate for a multi-lane highway with uncontrolled access in an urban area in Maryland for each of the three years studied. In response to Commissioners' questions regarding the safety of 33 additional rush-hour U-turns, Staff noted that only one of the reported accidents involved a U-turn. In addition, Staff advised the Planning Board that the Applicant had requested approval of a traffic signal at the intersection of the access road, New Hampshire Avenue and Quaint Acres Drive, but SHA had responded that the location did not warrant signalization. Staff further advised the Planning Board that SHA's denial did not result from

high-density residential zoning and detached single-family housing for the subject property. However, the forest conservation legislation and Planning Board precedent do not require that the plan achieve the break-even point with tree-save areas on site. Off-site forest planting will be provided as required by the final forest conservation plan. The perimeter tree-save and planting buffer is consistent with previous Planning Board approvals regarding buffering between similar uses.

Several neighboring property owners and representatives of community organizations disagreed with Staff and the Applicant about the plan's compliance with the forest conservation laws. They also disagreed with Staff's conclusion that the intermittent stream valley is the best location for the stormwater management pond and road crossing. They expressed concerns about the destruction of the most densely forested portion of the site and the impact of the forest loss on the restoration of the watershed, animal habitat, erosion and neighboring properties. The neighbors testified that the Applicant has identified 14.8 acres of the site as Priority I and II areas, but only 1.5 acres of existing forest will be retained and a significant number of large trees will be destroyed. The neighbors contend that such extensive clearing is not necessary or in compliance with Section 22A-12 of the Montgomery County Code, the Tree Manual, ("Trees, Approved Technical Manual," 1992 M-NCPPC) which direct developers to retain stream valley buffers and avoid clearing trees from Priority I areas wherever possible and to give consideration to preserving Priority II areas. The Tree Manual also states that developers should strive to reach the "break-even point" on forested sites. The neighbors also expressed concern that the tree-save buffer is not wide enough and trees along the edge may die as a result of disturbance during construction. Therefore, the community recommended increasing the tree-save buffer around the northern perimeter to 100 feet to provide maximum compatibility and on-site tree retention.

Noise

Staff testified that the Master Plan review process included a noise analysis for the Milestone Tract based on projected Year 2010 noise levels. As a result of the noise analysis, the Master Plan intent is to provide noise buffering for the properties along the perimeter of the Milestone Tract abutting US 29 and New Hampshire Avenue. Staff testified that the recommendation does not apply to the subject property, which is located toward the interior of the quadrant and will contain dwellings located outside the noise impact area of 65 dBA, LDN on lots set back a significant distance from New Hampshire Avenue and US 29. Staff also noted that intervening existing and future development will buffer the subject property. In addition, Staff testified that the subject property will continue to provide some noise mitigation for existing residences because of the setback and berm effect of its size and location on a ridge.

a design or funding problem, but strictly because the traffic numbers did not meet the warrants. Staff also noted that the Applicant had offered to pay a portion of the cost of a new signal.

Regarding the US 29/Stewart Lane interchange, Staff explained that SHA has approved the location, but that the final design and construction of the interchange has not been funded. The proposed Preliminary Plan provides for a future connection to the interchange, but cannot access Stewart Lane or Milestone Drive now without crossing two intervening properties. Moreover, such an access design would be temporary and inconsistent with the Master Plan. Staff advised the Planning Board that the interchange improvements include merging Stewart Lane with relocated Milestone Drive to become a one-way ramp to westbound New Hampshire Avenue. The original plan for the interchange showed a road that would connect the subject property and the future ramp. The Applicant's plan slightly modified the design to allow the road to enter the subdivision at an appropriate grade and curvature. The modified design accommodates all necessary traffic movements and continues to provide a direct connection from the interchange into the community as recommended in the Master Plan. SHA has reviewed the Applicant's proposed modification and will conduct further environmental and operational review during the final design stage. SHA has advised Staff that the Applicant's modification is acceptable, the development will not interfere with or inhibit any options for the interchange, and the proposal is consistent with the Master Plan.

Several neighboring property owners and representatives of community associations and the PTAs of Jackson Road Elementary School and White Oak Middle School testified regarding their concerns about traffic and the proposed use of U-turns to access southbound New Hampshire Avenue. The community described this portion of New Hampshire Avenue as already overcrowded and dangerous. They testified that the proposed U-turns will be impossible during rush hour because of traffic gridlock and dangerous at other times because of high speeds. The community is concerned that traffic seeking to go south from the subject property will use neighborhood streets in Springbrook Manor to access the traffic signal at Jackson Road or to wind back to Milestone Drive and Stewart Lane rather than attempt U-turns on New Hampshire Avenue. They testified that the neighborhood streets are narrow, curved and hilly and are not capable of handling much additional traffic. They further testified that the increased traffic will be hazardous to children and other pedestrians because the neighborhood does not have sidewalks, commuter vehicles often exceed the speed limit and a very large number of students walk to the schools in this neighborhood because bus service is not available. The residents of Quaint Acres, which is located directly across New Hampshire Avenue, also stated concerns about the increased danger to pedestrians crossing New Hampshire Avenue to access school buses, the library, public transportation and Martin Luther King Park. In addition, several neighbors testified that the Applicant's traffic study significantly underestimated the number of southbound trips that will be generated by the new development.

The community also expressed concerns about the Applicant's changes to the design of the US 29/Stewart Lane interchange. They noted that the Master Plan includes a specific design for the interchange and a connecting road through the subject property.

Several neighbors suggested that installing a traffic signal at the intersection of the site access road, Quaint Acres Drive and New Hampshire Avenue would improve the current situation and provide safe ingress and egress for the new subdivision. Although SHA denied their request for a traffic signal approximately five years ago, the Quaint Acres community believes that changed conditions on New Hampshire Avenue, together with the additional traffic from the subject development proposal, the approved elderly care facility and another potential retirement community on adjoining property, warrant signalization. However, the NWOCA representative testified that SHA must follow federal guidelines and that, even with the proposed development, the intersection will not warrant a light on a six-lane highway. NWOCA suggested that the ingress/egress for the subject property should be limited to a connection through the adjoining property to the south to Milestone Drive and the future interchange at US 29/Stewart Lane. They advised the Planning Board that a proposal for a nursing home on the adjoining property to the south (not yet submitted) includes a road configuration that could connect the subject property with Milestone Drive and the proposed US 29/Stewart Lane interchange.

In response to the community's suggestions, Staff reminded the Planning Board that the subject property cannot access Milestone Drive or Stewart Lane without crossing two intervening parcels. Staff suggested that the Applicant and Staff could pursue SHA approval of a signal based on a combination of existing and future traffic, and other factors, including the particular traffic patterns created by the proximity of the intersection to the US 29 ramps, Milestone Drive and several other roads. Alternatively, Staff suggested that it might be possible to convince SHA to relocate the partial signal that allows left turns from northbound New Hampshire Avenue to US 29 to the subject intersection.

Environmental Guidelines and Forest Conservation

At the public hearing, Staff testified that the proposed Preliminary Plan is in compliance with the Planning Board Environmental Guidelines and the Montgomery County Forest Conservation Law. Staff explained that there are no minimum requirements for on-site forest retention. The conservation thresholds contained in the State and County forest conservation laws are goals for on-site forest retention. Staff further explained that the appropriate amount of on-site preservation is determined as part of the review of a development project and its forest conservation plan, which takes into consideration site-specific conditions including: the zoning; Master Plan

recommendations; the proposed use; the minimum area required for development; the location, configuration, age and character of on-site forest and tree stands; the relationship to any off-site forest areas; other natural features and possible road access points for the site. Staff also explained that the "break-even point" is the amount of forest that must be preserved on-site if the Applicant wants to avoid reforestation requirements.

For the subject site, Staff found that the Master Plan recommendation for single-family, detached residential development and the high-density residential zoning greatly limit the ability to retain forest on the site. Moreover, some disturbance of the intermittent stream channel and associated buffer area, clearing and loss of trees in the northwestern portion of the site is unavoidable for access, stormwater management and a sewer connection. Staff explained that the northwestern portion of the site is technically classified as Priority I for forest preservation because it contains the remnant of a headwater stream, part of the associated buffer and a concentration of large trees. However, Staff testified that the value of the stream channel and its buffer as a functioning part of the natural stream system has been diminished by the use of an enclosed storm drain system in the adjoining subdivisions. The stream channel is an isolated section that is no longer connected to and is significantly separated from other natural components of the Paint Branch ecosystem. The remaining natural stream is located near Paint Branch Stream Valley Park, approximately 3,000 feet from the subject property.

Staff further explained that part of the buffer area is located on adjoining property and has already been cleared (the library parking area) or approved for clearing (the stormwater management area for Heartlands of White Oak). In addition, the only feasible access for the site requires road construction in the buffer area. A sewer connection must also be located in this area to connect to the existing sewer line in Kathryn Road. Staff further explained that the proposed location of the stormwater management facility will most effectively and efficiently (1) control stormwater runoff from the proposed development; and (2) maintain existing levels, and perhaps reduce water runoff levels to adjoining houses. Therefore, Staff concluded that the proposed disturbance is necessary and appropriate. In addition, Staff compared forest conservation under the cluster and standard plans for the site and found that the cluster plan provides more on-site forest preservation, tree save and tree planting areas (approximately 3 acres compared to 1.5 acres). Staff also noted that the cluster plan locates the forest-save areas on common open space, which allows more effective long-term maintenance and enforcement when compared with forest save areas located on private lots on a standard plan. Finally, Staff has recommended, and the Applicant is pursuing, the location of off-site reforestation within the Paint Branch watershed, if possible.

The Applicant testified that it could not meet all of the requirements of the forest conservation legislation on site because of the combination of Master Plan recommendations for

Regarding the future US 29/Stewart Lane overpass, Staff testified that it does not have enough information on the engineering and design of the overpass to evaluate the potential noise impacts. Staff did note, however, that the ramp to the new interchange will not be elevated where it abuts the subject property. Staff advised the Planning Board that SHA and staff will evaluate any noise impacts and mitigation when the relevant section of US 29 moves into the design phase.

Several neighboring property owners disagreed with Staff's interpretation of the Master Plan and testified that, because of existing problems with noise from US 29 and New Hampshire Avenue, the Master Plan recommends appropriate noise buffering for the entire quadrant. Noting that the noise levels will increase if the overpass is constructed, traffic increases or a bus lane is added, the neighbors stated that additional buffering is necessary to protect the future residents of the subject property and the existing neighborhood. Therefore, the community advocates a 100-foot tree buffer between existing homes and the new development, which it contends will reduce the noise level by 50% by reflecting and absorbing sound energy.

Stormwater Management

Staff testified that the proposed stormwater management plan for the site is designed to maximize the capture of surface water runoff, avoid exacerbation of existing runoff problems and possibly improve existing conditions by reducing stormwater runoff and associated water drainage problems on adjoining lots. On-site stormwater management controls include a dry pond for quantity control, a sand filter for quality control, and a network of small earth berms, swales and yard inlets on lots parallel to the northern and eastern property lines to convey runoff to the facility and away from existing houses. The yard inlets will be located within a stormwater management easement to allow County repair or maintenance, if necessary. The dry pond and sand filter are located in the northwestern corner of the site, which is the low point and the most effective and efficient location. The pond will be excavated and the slight slope will be planted with a double row of evergreens for screening. Stormwater leaving the facility will be conveyed through an enclosed pipe to the existing storm drain system in the unimproved Hedge Road right-of-way. The stormwater management concept and dam breach analysis were approved by MCDPS on December 3, 1998.

Staff also explained that most of the subject property is located in the Tanley Road subwatershed, which the Countywide Stream Protection Strategy (CSPS) identifies as a Watershed Restoration Area. For this area, the CSPS recommends an overall restoration approach because of adverse impacts from past development. The southeastern portion of the site is part of the Middle Mainstem subwatershed, a Watershed Protection Area, for which the CSPS recommends a remedial level of protection to address sediment deposition and erosion problems. Staff stated that the

approved stormwater management concept is consistent with the CSPS designations because it provides for the control of stormwater runoff so that existing downstream, erosion and sedimentation problems are not exacerbated. In addition, the concept will probably improve water drainage problems on some adjoining lots. Finally, because the site is located on a ridge, it does not receive uncontrolled runoff from any existing development and cannot be used for retrofit or restoration purposes.

The Applicant testified that the most significant concern expressed by the neighbors at its initial meeting with the North White Oak Civic Association was that development of the subject property would exacerbate adjacent homeowners' existing stormwater drainage problems. To address the concerns, the Applicant based the site design on controlling the maximum amount of runoff possible. Based on information obtained through borings, monitoring wells and interviews with adjacent residents, the Applicant and MCDPS determined that the maximum amount of runoff could be controlled by locating the stormwater management pond as close to the unimproved Hedge Road right-of-way as possible. The Applicant further testified that the proposed stormwater management concept will eliminate most of the stormwater runoff from the site.

Several neighbors testified regarding their concerns about stormwater runoff. They explained that, because of the steep hill, water from the subject property floods neighboring yards and streets. They further explained that the neighborhood stormwater drainage system has insufficient capacity and the few collection drains already overflow and pond for several days after heavy storms. The neighbors are concerned that the removal of much of the existing forest, the increased impervious surfaces and the regrading on the site will aggravate the runoff problems.

Some of the neighbors also stated concerns about the location of the stormwater management pond only 35 feet from existing homes. They are concerned about the potential flooding of neighboring properties if the drain in the pond gets clogged or if the dam is breached. They are also concerned about the potential danger the pond presents to neighborhood children. Accordingly, the neighbors advocated moving the pond at least 75 feet away from adjoining properties.

In response, Staff and MCDPS explained that the stormwater management pond is located 30 feet from the property line. Relocating the pond further away from the adjoining properties would mean moving it uphill and increasing the height of the berm to maintain the necessary storage volume. The higher berm would be more prominent visually, require the clearing of a larger area and increase the potential for a dam breach. Moreover, relocating the pond would decrease the area of the site from which surface water runoff could be controlled.

FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that: (1) the proposed lots are appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated residential use; (2) the proposed lots will abut public roads; (3) the Preliminary Plan meets the development standards of the R-90 Zone; (4) the Preliminary Plan is in accordance with the Master Plan; and (5) the site is adequately served by public facilities under the standards imposed by the FY99 Annual Growth Policy and the Pay-and-Go provisions. The Planning Board also finds that review of the development plans for the subject property and the remainder of the Milestone Tract has been comprehensive and coordinated. The Planning Board further finds that development under the cluster method is appropriate for the subject property and best addresses the goals of stormwater management, traffic safety, forest preservation and buffering on the site. In addition, the Planning Board finds that the proposed conditions, as modified, will ensure the appropriate use of the subject property, and adequate access and road improvements, forest conservation measures, stormwater management and screening.

Regarding the proposed road configuration and improvements, the Planning Board accepts Staff's finding that the proposed access to New Hampshire Avenue is the only feasible site access without further development and road construction on adjoining properties to the south. The Planning Board finds that it would be unreasonable to require the Applicant to obtain access via the adjoining properties to the south because the Applicant does not have any control over the construction of roads on those properties. However, taking existing traffic conditions into consideration, the Planning Board finds that the absence of a traffic signal at the intersection of the site access road and New Hampshire Avenue would create unsafe conditions by requiring drivers to make U-turns on New Hampshire Avenue or cut through neighborhood streets in order to travel south. Therefore, the Planning Board finds that Condition #12 should be added to require the Applicant to pursue SHA approval of a traffic signal at the subject intersection. Commissioner Richardson also acknowledged the traffic safety concerns, but disagreed with the other Commissioners and advocated recommending, rather than conditioning approval upon, the installation of a traffic signal.

Regarding the conflicting goals of stormwater management and forest conservation, both of which are important to the adjoining and future residents and the whole community, the Planning Board accepts the findings of Staff and MCDPS that the proposed location for the stormwater management pond would best mitigate existing runoff problems on adjoining properties and provide

effective stormwater management for the subject site. The Planning Board also accepts Staff's finding that some disturbance of the stream valley and buffer and loss of trees in the northwestern portion of the site would be unavoidable even if the pond were relocated. Moreover, the Planning Board finds that relocating the pond would result in additional tree loss and replanting, decrease the number of lots, and increase the dam breach hazard potential. The Planning Board further finds that it is not necessary nor legally required to preserve every tree on the subject property. Accordingly, the Planning Board finds that the Applicant's compliance with Conditions #2, 3 and 10 will ensure that forest conservation requirements are met. Condition #2 requires compliance with the preliminary forest conservation plan in accordance with the standards of the Forest Conservation Law, including the location of off-site planting within the Paint Branch watershed if possible, and the protection of as much on-site forest area as feasible by inclusion in a Category I Conservation Easement and supplemental planting to achieve buffer objectives. Condition #3 provides for the delineation of the conservation easements on the record plats. Condition #10 requires that the homeowners' association ("HOA") documents describe the restrictions that apply to all common open space and conservation easement areas. The Planning Board therefore adopts Conditions #2, 3 and 10.

The Planning Board further finds that the stormwater management plan and the conditions of the stormwater management concept approval are adequate to protect adjoining properties. The Planning Board accepts MCDPS' determination that the Stormwater Management Concept meets MCDPS' standards and finds that the subject application meets all applicable stormwater management requirements. In addition, the Planning Board accepts Staff's interpretation that the Master Plan recommendation for noise mitigation does not apply to the subject property as the site is outside of the 65 - decibel impact are a referenced in the master plan. The Planning Board finds that intervening development will provide sufficient buffering from the highways to the south and west. The Planning Board further finds that the proposed 50-foot wide tree-save and planting area will provide sufficient buffering between the proposed use and the existing houses to the north and east. Finally, the Planning Board finds that Conditions # 6, 10 and 11 will ensure notice to future homeowners of the forest conservation provisions and potential US 29/Stewart Lane interchange improvements. Therefore, the Planning Board adopts Staff's conditions, as modified.

CONCLUSION

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-98096, as modified by the Applicant, to be in accordance with the Subdivision Regulations of the Montgomery County Code

and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-98096, as modified by the Applicant, pursuant to the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval subject to the following conditions:

1) Prior to recording of plats, applicant to enter into an Adequate Public Facilities agreement (APF) with the Planning Board to limit development to a maximum of forty-nine single family detached dwelling units, and to pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permits, as provided by County law.

2) Compliance with the conditions of approval for the preliminary forest conservation plan, dated December 4, 1998. The final forest conservation plan must be approved prior to the recording of plat. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to, the following:

a. Off-site forest planting to be located within the Paint Branch watershed unless it can be demonstrated to Staff's satisfaction that the Applicant has conducted a reasonable search and cannot find appropriate land areas.

b. Category I conservation easement to be placed over forest preservation and planting areas located in proposed parcels A, B, C and part of White Oak library site that is adjacent to Parcel A and contains trees. Easements to be shown on record plats.

c. Forest and tree-save areas to include supplemental planting of trees and shrubs, as necessary, to achieve forest and landscape buffer objectives. Number, size and location of trees and shrubs for supplemental planting to be determined by M-NCPPC staff after initial clearing and grading of site and added to the final forest conservation plan.

3) Record plat to reflect the delineation of all conservation easements over the areas of tree preservation/landscaping, as stipulated by the forest conservation plan.

4) Prior to recording of plats, submit for technical staff approval, a landscape plan for the areas along the northern and eastern property lines.

5) Access and improvements to be approved by MCDPW&T prior to recording of plat.

6) Record plat to reference grading easement in the area of the Stewart Lane/US 29 interchange as shown on plan and accepted by MDSHA.

7) Conditions of MCDPS stormwater management approval, dated 12-3-98.

8) Dedication of all rights of way to occur simultaneously with or after dedication of rights of way included in preliminary plan 1-98088.

9) Other necessary easements.

10) Prior to recording of plats, submit Home Owner's Association (HOA) documents for technical staff approval. HOA documents shall describe the restrictions that apply to all common open space areas and conservation easement areas.

11) Prior to ratification of any sales contract, owner/developer shall disclose to all prospective home buyers the location and design concept of the Stewart Lane/RT 29 interchange.

12) Construct a traffic signal at the intersection of the site access road and New Hampshire Avenue.

13) This preliminary plan will remain valid until June 5, 2002 (37 months from the date of mailing which is May 5, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

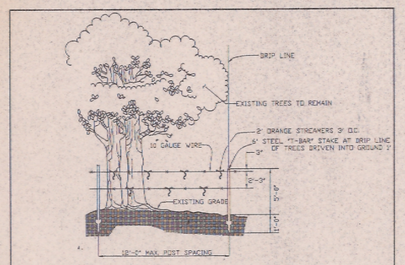
g:\opinions\kaufman1.pbo

STORM WATER MANAGEMENT POND PLANTINGS

REFORESTATION (PARCEL A) — .69 acres @ 200 plants / acre = 138 trees plus 46 shrubs

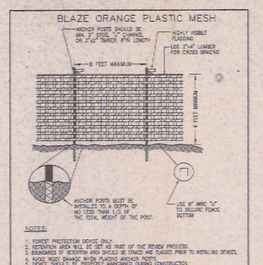
QTY	SCIENTIFIC NAME	COMMON NAME	SIZE
40	Acer rubrum	Red maple	1" cal. 5 gal. cont.
14	Aronia arbutifolia	Red chokecherry	5 gal. cont. 2'-3' high
16	Cornus amomum	Silky dogwood	5 gal. cont. 2'-3' high
30	Fraxinus pennsylvatica	Green Ash	1" cal. 5 gal. cont.
40	Liriodendron tulipifera	Tullp poplar	1" cal. 5 gal. cont.
14	Liquidamber styraciflua	Sweet gum	1" cal. 5 gal. cont.
14	Nyssa sylvatica	Black gum	1" cal. 5 gal. cont.
16	Viburnum dentatum	Southern arrowwood	5 gal. cont. 2'-3' high

- TREE PROTECTION OR REFORESTATION SIGN
- REFORESTATION AREAS 1" STOCK (NATIVE SPECIES ONLY)
- FOREST TO BE RETAINED
- LANDSCAPE STOCK 2 1/2" CAL. SEE LANDSCAPE PLAN FOR SPECS.
- TREE PROTECTION FENCE & SEDIMENT CONTROL
- CRITICAL ROOT ZONES OF TREES 24" OR GREATER

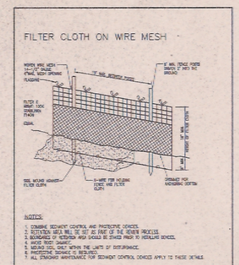


TREE PROTECTION DETAIL

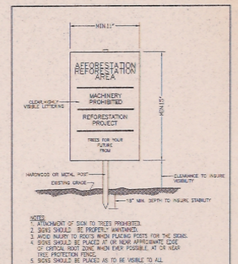
N.T.S.



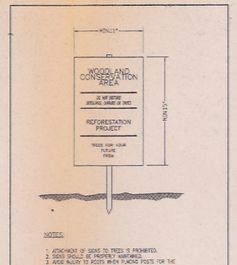
TREE PROTECTION FENCING (2)



TREE PROTECTION AND SEDIMENT CONTROL



SIGNAGE



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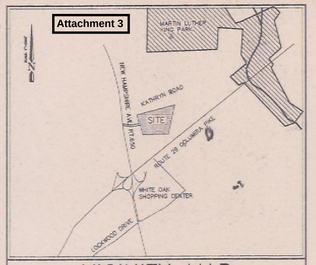


VICINITY MAP
MONTGOMERY COUNTY
1"=2000'

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAN IS PREPARED IN ACCORDANCE WITH MONTGOMERY COUNTY FOREST ... CONSERVATION REGULATIONS.

6-16-99 — DATE

SALLIE P. STEWART — REGISTERED LANDSCAPE ARCHITECT MD. #1202

SALLIE P. STEWART No. 1202 REGISTERED LANDSCAPE ARCHITECT

Quercus rubra – Red oak
20 YEAR CANOPY COVERAGE
30' DIAMETER (962 S.F.)
91 Trees along Heartsfield Drive (Total area= 87,542 S.F. or 2.01 ac.)

Acer saccharum 'Bonfire'– Sugar Maple
20 YEAR CANOPY COVERAGE
30' DIAMETER (707 S.F.)
19 Trees along Sherbrooke Woods Lane (Total area=13,433 S.F. or .31 ac)

BOTH SPECIES APPROVED BY MDOT AS BEING USED AS MAJOR STREET TREES.
SPECIES DESIGNATED ARE FAIRLY TOLERANT TO DEICING SALTS AND POLLUTANTS.

w/ final FCP
for M-NCPPC staff review + appr. overall, proposed language

NOTE: APPLICANT WILL PROVIDE DISCLOSURE TO PARK AND PLANNING DISCLOSING ON LOT CONSERVATION EASEMENT AND POTENTIAL PROXIMITY OF HOUSES TO THE CONSERVATION EASEMENT ON LOTS 13,14,19,20.

A.	TOTAL AREA OF TRACT:	18.6 Acres
B.	AREA WITHIN 100 YEAR FLOODPLAIN: (>400 AC. DA. OR USE A/B-P WATERS)	0 Acres
C.	AREA OF LAND TO BE USED FOR AGRICULTURE:	0 Acres
D.	AREA WITHIN ROW/EASEMENT FOR WHICH MCDOT OR MCDOT/SHA WILL BE RESPONSIBLE:	0 Acres
E.	NET TRACT AREA: A-B-C-D=	18.6 Acres
F.	LAND USE CATEGORY (FROM TABLE 2):	HIGH DENSITY RESIDENTIAL
G.	AFFORESTATION THRESHOLD: (.15)N FROM TABLE 3 x E)=	2.8 Acres
H.	CONSERVATION THRESHOLD: (.20)N FROM TABLE 3 x E)=	3.7 Acres
I.	EXISTING FOREST COVER: =	18.0 Acres
J.	FOREST COVER ABOVE AFFORESTATION THRESHOLD: (I–G)=	15.2 Acres
K.	FOREST COVER ABOVE CONSERVATION THRESHOLD: (I–H)=	14.3 Acres

CALCULATION OF BREAK–EVEN POINT

L.	IF K <– 0 AND I >– G, BREAK EVEN POINT EQUALS I: (IF I >– G, THEN E TO BREAK-EVEN POINT AND AFFORESTATION PLANTING IS REQUIRED. REFER TO P, BELOW)	0	Acres
M.	IF K > 0, BREAK–EVEN POINT EQUALS (K x 2.5)= H =	6.6	Acres
N.	FOREST COVER TO BE RETAINED: =	11.7	Acres 11.7
O.	TOTAL AREA OF FOREST TO BE CLEARED: (IF N IS GREATER THAN I – L, REFORESTATION PLANTING IS REQUIRED. SEE Q – W, BELOW)	6.6	Acres 16.3

CALCULATION OF REFORESTATION REQUIREMENT

P.	AREA OF FOREST ABOVE CONSERVATION THRESHOLD TO BE CLEARED:	14.3	Acres
Q.	AREA OF FOREST BELOW CONSERVATION THRESHOLD TO BE CLEARED: N–O=	11.7	Acres 2
R.	FORESTED AREA ABOVE CONSERVATION THRESHOLD TO BE SAVED: M – N=	0	Acres
S.	PLANTING REQUIRED FOR CLEARING ABOVE THRESHOLD: Q x 1/4=	3.6	Acres 4.0
T.	PLANTING REQUIRED FOR CLEARING BELOW THRESHOLD: P x 2=	28.6	Acres
U.	CREDIT FOR FOREST SAVED ABOVE CONSERVATION THRESHOLD: S=	0.0	Acres 7.6
W.	TOTAL REFORESTATION REQUIREMENT: T + U – V=	7.6	Acres

TOTAL PLANTING REQUIREMENT

X.	REFORESTATION: W=	7.6	Acres
Y.	CREDIT FOR TREES AND LANDSCAPING-3 = 20% x W	1.5	Acres
Z.	TOTAL FOREST PLANTING REQUIREMENT: X – Y=	6.1	Acres

ON SITE REFORESTATION:	1.4	Acres
OFF SITE REFORESTATION:	4.4	Acres 4.7

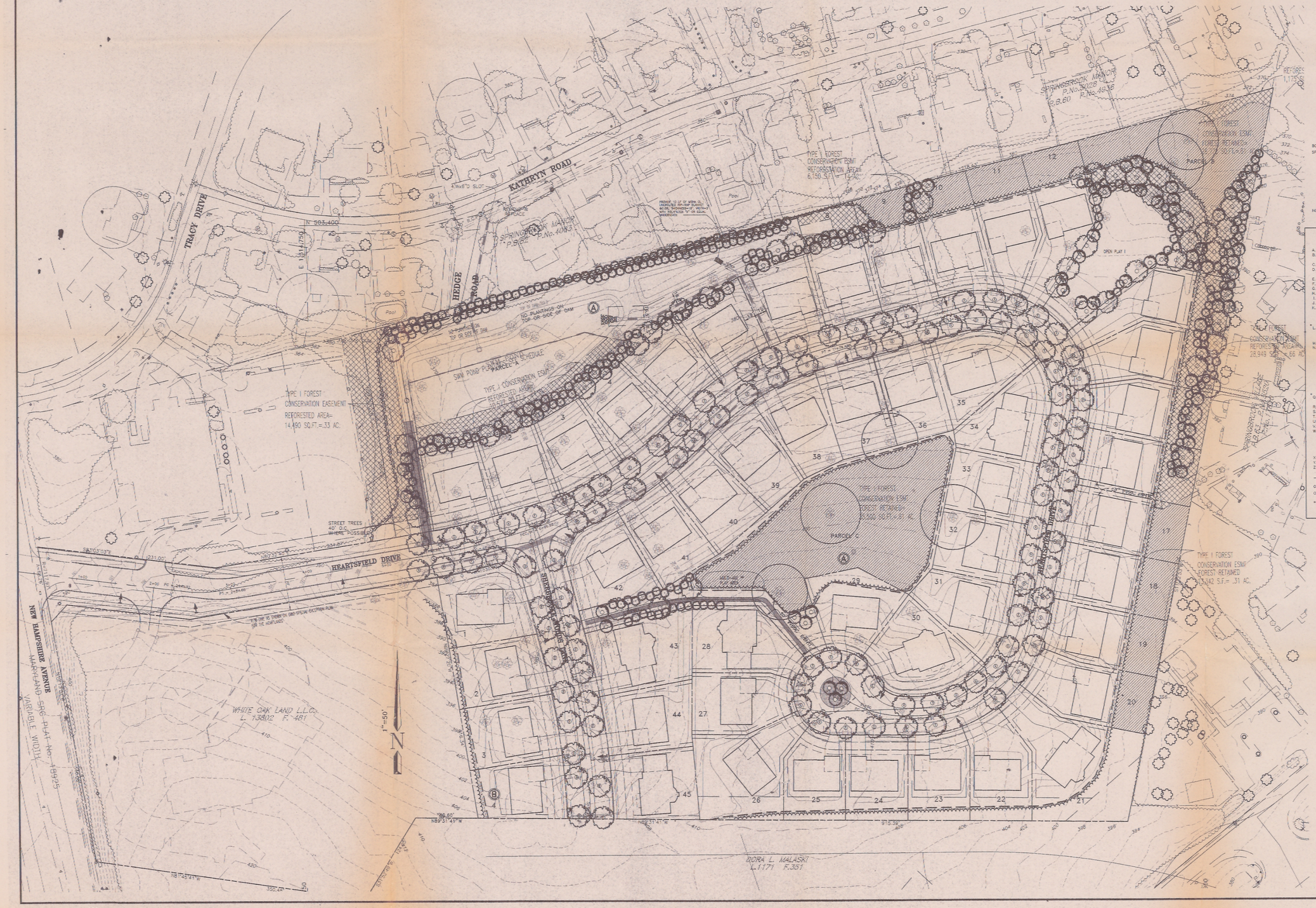
** AREA OF MULTI AGE PLAY NOT INCLUDED IN FOREST RETAINED

Retention: 0.61 + 0.14 + 0.29 + 0.33 = 1.37 = 1.4
Planting: 0.66 + 0.14 + 0.29 + 0.33 = 1.37 = 1.4

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PRELIMINARY FOREST CONSERVATION PLAN

CONDITIONAL APPROVAL

Plan No. 1-98096
Cindy Conway 6/22/99
SIGNATURE DATE
(Includes above change to worksheet).



Plotted: June 11, 1999

Acad Dwg: 28-00/11-02/44-099/46-099/53-00/PDS

CPJ Associates

Charles P. Johnson & Associates, Inc.
PLANNERS · ENGINEERS · LANDSCAPE ARCHITECTS · SURVEYORS
12155 ELTON ROAD SUITE 200 SILVER SPRING, MARYLAND 20905
Phone:(301)934-7000 E-mail:mail@cpja.com Fax:(301)934-7094
FREDERICK, MD FAIRFAX, VA

PRELIMINARY FOREST CONSERVATION PLAN
PARCEL 626
KAUFMAN PROPERTY
COLESVILLE (5th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

CLIENT: CLH STREET DEVELOPMENT, 6830 ELM STREET SUITE 201, McLEAN, VA 22101

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DESIGN LMP | DRAFT CCL | APPROVED | DATE MAY '98 | SCALE 1"=50'

SHEET 1 OF 1

FILE NO. 28-055-28 D

Attachment 4

Date of Mailing: November 16, 1999

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan No.: 1-98096
Project: Kaufman Property
Date of Hearing: September 28, 1999

Action: **APPROVAL SUBJECT TO CONDITIONS**. *(Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Perdue; with a vote of 4-0, Commissioners Hussmann Bryant, Perdue and Wellington voting in favor. Commissioner Holmes necessarily absent.)*

The date of this written opinion is November 16, 1999. Any party authorized by law to take an administrative appeal must initiate such an appeal as provided in the Maryland Rules of Procedure. If no administrative appeal is timely filed, then this Preliminary Plan shall remain valid as set forth in Section 50-35(h).

INTRODUCTION

On May 11, 1998, Elm Street Development ("Applicant") filed a preliminary plan application seeking the subdivision of a residentially-zoned 18.5-acre parcel into 49 lots under the optional cluster method of development. The application was designated Preliminary Plan No. 1-98096. After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on December 10, 1998, which was duly recessed to and concluded on December 17, 1998, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Code"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Applicant, neighboring property owners and community and civic organizations, and received evidence into the record on the application. The Planning Board issued a written opinion dated May 6, 1999, approving Preliminary Plan 1-98096, subject to specific conditions. Pursuant to the Planning Board's Rules of Procedure, the Applicant submitted a timely written request seeking reconsideration of Condition No. 12 of the original opinion. The Board on May 27, 1999, granted the request. A de novo preliminary plan hearing was duly noticed, and held on September 28, 1999. The record incorporates all materials contained in the record on the original application and all testimony received and materials submitted with respect to the de novo hearing.

THE SUBJECT PROPERTY

The subject property is located in White Oak on the northeast side of New Hampshire Avenue (MD Rt. 650), approximately 1,800 feet northwest of the intersection with Columbia Pike (US 29). The site is part of the "Milestone Tract" and is zoned R-90 (Residential Zone, with a minimum lot size of 5,000 square feet). The site is wooded and contains the remnant of an intermittent headwater stream and associated environmental buffer. The property lies within the Paint Branch watershed. The topography is characterized by an abrupt hill along the northern property line, which makes the site significantly higher than many of the adjoining lots.

The site is bordered on the north by the Springbrook Manor subdivision and on the east by 11 single-family residential lots that were developed in the early 1990's. A child day-care facility

is located to the southeast. The property located immediately south of the site is undeveloped. On the west, the site is bordered by the White Oak Public Library and a parcel that recently received approval for an elderly care/assisted living center as Preliminary Plan No. 1-98088 ("Heartlands of White Oak").

The subject property is located within the area covered by the 1996 Approved and Adopted Fairland-White Oak Master Plan ("Master Plan"). To provide a compatible transition to the existing residential neighborhoods, the Master Plan recommends single-family, detached dwellings and R-90 zoning for the subject property. The Master Plan also supports a grade-separated interchange at US 29 and Stewart Lane. The Master Plan further recommends that the road network within the Milestone Tract (or Milestone Drive properties) provide access to New Hampshire Avenue and US 29, discourage cut-through traffic, and provide pedestrian and bicycle access to the library. In addition, the Master Plan recommends mitigation of noise impacts from US 29 and New Hampshire Avenue for the group of properties. Finally, the Master Plan identifies this part of the Paint Branch watershed as an Environmental Restoration Area, to which "existing guidelines and regulations for new development shall be applied . . . ."

The Applicant proposes the creation of 49 lots on 18.5 acres under the optional "cluster" method of development to allow the construction of 49 detached single-family houses. The proposed lot sizes range from 8,000 square feet to 20,000 square feet. Common open space is provided in three locations on the site: the forest save and multi-age play areas in the center; the stormwater management facility and surrounding landscaped and forest planting areas in the northwestern corner; and the forest save and planting area in the northeastern corner. Stormwater management and storm drain systems consist of a dry pond, a sand filter and a network of small earth berms, swales and yard inlets for on-site water quantity and quality control. Access will be provided from New Hampshire Avenue via a street adjacent to an existing driveway that serves the White Oak Public Library, and via a second access connecting the subject site to Milestone Drive, across two abutting properties.

THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Code. The Planning Board administers Chapter 50 of the Code, the Subdivision Regulations. The application must also meet the requirements of Chapter 59 of the Code, the Zoning Ordinance. Section 50-35 of the Code provides the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Planning Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Code and all other applicable regulations. Section 50-35(k) also requires the Planning Board to determine "that public facilities will be adequate to support and service the area of the proposed subdivision . . . [including] roads and public transportation facilities . . . in accordance with the guidelines and limitations established by the County Council in its Annual Growth Policy."

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Code. Lot size, width, shape and orientation must be appropriate for the location of the subdivision

and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road. The record on the subject application includes information about the lot size, width, shape and orientation of the proposed 49-lot subdivision and the relationship of the lots to public roads. The record also contains information as to the Preliminary Plan's conformance with the development standards for the R-90 Zone. In addition, the Applicant has submitted a traffic study that analyzes the existing conditions in the vicinity of the site and the traffic impacts and transportation needs that will be generated by the proposed development.

DISCUSSION OF ISSUES

In its report and through testimony at the public hearing, Staff described the subject property, the proposal, the surrounding neighborhood, existing traffic conditions and planned road improvements. The project proposed the "cluster" method of development, which allows flexibility in lot layout by allowing the reduction of standard lot sizes in exchange for the preservation of additional community open space and trees. The cluster method permits the same density as ordinarily allowed in the R-90 Zone. For the subject property, the maximum density allowed under the cluster provisions of Section 59-C-1.53 of the Zoning Ordinance is 66 dwelling units; the Applicant has elected to limit development to 49 units.

Staff testified that its comparison of the proposed 49-lot cluster plan with a 49-lot standard method plan, showed that development under the cluster method would provide larger and better protected forest and tree save and planting areas. The tree save and planting areas are 50 feet deep along the eastern and northern property lines where the site adjoins existing residences. Staff found the Preliminary Plan, including setbacks and buffering, to be compatible with surrounding development and in conformance with the Subdivision Regulations and the Zoning Ordinance. Staff recommended approval of the plan, subject to conditions.

The Applicant testified that the proposed 49-lot plan meets the requirements of the Zoning Ordinance, the Subdivision Regulations, the Master Plan, the cluster method of development and the forest conservation law. The existing adjacent lots to the north and east range in size from 9,000 to 12,000 square feet. The proposed lots that abut existing homes average almost 12,000 square feet. The setbacks for the proposed lots along the northern boundary of the property are comparable to the setbacks of the abutting lots. On the eastern side of the property, the proposed setbacks significantly exceed the setbacks of the existing houses. Thus, the plan provides appropriate and desired detached single-family housing at a reasonable density, which is only 60% of the density allowed by the Zoning Ordinance.

Neighboring property owners and community associations submitted extensive correspondence into the record detailing their concerns. Several neighbors and representatives of community organizations also testified at the public hearing. Many neighbors stated that they do not oppose residential development of the subject property, but that more consideration must be given to their concerns about traffic and site access, tree removal, wetlands disturbance, buffering, stormwater control and noise. They also contended that there has been insufficient coordination of the development of the subject site with the development of the other properties that comprise the Milestone Tract, as recommended by the Master Plan.

SPECIFIC ISSUES

Adequacy of Public Facilities

Staff explained that a general moratorium exists for residential development in the Fairland/White Oak Policy Area because there is a negative net remaining traffic capacity for housing units. Therefore, the Applicant has requested approval under the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval ("Pay-and-Go"), which allows the payment of an excise tax to satisfy the adequate public facilities test.[1] The Applicant paid ten percent of the total excise tax prior to the public hearing. Condition #1 requires payment of the balance of the tax prior to receipt of building permits. The Applicant has identified a potential improvement at the US 29/Oak Leaf Drive intersection, agreed to dedicate right-of-way or easement for the future construction of a grade-separated interchange at the US 29/Stewart Lane intersection, design and construct the extension of the access road, and improve the intersection of the access road and New Hampshire Avenue if that improvement has not been implemented by others prior to construction.

Site Access

Staff described the current and future circulation patterns for the site vicinity and testified that the subject Preliminary Plan addresses Master Plan concerns about cut-through traffic, provides access to the site from New Hampshire Avenue, provides for a future connection to US 29, and accommodates a proposed future grade-separated interchange at US 29 and Stewart Lane. Staff explained that access will be provided from New Hampshire Avenue to the site via an access road adjacent to the driveway that currently serves the White Oak Public Library. A connecting internal road will provide direct access to 7 lots. In addition, the Applicant proffered an alternative access road connecting the subject site to Milestone Drive. This access would require the Applicant to secure access easements over two abutting properties. The intersection with New Hampshire Avenue will be improved, with a right-in/right-out/left-in configuration. The Applicant testified it does not have access to these easements at this time. Applicant, however, accepted on the record as a condition of approval that it would acquire access easements across the two adjacent properties as detailed in the Condition 3, below.

Staff advised the Planning Board that the Applicant had requested approval of a traffic signal at the intersection of the access road, New Hampshire Avenue and Quaint Acres Drive, as required by Condition No. 12 of the original Preliminary Plan, but SHA had responded that the location did not warrant signalization. Staff further advised the Planning Board that SHA's denial resulted because the traffic numbers did not meet the warrants. As part of its request for

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1 On May 13, 1998, the Montgomery County Council adopted Resolution 13-1271, which amended Resolution 13-1087, to limit the availability of the Pay-and-Go program to non-residential development. Resolution 13-1271 did not affect the applicability of the Pay-and-Go guidelines to the subject application which had already been submitted for Staff review.

reconsideration, the Applicant proffered to escrow $100,000 to be used for construction of the traffic signal at New Hampshire Avenue and the site access, should SHA determine a need for that traffic signal, as reflected in Condition No. 4.

Regarding the US 29/Stewart Lane interchange, Staff explained that SHA approved the location, but final design and construction of the interchange has not been funded. Staff advised the Planning Board that the interchange improvements include merging Stewart Lane with relocated Milestone Drive to become a one-way ramp to westbound New Hampshire Avenue. The Applicant's plan allows the road to enter the subdivision at an appropriate grade and curvature. This design accommodates all necessary traffic movements and continues to provide a direct connection from the interchange into the community as recommended in the Master Plan. SHA has advised Staff that the Applicant's proposal is acceptable, and the development will not interfere with or inhibit any options for the interchange, and the proposal is consistent with the Master Plan.

Several neighboring property owners and representatives of community associations and the PTA of Jackson Road Elementary School testified regarding their concerns about traffic and the proposed use of U-turns to access southbound New Hampshire Avenue. The community described this portion of New Hampshire Avenue as already overcrowded and dangerous. They testified that the proposed U-turns will be difficult during rush hour because of traffic congestion and unsafe at other times because of high speeds. They further testified that the increased traffic will be hazardous to children and other pedestrians because the neighborhood does not have sidewalks, commuter vehicles often exceed the speed limit and a very large number of students walk to the schools in this neighborhood because bus service is not available. The residents of Quaint Acres, which is located directly across New Hampshire Avenue, also stated concerns about the increased danger to pedestrians crossing New Hampshire Avenue to access school buses, the library, public transportation and Martin Luther King Park.

Environmental Guidelines and Forest Conservation

At the public hearing, Staff testified that the proposed Preliminary Plan is in compliance with the Planning Board Environmental Guidelines and the Montgomery County Forest Conservation Law. Staff explained that there are no minimum requirements for on-site forest retention. The conservation thresholds contained in the State and County forest conservation laws are goals for on-site forest retention. Staff further explained that the appropriate amount of on-site preservation is determined as part of the review of a development project and its forest conservation plan, which takes into consideration site-specific conditions including: the zoning; Master Plan recommendations; the proposed use; the minimum area required for development; the location, configuration, age and character of on-site forest and tree stands; the relationship to any off-site forest areas; other natural features and possible road access points for the site. Eighteen of the site's 18.5 acres are forested; 16.3 acres will be cleared. Less than two of the 7.6 acres required to be re-forested will be located on-site. In addition, some landscaping trees will be credited toward reforestation, as allowed in the forest conservation law.

Staff found that the Master Plan recommendation for single-family, detached residential development greatly limited the ability to retain forest on the site. Moreover, some disturbance of

the intermittent stream channel and associated buffer area, clearing and loss of trees in the northwestern portion of the site is unavoidable for access, stormwater management and a sewer connection. Staff explained that the northwestern portion of the site is classified as Priority I forest for forest preservation because it contains the remnant of a headwater stream, the associated buffer and a concentration of large trees. Staff testified that the value of the stream channel and its buffer has been diminished by the use of an enclosed storm drain system in the adjoining subdivisions. The stream channel is an isolated section that is no longer connected to and is significantly separated from other natural components of the Paint Branch ecosystem. The remaining natural stream is located near Paint Branch Stream Valley Park, approximately 3,000 feet from the subject property.

A sewer connection must also be located in this area to connect to the existing sewer line in Kathryn Road. Staff explained that the proposed location of the stormwater management facility within currently forested area will most effectively and efficiently (1) control stormwater runoff from the proposed development; and (2) maintain existing, and perhaps reduce water runoff levels to adjoining houses, many of which currently experience water drainage problems. Therefore, Staff concluded that the proposed disturbance is necessary and appropriate. In addition, Staff compared forest conservation under the cluster and standard plans for the site and found that the cluster plan provides more on-site forest preservation, tree save and tree planting areas. Staff also noted that the cluster plan locates the forest-save areas on common open space, which allows more effective long-term maintenance and enforcement when compared with forest save areas located on private lots on a standard plan.

The Applicant testified that it could not provide all reforestation on site because of the Master Plan recommendation for a high-density detached single-family housing zone.

Stormwater Management

Staff testified that the proposed stormwater management plan for the site is designed to maximize the capture of surface water runoff from the site, avoid exacerbation of existing runoff problems and possibly improve existing conditions by reducing stormwater runoff and associated water drainage problems on adjoining lots. On-site stormwater management controls include a dry pond for quantity control, a sand filter for quality control, and a network of small earth berms, swales and yard inlets on lots parallel to the northern and eastern property lines to convey runoff to the facility and away from existing houses. The yard inlets will be located within a stormwater management easement to allow County repair or maintenance, if necessary. The dry pond and sand filter are located in the northwestern corner of the site, which is the low point and the most effective and efficient location. The pond will be excavated and the land along the property line next to the stormwater management facility will be planted with a double row of evergreens for screening. Stormwater leaving the facility will be conveyed through an enclosed pipe to the existing storm drain system in the unimproved Hedge Road right-of-way. The stormwater management concept and dam breach analysis were approved by MCDPS on December 3, 1998.

The Applicant testified that the most significant concern expressed by the neighbors at its initial meeting with the North White Oak Civic Association was that development of the subject

property would exacerbate adjacent homeowners' existing stormwater drainage problems. To address the concerns, the Applicant based the site design on controlling the maximum amount of runoff possible. Based on information obtained through borings, monitoring wells and interviews with adjacent residents, the Applicant and MCDPS determined that the maximum amount of runoff could be controlled by locating the stormwater management pond as close to the unimproved Hedge Road right-of-way as possible. The Applicant further testified that the proposed stormwater management concept will effectively control most of the stormwater runoff from the site.

Several neighbors testified regarding their concerns about stormwater runoff. They explained that, because of the steep hill, water from the subject property floods neighboring yards and streets. They further explained that the neighborhood stormwater drainage system has insufficient capacity and the few collection drains already overflow and pond for several days after heavy storms. The neighbors are concerned that the removal of much of the existing forest, the increased impervious surfaces and the regrading on the site will aggravate the runoff problems.

FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that: (1) the proposed lots are appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated residential use; (2) the proposed lots will abut public roads; (3) the Preliminary Plan meets the development standards of the R-90 Zone; (4) the Preliminary Plan is in accordance with the Master Plan; and (5) the site is adequately served by public facilities under the standards imposed by the FY99 Annual Growth Policy and the Pay-and-Go provisions. The Planning Board further finds that development under the cluster method is appropriate for the subject property and best addresses the goals of stormwater management, forest preservation and buffering on the site. In light of the Master Plan recommendations highlighting the need to protect the Paint Branch watershed and to meet the goals of the cluster zone (i.e., to preserve trees), the Board further finds that six acres of existing forest that otherwise might be developed must be protected. This requirement is in lieu of the standard off-site reforestation requirement (which allows an applicant to plant young trees on vacant land as a replacement measure). In addition, the Planning Board finds that the proposed conditions, as modified, will ensure the appropriate use of the subject property, and adequate access and road improvements, forest conservation measures, stormwater management and screening.

Regarding the proposed road configuration and improvements, the Planning Board accepts Staff's recommendation that the proposed access to New Hampshire Avenue be supplemented with a second access to Milestone Drive. The Board accepts Applicant's proffer to secure the off-site easements necessary to achieve this access. The Board also accepts Applicant's proffer to escrow funds for a traffic signal at the intersection of the site access road, Quaint Acres Drive, and New Hampshire Avenue, as detailed in its letter requesting reconsideration of the original preliminary plan approval.

Regarding the conflicting goals of stormwater management and forest conservation, both of which are important to the adjoining and future residents and the whole community, the Planning

Board accepts the findings of Staff and MCDPS that the proposed location for the stormwater management pond would best mitigate existing runoff problems on adjoining properties and provide effective stormwater management for the subject site. The Planning Board also accepts Staff's finding that some disturbance of the stream valley and buffer and loss of trees in the northwestern portion of the site would be unavoidable even if the pond were relocated. Moreover, the Planning Board finds that relocating the pond would result in additional tree loss and replanting, decrease the number of lots, and increase the dam breach hazard potential. The Planning Board finds that the Applicant's compliance with Condition No. 2 will ensure that forest conservation requirements are met. Condition #2 requires compliance with a final Forest Conservation Plan ("FCP") in accordance with the standards of the Forest Conservation Law, including the preservation of six acres of existing forest, in the Paint Branch watershed, that otherwise would be subject to development. On-site forest area will be protected by a Category I Conservation Easement. Condition #2 also provides for the delineation of the conservation easements on the record plats. Condition #6 requires that the homeowners' association ("HOA") documents describe the restrictions that apply to all common open space and conservation easement areas. The Planning Board therefore adopts Condition Nos. 2 and 6.

The Planning Board further finds that the stormwater management plan and the conditions of the stormwater management concept approval are adequate to protect adjoining properties. The Planning Board accepts MCDPS' determination that the Stormwater Management Concept meets MCDPS' standards and finds that the subject application meets all applicable stormwater management requirements. The Planning Board further finds that the proposed 50-foot wide tree-save and planting area will provide sufficient buffering between the proposed use and the existing houses to the north and east. Finally, the Planning Board finds that Condition Nos. 7 and 8 will ensure notice to future homeowners of the forest conservation provisions and potential US 29/Stewart Lane interchange improvements. Therefore, the Planning Board adopts Staff's conditions, as modified.

CONCLUSION

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-98096, as modified by the Applicant, to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-98096, as modified by the Applicant, pursuant to the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval subject to the following conditions:

1) Prior to recording of plats, Applicant to enter into an Adequate Public Facilities agreement (APF) with the Planning Board to limit development to a maximum of forty-nine single family detached dwelling units, and to pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permits, as provided by County law.

2) Compliance with the conditions of approval of a final Forest Conservation Plan ("FCP"). The Applicant must meet all FCP conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to, the following:

   a. Before going to record plat, applicant must place six acres of off-site existing forest located within the Paint Branch watershed under a Category I Conservation Easement. The six acres must be located on property that otherwise would be subject to the threat of development (e.g., outside of environmental buffers).

   b. Category I Conservation Easement to be placed over forest preservation and planting areas located on proposed parcels A, B, C, and on lots 8 through 20 (inclusive). Small landscaped areas that are credited in the forest conservation plan (excluding street trees) to be placed in Category II conservation easement. Easements to be shown on record plats.

   c. Forest and tree-save areas to include supplemental planting of trees and shrubs to achieve forest and landscape buffer objectives, specifically including the property line that abuts the library site. Number, size and location of trees and shrubs for supplemental planting to be determined by M-NCPPC staff after initial clearing and grading of site and added to the final FCP.

3) Applicant to submit binding commitments acceptable to legal staff from appropriate representatives of Parcel 725 and Parcel 790, which will provide ultimate access from the Kaufman property to Milestone Drive. Easement acceptable to the Montgomery County Department of Public Works and Transportation (MCDPW&T) or dedication for 60 feet right-of-way across Malasky Property (Parcel 725) and to connect Milestone Drive through the Clark Property (Parcel 790). Coordinate with the Maryland State Highway Administration (MDSHA) and MCDPW&T regarding construction of this additional access. This access road to be constructed and approved/accepted by MCDPW&T prior to the Applicant receiving the twenty-first (21) building permit.

4) Applicant to post a bond in the amount of $100,000 with M-NCPPC, which will expire after five years after the date of issuance, to pay for the installation of a traffic signal at the intersection of New Hampshire Avenue and Heartfield Drive - Quaint Acres Drive should MDSHA determine before the expiration of the bond that the traffic volumes warrant the signal's installation. Bond be posted prior to MCPB release of any building permits.

5) No construction traffic shall enter the site via Heartfield Drive once connection is made to Milestone Drive.

6) Prior to recording of plats, submit Homeowner's Association (HOA) documents for review and approval. HOA documents shall describe the restrictions that apply to all common open space areas, conservation easement areas and stormwater management area.

7) Prior to ratification of any sales contract, owner/developer shall disclose to all prospective home buyers the location and design of the Stewart Lane/Route 29 interchange.

8) Record plat to reference grading easement in the area of Stewart Lane/Route 29 interchange as shown on plan and accepted by MDSHA.

9) Dedication of all rights-of-way to occur simultaneously with or after dedication of right-of-way included in Preliminary Plan 1-98088.

10) Conditions of MCDPS stormwater management approval dated 12-3-98.

11) Terms and conditions of access to be granted by MCDPW&T and MDSHA prior to the release of building permits.

12) All common ingress/egress easements to be referenced on record plats.

13) Other necessary easements.

g:\opinions\kaufman2.pbo

Attachment 5

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760
(301)495-4617

PARK AND PLANNING COMMISSION
RECEIVED
JAN 10 2000
ENVIRONMENTAL PLANNING DIVISION

APPROVED

MINUTES

The Montgomery County Planning Board met in regular session on Tuesday, September 28, 1999, at 7:35 p.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 10:30 p.m.

Present were Chairman William H. Hussmann, and Commissioners Allison Bryant, Wendy Collins Perdue, and Meredith Wellington. Vice Chairman Arthur Holmes, Jr., was necessarily absent.

ITEM 1. PRELIMINARY PLAN NO. 1-98096 - KAUFMAN PROPERTY; R-90 ZONE; FORTY-NINE (49) LOTS REQUESTED (SINGLE FAMILY DETACHED); 18.5 ACRES; EAST SIDE OF NEW HAMPSHIRE AVENUE (MD 650), APPROXIMATELY 1,400 FEET NORTH OF THE INTERSECTION OF COLUMBIA PIKE (US 29), BEHIND THE WHITE OAK LIBRARY; FAIRLAND - WHITE OAK POLICY AREA

ACTION: Motion of Bryant
Second by Perdue
4-0 (Holmes absent)
Approved staff recommendation to approve subject to conditions, modifying the conditions to require binding agreements securing the right-of-way through intervening properties to Milestone Drive; increased buffering of the Library and additional review of the design of the stormwater management facility with a view to creating a larger buffer area; and six acres of off-site replacement of trees, as stated in the attached Opinion.

In opening remarks, Development Review staff noted that the Board first took action on this preliminary plan in December 1998. Subsequently, the applicant requested reconsideration of a condition placed on the approval of the plan that required the applicant to install a traffic signal at the intersection of the access road and New Hampshire Avenue. In requesting reconsideration, the applicant reported that State Highway Administration will not allow the traffic signal to be installed because it does not meet the warrants for a signal. The Planning Board agreed to reconsider its action, noting that the entire action, rather than just one condition, would be reconsidered. Tonight's hearing is the reconsideration of the preliminary plan. Staff noted that State Highway Administration continues to object to the installation of a traffic signal.

Staff noted that the Planning Board's information packet includes the staff reports and citizen correspondence from the previous hearing and a cover memorandum that highlights the major issues at the previous hearing and conditions placed on the approval of the plan to address those issues. In addition, staff noted that additional correspondence received has been distributed separately.

Staff presented the proposal to create 49 lots under the optional cluster method of development on property in the northwest quadrantof the intersection of US 29 and New Hampshire Avenue, abutting the White Oak Library, as detailed in the staff report. Staff described the surrounding development, pointing out an exhibit GIS map that included a wider area than the maps in the information packets, south past Lockwood Drive and north past Jackson Road. Staff described the surrounding development, noting that the lot sizes in the Springbrook Manor subdivision to the north range from 8,000 to 15,000 square feet, with the abutting lots in the 8,000 to 11,000 square foot range. The lots on Caplinger Court to the east are 10,000 to 13,000 square feet. Staff reported that the proposed lots are comparable in size to the surrounding lots and the house setbacks on the proposed lots are the same or greater than the setbacks on the abutting lots. In addition, there is a daycare facility to the southeast. Pending adjacent development, staff said, includes the Constellation elderly housing and care facility across the access road from the Library, which has an approved special exception and preliminary plan; and the pending Sunrise assisted-living and day care facility to the south at the intersection of US 29 and New Hampshire Avenue.

Staff pointed out various features of the preliminary plan, noting particularly a 50-foot buffer area along the north and east property lines that abut existing homes to address concerns about compatibility. Staff also noted the relocation of two units from the northeast corner of the site to create more open space and tree preservation in that area.

With regard to the access issue, staff pointed out that the applicant is proposing, and has revised the plan to show, an extension of the interior street to provide a second point of access south through two intervening properties to Milestone Drive for access to US 29. That road extension, which will be a 60-foot secondary residential street, will also provide access for the Malasky property, the Sunrise property, and two additional adjoining properties. Staff noted that SHA has reviewed and approved this proposed access in terms of tying into the future Stewart Lane/US 29 interchange.

Concluding, staff briefly reviewed the proposed conditions of approval, noting that condition 4 requires the applicant to post a bond for the future installation of a traffic signal at the intersection of the access road and New Hampshire Avenue, if SHA determines within five years from posting of the bond that the traffic volume warrants a signal. In addition, condition 3 limits building permits to 20 prior to construction of the alternative access to Milestone Drive.

Mr. Steve Kaufman, attorney representing the applicant, introduced Mr. John Clark of the applicant company and Mr. Les Powell, the engineer. He noted for the record that he is no relation to the seller of the subject property. Mr. Kaufman reiterated that SHA has disapproved the installation of the traffic signal required as a condition of the previous approval of the plan,

which is why the applicant requested reconsideration of that condition. The applicant had suggested putting money in escrow to install that signal when it is deemed to be warranted, and is still willing to do so. In addition, he affirmed, the applicant is now proposing the additional access described by staff, and he cited letters in the information packet related to arrangements for crossing the adjoining properties for access to Milestone Drive. Concluding, Mr. Kaufman concurred in the staff recommendation and noted that the applicant has made all the changes to the plan mandated by the previous approval.

Chairman Hussmann raised questions about the alignment of the right-of-way for the future Stewart Lane/US 29 interchange, the impact on the adjoining lots, the tie-in with the proposed new access road, and about whether that access road will have to be closed and regraded when the interchange is built.

Responding, Transportation Planning staff stated that the design of the future interchange is completed enough to ascertain the alignment and a small portion of the Kaufman property will be needed for a grading easement. Development Review staff clarified that the affected lot will still have 55 feet for a rear yard.

Mr. Les Powell, the applicant's engineer, verified that the new access road to the south will tie in to the future interchange at grade and will remain open during construction of the interchange.

The following speakers offered testimony on the proposal: Mr. Neal Fitzpatrick, representing the Audubon Naturalist Society; Mr. Barry Wides, representing the North White Oak Civic Association; Mr. Jim Fary, representing the Sierra Club; Ms. Patricia Brennan, representing the Jackson Road Elementary School Parent-Teachers Association; Mr. Robert Ferraro, representing the Eyes of Paint Branch; and adjacent property owners Ms. Marie Daniele Zartman, Ms. Anne Lucker, Ms. Jane Rising, Mr. Robert Rising, Ms. Kady Burke, Mr. Donald Krizek, Mr. Charles Campbell, Mr. Robert Lynn, Ms. Maria Germany, Mr. Mark Abbruzzese, and Ms. Holly Berardi. The speakers, many of whom distributed written testimony and material, raised concerns about exacerbating existing traffic problems on New Hampshire Avenue, particularly related to U-turns; increased traffic on neighborhood streets with no sidewalks and the safety of children walking to school; the need for a traffic signal at the intersection of the access road and New Hampshire Avenue; the need for guarantees that the alternate access to Milestone Drive will actually be constructed; preservation of all or more of the mature forest on the subject property, including the area abutting the Library property, by decreasing the size or number of lots and increasing to 100 feet the buffer next to abutting homes; the need for protection against increased noise and pollution from US 29 and New Hampshire Avenue; problems with increased flooding caused by loss of trees; and the location of the stormwater management facility too close to abutting homes.

In addition, Mr. Kevin Fay, representing the abutting property owner Dora Malasky, offered testimony about the proposed access through the Malasky property, noting that the property owner supports it, but the property is under contract for sale; any access easement, he stated, will have to be granted by the purchaser of the property.

In rebuttal, Mr. Kaufman addressed the issue of the right-of-way first. He noted that the applicant has an agreement with the contract purchaser of the Malasky property for the right-of-way, and he said that the applicant will accept a condition that the right-of-way must be secured prior to release of building permits. In addition, Mr. Kaufman noted that such an agreement also exists with the Sunrise property owners and the access will be built whether or not the anticipated interchange is ever constructed.

With regard to tree preservation, Mr. Kaufman cited the staff report and the previous Board opinion, which state that the proposal meets all requirements and, in fact, saves more than twice the number of trees that would be saved under standard development of the property. He added that the proposed density is 60 percent of the possible density under the current zoning.

In terms of stormwater management, Mr. Kaufman stated that the proposed location is the best place on the property for the facility and the existing situation will be significantly improved.

Mr. Les Powell, the applicant's engineer, elaborated on those issues. He noted that the tree buffer area around the perimeter has been increased from 35 to 50 feet and there will be significant replanting in the pond area in addition to other trees being saved on the site. Mr. Powell displayed a cross-section exhibit of the stormwater management pond and discussed the types of planting to be used. Responding to questions from Commissioner Wellington, Mr. Powell pointed out the area that was identified as a priority one forest area and he noted that the priority one status will be lost when the road is constructed.

Responding to questions from Chairman Hussmann, Environmental Planning staff elaborated on the issue of the priority one forest area, verifying that the area is technically priority one because there is the remnant of an intermittent stream and a buffer area. However, staff stated that the construction of the road and installation of the sewer line will fragment the priority one area. Staff also said that if the stormwater management pond is moved to another location on the site, a dam would have to be created and there would be the possibility of dam breach. In addition, more trees would be lost.

Mr. Kaufman contended that the site has been carefully engineered and reviewed, with efforts to balance many different priorities and meet all the requirements. He reiterated that the proposed location for the stormwater management pond is the safest and best place for that facility.

Chairman Hussmann raised concern about clearing the priority one area. He also noted that the area abuts the Library, and he questioned whether there will be adequate buffering. He suggested that the six lots adjacent to that area should be deleted to address the environmental issues and provide greater buffering.

Mr. Kaufman suggested that, rather than reducing the density, it would be more meaningful to the Paint Branch watershed to increase the quality and size of the plantings, phase the grading, and provide a significant off-site preservation or reforestation. Mr. Kaufman said that

the applicant will work with the community about screening for the stormwater pond and the Library. He also suggested that the fact that the property owner previously donated the land for the Library should be taken into consideration.

Mr. John Clark, of the applicant company, noted that they have been working with County Department of Permitting Services (DPS) with regard to where trees can be planted in the area around the stormwater management pond.

Mr. Dave O'Brien, one of the applicant's engineers, provided additional information about the phasing of clearing and grading and about the stormwater management facility. He noted that the Maryland Department of the Environment and the Corps of Engineers have reviewed the proposal and its environmental impact and have granted permission to fill in the intermittent stream area.

At Mr. Kaufman's request, Mr. Powell discussed the connection of the second access to Milestone Drive and verified that access will be provided to US 29 whether or not the future interchange is constructed. Mr. Kaufman reiterated that there is no objection to a condition requiring evidence that the right-of-way is available prior to release of building permits and he added that if additional tree preservation if desired, it can be accomplished in alternate ways rather than redesigning the plan and deleting lots.

There followed additional discussion about the right-of-way through the adjoining properties to the south for the access to Milestone Drive. It was noted that the developers of the Sunshine project do not yet own the property and that project must come before the Board for approval, at which time the alignment through that property will be finalized. It was agreed that a condition should be added that requires the applicant to secure binding letters of agreement demonstrating that the right-of-way will be available for the applicant to construct the road prior to release of the first building permit.

Returning to the forest conservation issues, Chairman Hussmann said he is not convinced that a maximum effort has been made to avoid clearing the priority one forest area. He reiterated the view that if the first five or six lots on the north side of the street were deleted the stormwater management facility could be moved farther from the Library, the priority one area could be retained, and the buffering for the Library increased.

There followed additional discussion of possible relocation of the stormwater management pond. Environmental Planning staff suggested that the sand filter then also would have to be moved into the conservation buffer and, therefore, additional trees in that area would be lost. In addition, staff noted that moving the pond from the lowest point on the property would likely cause less drainage into the pond and more runoff to existing homes.

In response to the Chairman's concerns about buffering for the Library and Commissioner Wellington's questions about a letter in the information packet with concerns from the Library, Mr. Clark provided information about various negotiations with the Library related to screening and access. He noted that an offer was made to the Library to provide a connection to

the interior road for access through the subject site to Milestone Drive, and to provide fencing and plantings on the sloped area next to the parking lot. In addition, he noted that the applicant secured permission to construct a closed-section road into the site, which will save trees adjacent to the Library. Mr. Clark said he will work with the Library and staff to ensure that there is adequate buffering, and Mr. Kaufman suggested a new condition to that effect.

Commissioner Perdue noted that it is unfortunate that the low point of the site is located in that area and said she is convinced by the technical staff testimony that the proposed location is the best for the stormwater management facility and moving it will create other complications. She noted, however, that she would like to see stronger language about better buffering for the Library. In addition, Commissioner Perdue expressed the view that it is not irrelevant that the owner of the property donated the land for the Library and for that reason, because it is a close call, she is willing to shift the equity enough to allow this to move forward with appropriate buffering, rather than penalizing the property owner for the impact on the Library. She also supported requiring evidence of a binding agreement for the right-of-way through both adjoining properties to Milestone Drive.

Commissioner Wellington shared the Chairman's concerns about the location of the stormwater management facility, the priority one area, and buffering for the Library.

Commissioner Perdue raised the question of additional off-site tree save areas, to which Mr. Kaufman responded that the applicant is willing to consider off-site tree save in addition to looking again at the stormwater management facility design to see if additional buffer space can be created.

In making the motion, Commissioner Bryant included modifications to the conditions to address the issues of guaranteeing the right-of-way to Milestone Drive, providing increased buffering for the Library and reviewing the design of the stormwater management facility with a view to creating a greater buffer area, and requiring off-site replacement of trees.

Staff offered wording to insert at the beginning of condition 3 to address the requirement for evidence of right-of-way to Milestone Drive, which was accepted by Commissioner Bryant.

In seconding the motion, Commissioner Perdue clarified her understanding of the element of the motion related to review of the stormwater management facility, noting that she expects it will not create a significant amount of increased buffer, but may create some increase.

There followed some discussion of the proposed off-site planting in the Paint Branch watershed and whether the requirement should be for new plantings or preservation of existing trees through creation of a conservation easement.

Mr. Kaufman spoke in support of additional plantings, although Chairman Hussmann noted that there are often problems with retaining new plantings.

Staff supported preserving existing trees, particularly in an area that is likely to be threatened by development, although staff noted that a survey has not been conducted to identify potential tree-save areas. Staff suggested a combination of new plantings and preservation of existing trees.

Mr. Kaufman suggested that if there has been a problem with retention of new trees, the applicant could plant more mature stock and guarantee that it will be replaced if it does not survive.

Chairman Hussmann suggested that creating six acres of tree preservation would likely have greater significance than new plantings in the Paint Branch watershed.

The maker and seconder of the motion accepted that proposal to require six acres of tree preservation in an area subject to the threat of development, rather than additional off-site tree plantings.

In conclusion, the Chairman said that he would rather have more on-site tree preservation to address the community concerns, but he acknowledged that the off-site tree preservation will have significance for the watershed. He added that the plan is much improved with the second point of access.

There being no further business, the meeting was adjourned at 10:30 p.m. The next regular meeting of the Planning Board will be held Thursday, September 30, 1999, at 12:00 p.m. in the Montgomery Regional Office in Silver Spring, Maryland.

Ellyn Dye
Technical Writer

Agenda for Montgomery County Planning Board Meeting
Tuesday, September 28, 1999, 7:30 P.M.

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

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1. **Preliminary Plan No. 1-98096 - Kaufman Property**

R-90 Zone; Forty-Nine (49) Lots Requested (Single Family Detached); 18.5 Acres
Community Sewer and Community Water

East Side of New Hampshire Avenue (MD 650), Approximately 1,400 Feet North of the Intersection of Columbia Pike (MD 29), Behind the White Oak Library

Policy Area: Fairland - White Oak

APPLICANT: Elm Street Development
ENGINEER: Charles P. Johnson and Associates
ATTORNEY: Linowes and Blocher

Staff Recommendation: See Conditions of Approval Enumerated in Staff Report.

BOARD ACTION

Motion:

Vote:
Yea:

Nay:

Other:

Action: **SEE MINUTES.**

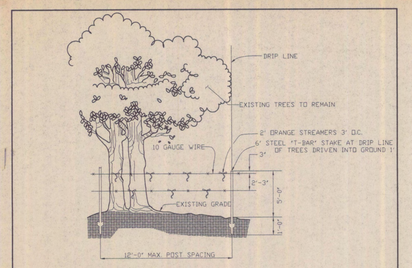
Attachment 6

INSPECTION SCHEDULE –SEQUENCE FOR SITE DEVELOPEMENT		
M-NCPPC APPROVAL SIGNATURE	DATE	TASK PERFORMED
		PRE-CONSTRUCTION MEASURES
		IN PLACE BEFORE CLEARING & GRADING
		POST CONSTRUCTION PROTECTION
		PRIOR TO PLANTING (REFORESTATION)
		AFTER REFORESTATION– BEGINNING OF THE 2 YEAR MAINTENANCE PERIOD
		AFTER 2 YEAR MAINTENANCE
		MUST MEET SURVIVABILITY RATE

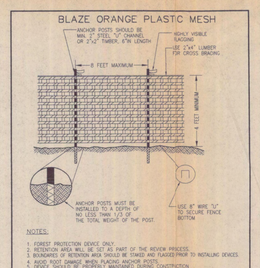
LEGEND

- NATIVE SHRUBS RECOMMENDED
  OPTIONAL SPECIES INCLUDE AMERICAN HOLLY, HEMLOCK
  LELAND CYPRESS, VARIOUS SPRUCE, FIR, AND PINES
- NATIVE UNDERSTORY TREES RECOMMENDED
  OPTIONAL SPECIES INCLUDE DOGWOOD, SERVICEBERRY,
  RED BUD, WINTERBERRY, BLACK GUM, AND SASSAFRAS
- NATIVE SHADE TREES RECOMMENDED
  ALTERNATIVES INCLUDE VARIOUS DECIDUOUS HARDWOODS
  INCLUDING MAPLE, ASH, OAK, HICKORY, POPLAR, ETC.

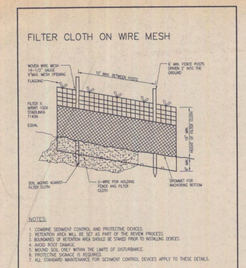
- TREE PROTECTION OR REFORESTATION SIGN
- REFORESTATION AREAS 1" STOCK (NATIVE SPECIES ONLY)
- FOREST TO BE RETAINED
- SUPPLEMENTAL PLANTING LANDSCAPE STOCK
- TREE PROTECTION FENCE & SEDIMENT CONTROL
- CRITICAL ROOT ZONES OF TREES 24" OR GREATER



TREE PROTECTION DETAIL
N.T.S.



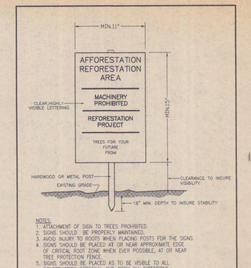
TREE PROTECTION FENCING



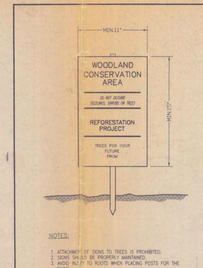
NOTES:
1. FOREST PROTECTION DEVICE ONLY
2. REFORESTATION AREA WILL BE SET AS PART OF THE REVIEW PROCESS.
3. BOUNDARIES OF RETENTION AREA SHOULD BE STAKED AND FLAGGED PRIOR TO INSTALLING DEVICES.
4. AVOID ROOT DAMAGE WHEN PLACING ANCHOR POSTS.
5. DEVICE SHOULD BE PROPERLY MAINTAINED DURING CONSTRUCTION
6. PROTECTIVE SIGNAGE IS ALSO REQUIRED.

SOURCE: PRINCE GEORGES COUNTY-MARYLAND-WASHINGTON CONSERVATION MANUAL ADAPTED FROM MARYLAND STATE FOREST CONSERVATION MANUAL

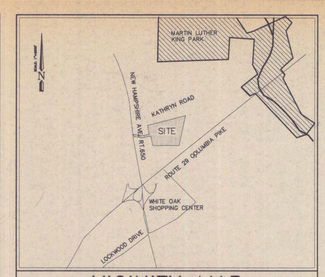
TREE PROTECTION AND SEDIMENT CONTROL



NOTES:
1. ATTACHMENT OF SIGN TO TREES PROHIBITED.
2. SIGNS SHOULD BE PROPERLY MAINTAINED.
3. AVOID INJURY TO ROOTS WHEN PLACING POSTS FOR THE SIGNS.
4. SIGNS SHOULD BE PLACED AT OR NEAR APPROXIMATE EDGE OF CRITICAL ROOT ZONE WHEN EVER POSSIBLE, AT OR NEAR PROTECTIVE FENCING.
5. SIGNS SHOULD BE PLACED AS TO BE VISIBLE TO ALL CONSTRUCTION PERSONNEL AND FROM ALL DIRECTIONS.
6. AT A MINIMUM, THE INFORMATION INDICATED FOR EACH TYPE OF SIGN ABOVE SHALL BE SHOWN FOR EACH AREA BEING PROTECTED.
7. SEE PAGE 28 IN STATE F.C.A. MANUAL FOR OTHER SIGN INFORMATION.



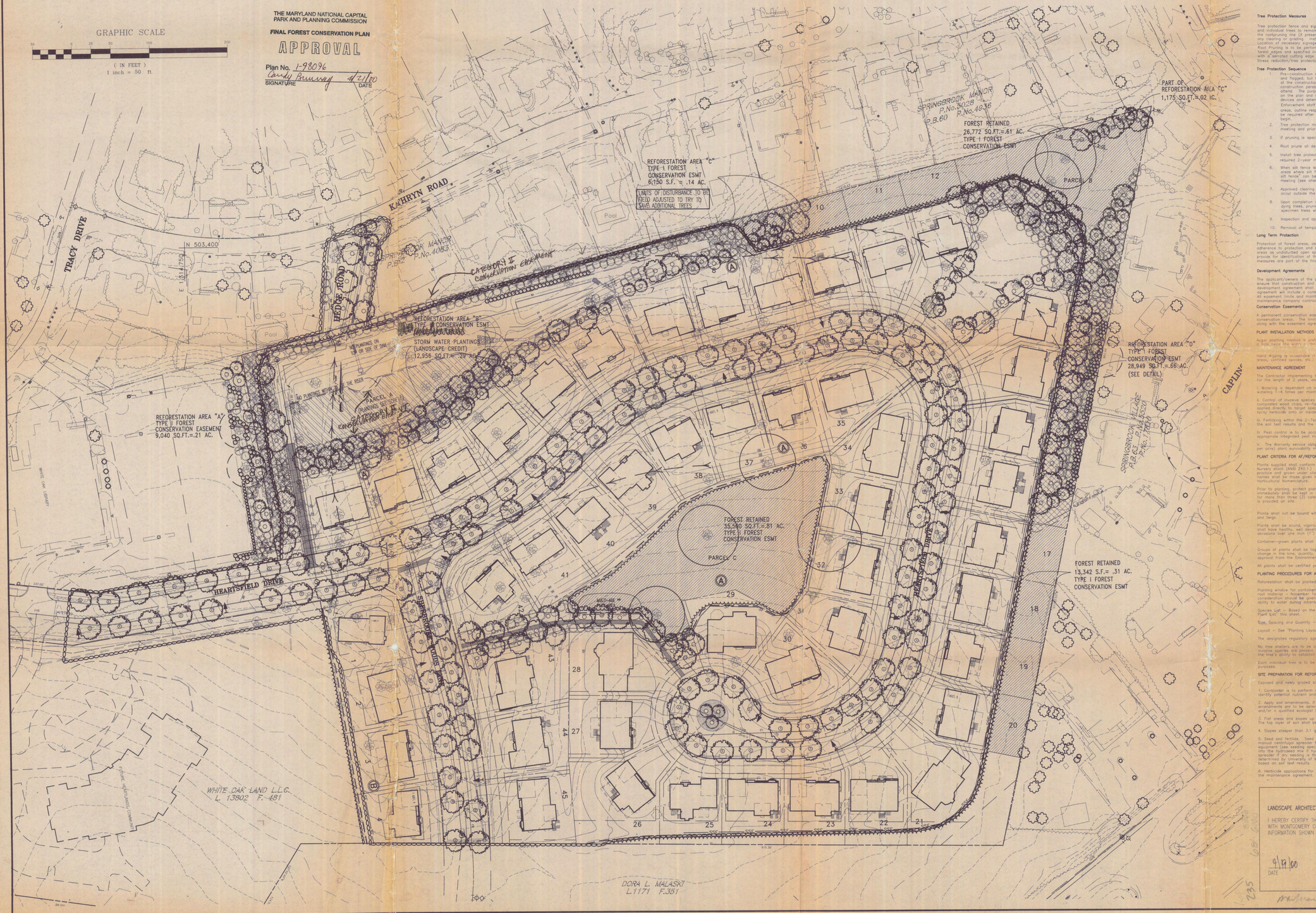
NOTES:
1. ATTACHMENT OF SIGNS TO TREES IS PROHIBITED.
2. SIGNS SHOULD BE PROPERLY MAINTAINED.
3. AVOID INJURY TO ROOTS WHEN PLACING POSTS FOR THE SIGNS.



VICINITY MAP
MONTGOMERY COUNTY
1"=2000'

GRAPHIC SCALE
50 0 25 50 100 200
(IN FEET)
1 inch = 50 ft.

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
FINAL FOREST CONSERVATION PLAN
APPROVAL
Plan No. 1-98096
Cindy Brunaugh 4/21/00
SIGNATURE DATE



Tree Protection Measures

Tree protection fence and signs are to be installed along the perimeter of existing forest and individual trees to remain. It is to be installed outside of the critical root zone of the trees and any clearing, grading or construction activity that is necessary for the area is to be installed before any clearing or grading activities occur. Minor encroachment of the zone is however, permissible. Location of necessary signage will be determined during the pre-construction meeting.
Root Pruning is to be performed as per site plan, typically outside the critical root zone of specified forest edges and specified individual trees to remain. It is to be accomplished by a vibratory plow with a serrated cutting edge or a root cutter with a 36" wheel, to a depth of 8".
Stress reduction/tree protection measures for individual trees will be completed before grading.

Tree Protection Sequence

1. Pre-construction meeting: After the boundaries of the limits of disturbance have been staked and flagged, but before any disturbance has taken place on-site, a pre-construction meeting at the construction site shall be held. The developer, contractor or project manager, all construction personnel, contracted tree professional and appropriate local inspectors shall attend. The purpose of the meeting will be to field verify the limits of clearing as specified on the plan and make any necessary adjustments. They will authorize installation of protection devices and determine location and quantity of necessary signage.
   Enforcement staff will also discuss the value and importance of the preservation areas, outline responsibilities and discuss violation penalties. An additional inspection may be required after installation of the protection devices before construction is authorized to begin.
2. Tree protection measures and devices shall be implemented after the pre-construction meeting and prior to any disturbance or clearing activity including erosion control devices.
3. If pruning is specified, do so before installing fence to avoid damage to fencing.
4. Root prune all designated areas.
5. Install tree protection fence and signs (see detail this page). To be maintained through the required 2-year maintenance period.
6. When silt fence is specified, it should be positioned outside of the tree protection fence. In areas where silt fence and tree protection fence are to be used a "combination tree protection silt fence" can be used instead. Final determination can be made at the pre-construction meeting (see alternative fence detail this page).
7. Approved clearing will take place after all tree protection measures are completed and will occur outside the tree protection fence.
8. Upon completion of construction, corrective measures may include: Removal of dead or dying trees, pruning of dead or declining limbs, soil aeration, fertilization, watering of specimen trees when specified, and clean-up of retention areas.
9. Inspection and approval by regulatory agency for Montgomery County.
10. Removal of temporary protective measures, such as tree protection fence and signs.

Long Term Protection

Protection of forest areas, as established through the forest conservation process, relies upon adherence to protection and maintenance standards during construction and preservation of these areas as undisturbed open space after construction to ensure their long term survival. In order to provide for identification of these measures and ensure that they are carried out, the following measures are part of the final forest conservation plan approval process.

Development Agreements

The applicant/owners of the property shall enter into a binding agreement with the MNCPPC to ensure that construction and development meet the appropriate standards for tree conservation. This development agreement shall be submitted for approval with the record plat submission. The agreement will include a construction timetable with phasing and tree planting schedules.
All easement limits and maintenance agreements should be made known and understood by the maintenance company contracted by Erin Street Development. (See Inspection Schedule)

Conservation Easements

A permanent conservation easement will be established to prohibit actions compromising the tree conservation areas. The limits of the easement shall be shown on the record plat, and recorded, along with the easement agreement.

PLANT INSTALLATION METHODS

Auger planting method is preferred for level areas, as it creates better soil porosity by rotating a hole/bore hole with a tree auger and is producing less soil compaction.

Hand digging is acceptable in situations where the auger cannot be applied (slopes, wet areas, confined spaces, etc.)

MAINTENANCE AGREEMENT

The Contractor implementing the reforestation plan is subject to a binding maintenance agreement for the length of 2 years, and is responsible for the following:

i. Watering is dependent on rainfall and the amount and frequency will vary. Plants will need watering 1-4 times per month depending on rainfall, time of season, and installation timing.

ii. Control of invasive species will be achieved by annually mulching individual trees with composted wood chips, re-flagging them as needed and spot applications of herbicide "Round-up" applied directly to target species competing with the reforestation plants. Be careful not to spray herbicide onto or inside the critical root zone of desirable plants.

iii. Fertilizing within the 2-Year maintenance period may not be necessary and will be based on the soil test results and the UMPC Ext. Service Recommendations.

iv. Pest-control is to be accomplished by identifying insect and disease, problems and applying appropriate integrated pest management practices as needed.

v. The Warranty service obligations are such that at the end of the 2-year period, (at 100 plants per acre) plant survivability must be above 75%.

PLANT CRITERIA FOR AF/REFORESTATION

Plants supplied shall conform in all respects to the current edition of the American Standard for Nursery stock (ANSI Z60.1.) They shall be nursery grown in accordance with good horticultural practice and grown under conditions similar to those in the locality of the project. Plant names shall be those given in the edition of Standard Plant Names. American Joint Committee on Horticultural Nomenclature.

Prior to planting, protect plants at all times from sun and drying winds. Plants that cannot be planted immediately shall be kept in the shade, and kept well watered. Plants shall not remain unplanted for more than three (3) calendar days unless adequate irrigation and protection from the elements is provided on site.

Plants shall not be bound with wire or rope at any time so as to damage the bark or break branches and twigs.

Plants shall be sound, vigorous and healthy. They shall be free of disease and insect pests and shall have healthy, well developed root systems. Trunks and branches shall be free of cuts and abrasions over one inch (1") in any dimension.

Container-grown plants shall not have roots that encircle the rootball.

Groups of plants shall be tagged with labels identifying the botanical names of the plants. No change in the kind, quantity, quality or size of plants specified shall be made without the written approval from the Environmental Consultant for the project.

All plants shall be certified pest-free by the Department of Agriculture of the state of origin.

PLANTING PROCEDURES FOR AF/REFORESTATION

Reforestation shall be planted after final grading has been completed.

Planting window for containerized or B&B material only – March 1st – December 30th. For bare root material – November 1st – April 15th. When planting in June, July and August, careful consideration should be given to weather conditions (drought, high temperatures, etc.) and the ability to water during adverse weather conditions.

Species List – Based on the native forest association for each individual site, see "Reforestation Plant List" this sheet.

Size, Spacing and Quantity – See "Reforestation Plant List" table this sheet.

Layout – See "Planting Layout" this sheet. The layout methodology applies to each individual zone.

The designated regulatory agency shall inspect site.

No tree shelters are to be used unless excessive deer browse is evident or adjacent infestations of invasive species are present. Tree shelters must have native color, resists bird nesting and attack, and the tree's ability to establish root systems which are accumulate to the elements such as wind, rain, etc.

Each individual tree is to be flagged with fluorescent flagging tape for maintenance and monitoring purposes.

SITE PREPARATION FOR REFORESTATION AREAS

Exposed and newly graded soils

1. Contractor is to perform soil tests in proposed planting areas prior to site preparation, to identify potential nutrient and pH deficiencies.

2. Apply soil amendments, if specifies, prior to tilling, disking, raking, final grading, etc. Soil amendments are to be determined by the University of Maryland Cooperative Extension Service and/or a qualified ecologist based on soil test results.

3. Flat areas and slopes up to 3:1 grade shall be loose and friable to a depth of at least 6 inches. The top layer of soil shall be loosened by raking, discing or other acceptable means before seeding.

4. Slopes steeper than 3:1 grade shall have the top 1–3 inches of soil loose and friable before seeding.

5. Seed and fertilize. Seed with a hydro-seeder for sites larger than one half acre. Dry seed with a manual centrifugal spreader for sites less than one half acre or that are inaccessible to hydroseeding equipment. Seed and fertilizer may be applied in two separate operations or may be incorporated into the hydroseed mix. Hydroseeding is performed as it is to be applied with a manual centrifugal spreader if dry seeding is the method used. Fertilizer type, analysis, and application rate to be determined by University of Maryland Cooperative Extension Service and or a qualified Ecologist based on soil test results.

6. Herbicide applications for the control of invasive species after planting will be done as part of the maintenance agreement.

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAN IS PREPARED IN ACCORDANCE WITH MONTGOMERY COUNTY FOREST CONSERVATION REGULATIONS. INFORMATION SHOWN IS TAKEN FROM AVAILABLE PLANS AND RECORDS.

4/19/00
DATE

LESLEY POWELL
REGISTERED LANDSCAPE ARCHITECT
MD. #596

STATE OF MARYLAND – LESLEY POWELL – No. 596 – REGISTERED LANDSCAPE ARCHITECT

Reforestation: A = 0.21, B = 0.32, C = 0.14, D = 0.02, E = 0.66

Sheet 2 of sheet casing 5/11/00

Charles P. Johnson & Associates, Inc.
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS
1751 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
Phone:(301)434-7000 E-mail:mail@cpja.com Fax:(301)434-1594
FREDERICK, MD FAIRFAX, VA

FINAL FOREST CONSERVATION PLAN
PARCEL 626
KAUFMAN PROPERTY
COLESVILLE (5th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

FSD #4-98251
PP #1-98096

CLIENT : ELM STREET DEVELOPMENT
6320 ELM STREET SUITE 201
McLEAN, VA 22101

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UPDATES/REVISIONS :
10/6/99 ADDRESS, PLANNING BOARD COMMENTS
12/16/99 ADDRESS, PLANNING BOARD COMMENTS
4/19/00 ADDRESS, AM & PM COUNTY COMMENTS

DESIGN	LWP
DRAFT	GCL
APPROVED	
DATE	JULY 99'
SCALE	1"=50'

SHEET 1 OF 3
FILE NO. 28-055-22 D

Plotted: April 19, 2000
Acad Dwg: 22-00S1/22-00/44-099/46-099/53-00/PDS/21-00

TREE PROTECTION OR REFORESTATION SIGN

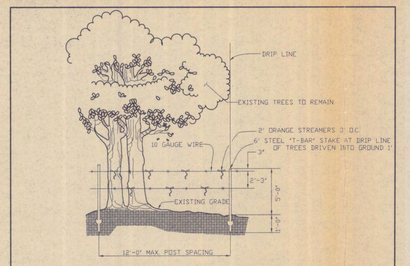
REFORESTATION AREAS 1" STOCK (NATIVE SPECIES ONLY)

FOREST TO BE RETAINED

SUPPLEMENTAL PLANTING LANDSCAPE STOCK

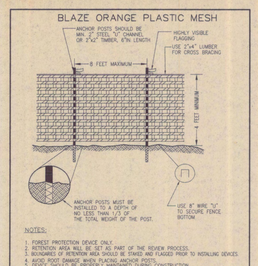
TREE PROTECTION FENCE & SEDIMENT CONTROL

CRITICAL ROOT ZONES OF TREES 24" OR GREATER

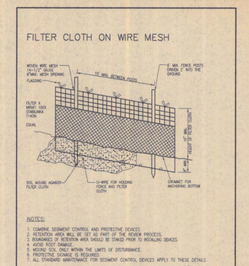


TREE PROTECTION DETAIL

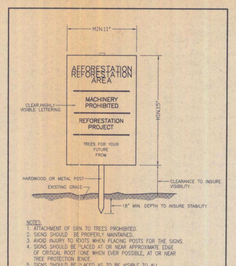
N.T.S.

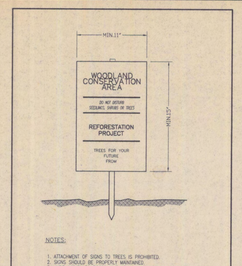


TREE PROTECTION FENCING (2)



TREE PROTECTION AND SEDIMENT CONTROL





SIGNAGE

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAN IS PREPARED IN ACCORDANCE WITH MONTGOMERY COUNTY FOREST CONSERVATION REGULATIONS. INFORMATION SHOWN IS TAKEN FROM AVAILABLE PLANS AND RECORDS.

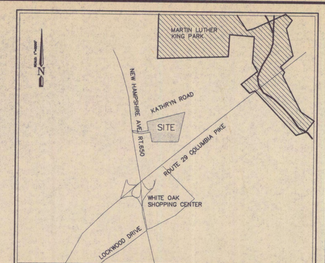
4/19/00
DATE

LESLEY POWELL
REGISTERED LANDSCAPE ARCHITECT
MD# 596

STATE OF MARYLAND — LESLEY POWELL — No. 596 — REGISTERED LANDSCAPE ARCHITECT

GRAPHIC SCALE

(IN FEET)
1 inch = 20 ft.



VICINITY MAP
MONTGOMERY COUNTY
1"=2000'

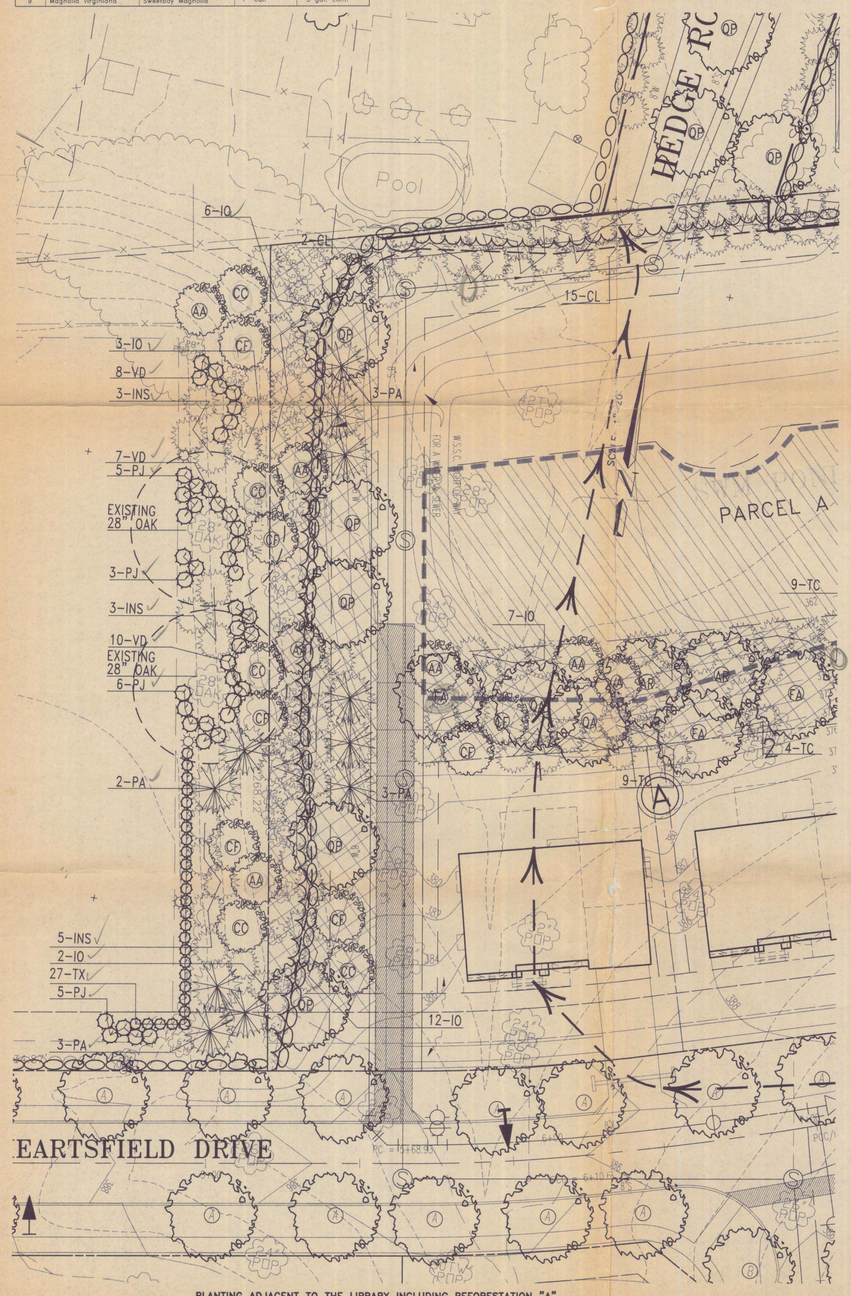
STORM WATER MANAGEMENT POND PLANTINGS

REFORESTATION (PARCEL A) — .29 acres @ 200 plants / acre = 58 trees plus 36 shrubs				
QTY.	SCIENTIFIC NAME	COMMON NAME	SIZE/SPACING	ROOT COND.
10	Quercus phellos	Willow Oak	1" caliper	5 gal. cont.
9	Amelanchier arborea	Common Shadbush	1" caliper	5 gal. cont.
4	Ilex glabra	Inkberry holly	30"-36" high	3 gal. cont.
5	Cephalanthus occidentalis	Buttonbush	30"-36" high	3 gal. cont.
9	Cornus amomum	Silky Dogwood	30"-36" high	3 gal. cont.
9	Ilex verticillata	Winterberry	42"-48" high	B&B
10	Liquidambar styraciflua	Sweet gum	1" caliper	B&B
10	Nyssa sylvatica	Black gum	1" caliper	B&B
10	Fraxinus pennsylvatica	Green Ash	1" caliper	B&B
9	Viburnum dentatum	Southern Arrowwood	30"-36" high	3 gal. cont.
9	Magnolia virginiana	Sweetbay Magnolia	1" cal.	5 gal. cont.

LANDSCAPE PLANTING SCHEDULE — ADJACENT TO LIBRARY

SYM.	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWARDS LANDSCAPING
CF	3	Cornus florida	Flowering Dogwood	6'-8' high. B&B	Not Applicable-spd. 15' o.c.
IO	5	Ilex opaca	American Holly	6'-8' high. B&B	Not Applicable-spd. 12' o.c.
INS	11	Ilex x meserveae 'Nellie Stevens'	Nellie Stevens Holly	6'-8' high B&B	Not Applicable-spd. 15' o.c.
TX	27	Taxus x media 'Densiformis'	Dense Yew	5 gal. cont. 36" hgt.	Not Applicable-spd. 4' o.c.
PA	8	Picea obies 'Concolor'	Blue Norway Spruce	6'-8' high. B&B	Not Applicable-spd. 20' o.c.
AA	2	Amelanchier arborea	Serviceberry	6'-8' high. B&B	Not Applicable-spd. 15' o.c.
CC	4	Cercis canadensis	Eastern Redbud	6'-8' high. B&B	Not Applicable-spd. 15' o.c.
VD	25	Viburnum dentatum	Arrow wood	5 gal. cont. 36"hgt.	Not Applicable-spd. 6' o.c.
PJ	19	Pieris japonica 'Mountain Fire'	Japanese Pieris	5 gal. cont. 36"hgt.	Not Applicable-spd. 6' o.c.

*Quantities not reflected in the onsite planting schedule. Planting only on library property.



PLANTING ADJACENT TO THE LIBRARY INCLUDING REFORESTATION "A"

Quercus rubra – Red oak
20 YEAR CANOPY COVERAGE
30' DIAMETER (962 S.F. x .25%) = 240 s.f. each
99 Trees along Heartsfield Drive (Total area= 23,760 s.f. or .54 ac.)

Acer saccrhum 'Bonfire'– Sugar Maple
20 YEAR CANOPY COVERAGE
30' DIAMETER (707 s.f. x .25%)=176 s.f. each
19 Trees along Sherbrooke Woods Lane (Total area 3,168 or .07 ac.)

BOTH SPECIES APPROVED BY MCDOT AS BEING USED AS MAJOR STREET TREES.
SPECIES DESIGNATED ARE FAIRLY TOLERANT TO DEICING SALTS AND POLLUTANTS.

NOTE: APPLICANT WILL PROVIDE DISCLOSURE TO PARK AND PLANNING DISCLOSING ON LOT CONSERVATION EASEMENT AND POTENTIAL PROXIMITY OF HOUSES TO THE CONSERVATION EASEMENT ON LOTS 13,14,15,20.
**Quantity, size, and location to be determined by M-NCPPC staff after initial clearing and grading

A. TOTAL AREA OF TRACT:	18.5	acres
B. AREA WITHIN 100 YEAR FLOODPLAIN:	0	acres
(>400 Ac. D.A. OR USE III/III-P WATERS)		
C. AREA OF LAND TO BE USED FOR AGRICULTURE:	0	acres
D. AREA WITHIN ROW/EASEMENT FOR WHICH WSSC OR MCDOT/SHA WILL BE RESPONSIBLE:	1	acres
E. NET TRACT AREA: A-B-C-D=	18.4	acres
F. LAND USE CATEGORY (FROM TABLE 2):	HIGH DENSITY RESIDENTIAL	
G. AFFORESTATION THRESHOLD: (.20)% FROM TABLE 3 x E)=	3.8	acres
H. CONSERVATION THRESHOLD: (.20)% FROM TABLE 3 x E)=	3.8	acres
I. EXISTING FOREST COVER: =	18.0	acres
J. FOREST COVER ABOVE AFFORESTATION THRESHOLD: (I-G)=	15.2	acres
K. FOREST COVER ABOVE CONSERVATION THRESHOLD: (I-H)=	14.3	acres

CALCULATION OF BREAK-EVEN POINT

L. IF K <= 0 AND I >= G, BREAK EVEN POINT EQUALS J:	0	acres
(IF I < G, THERE IS NO BREAK-EVEN POINT AND AFFORESTATION PLANTING IS REQUIRED. REFER TO P, BELOW)		
IF K > 0, BREAK-EVEN POINT EQUALS (K x 20%) +H =	6.6	acres
M. FOREST COVER TO BE RETAINED: =	3.8	acres
N. TOTAL AREA OF FOREST TO BE CLEARED:	14.3	acres
(IF N IS GREATER THAN I - L, REFORESTATION PLANTING IS REQUIRED. SEE Q - W, BELOW.)		

CALCULATION OF REFORESTATION REQUIREMENT

Q. AREA OF FOREST ABOVE CONSERVATION THRESHOLD TO BE CLEARED:	14.3	acres
(IF K >= N, USE N; K <= N, USE K)=		
R. AREA OF FOREST BELOW CONSERVATION THRESHOLD TO BE CLEARED: N-Q=	7.0	acres
S. FORESTED AREA ABOVE CONSERVATION THRESHOLD TO BE SAVED: M - H=	3.8	acres
T. PLANTING REQUIRED FOR CLEARING ABOVE THRESHOLD: Q x 1/4=	3.6	acres
U. PLANTING REQUIRED FOR CLEARING BELOW THRESHOLD: R x 2=	4.0	acres
V. CREDIT FOR FOREST SAVED ABOVE CONSERVATION THRESHOLD: S=	0	acres
W. TOTAL REFORESTATION REQUIREMENT: T + U - V=	7.6	acres

TOTAL PLANTING REQUIREMENT

X. REFORESTATION: W=	7.60	acres
Y. CREDIT FOR TREES AND LANDSCAPING : = (20% x W=1.5 MAX.)	1.50	acres
(ACTUAL TOTAL CALCULATION FOR ON-SITE LANDSCAPING = 1.76 AC.)		
Z. TOTAL FOREST PLANTING REQUIREMENT: =	6.10	acres
ON SITE REFORESTATION:	1.25	acres
OFF SITE REFORESTATION:	4.81	acres

* 6.0 ACRES OF EXISTING WOODLAND SHALL BE PUT IN A CONSERVATION EASEMENT PER PLANNING BOARD COMMENTS ON 9/28/99.
** AREA OF MULTI AGE PLAY NOT INCLUDED IN FOREST RETAINED

REFORESTATION "A" — .21 acres (Landscape stock see detail)

SYM	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWARDS LANDSCAPING
QP	5	Quercus palustris	Pin Oak	2 1/2" cal. B&B	n/a
IO	18	Ilex opaca	American Holly	6'-8' high B&B	n/a
CF	3	Cornus florida	Flowering Dogwood	1 1/2" cal. B&B	n/a
CC	1	Cercis canadensis	Eastern Redbud	1 1/2" cal. B&B	n/a
AA	2	Amelanchier arborea	Common Shadbush	1 1/2" cal. B&B	n/a
PA	6	Picea abies 'Concolor'	Blue Norway Spruce	6-8' high B&B	n/a

REFORESTATION "B" — .24 acres (Landscape stock-behind lots 1-5 blk. A)

SYM	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWARDS LANDSCAPING
CF	8	Cornus florida	Flowering Dogwood	1 1/2" cal. B&B	~~50 s.f. ea. = 400 s.f. total~~
AR	4	Acer rubrum	Red Maple	2 1/2" cal. B&B	~~120 s.f. ea. = 480 s.f. total~~
AA	8	Amelanchier arborea	Common Shadbush	1 1/2" cal. B&B	~~78 s.f. ea. = 624 s.f. total~~
IO	12	Ilex opaca	American Holly	6'-8' high. B&B	~~28 s.f. ea. = 336 s.f. total~~
TC	35	Tsuga canadensis	Eastern Hemlock	6'-8' high. B&B	~~176 s.f. ea. = 6160 s.f. total~~
QA	3	Quercus alba	White Oak	2 1/2" cal. B&B	~~240 s.f. ea. = 720 s.f. total~~
FA	5	Fraxinus americana	White Ash	2 1/2" cal. B&B	~~104 s.f. ea. = 520 s.f. total~~
QP	4	Quercus palustris	Pin Oak	2 1/2" cal. B&B	~~240 s.f. ea. = 960 s.f. total~~
CL	107	Cupressocyparis leylandii	Leland Cypress	6-8' high. B&B	~~64 s.f. ea. = 6848 s.f. total~~

24,134 s.f. = .554 = .55 acres

REFORESTATION "C" — .16 acres (Landscape stock-behind lots 8-10 & blk. A)

SYM	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWARDS LANDSCAPING
CF	6	Cornus florida	Flowering Dogwood	1 1/2" cal. B&B	n/a
CL	15	Cupressocyparis leylandii	Leland Cypress	6-8' high. B&B	n/a
AA	3	Amelanchier arborea	Common Shadbush	1 1/2" cal. B&B	n/a
IO	9	Ilex opaca	American Holly	6'-8' high. B&B	n/a
TC	15	Tsuga canadensis	Eastern Hemlock	6'-8' high. B&B	n/a
QP	1	Quercus palustris	Pin Oak	2 1/2" cal. B&B	n/a
FA	4	Fraxinus americana	White Ash	2 1/2" cal. B&B	n/a
QR	2	Quercus rubra	Red Oak	2 1/2" cal. B&B	n/a
FG	3	Fagus americana	American Beech	2 1/2" cal. B&B	n/a
CC	2	Cercis canadensis	Eastern Redbud	1 1/2" cal. B&B	n/a

REFORESTATION "D" — .68 acres (Landscape stock Parcel B & lots 13-16 blk A)

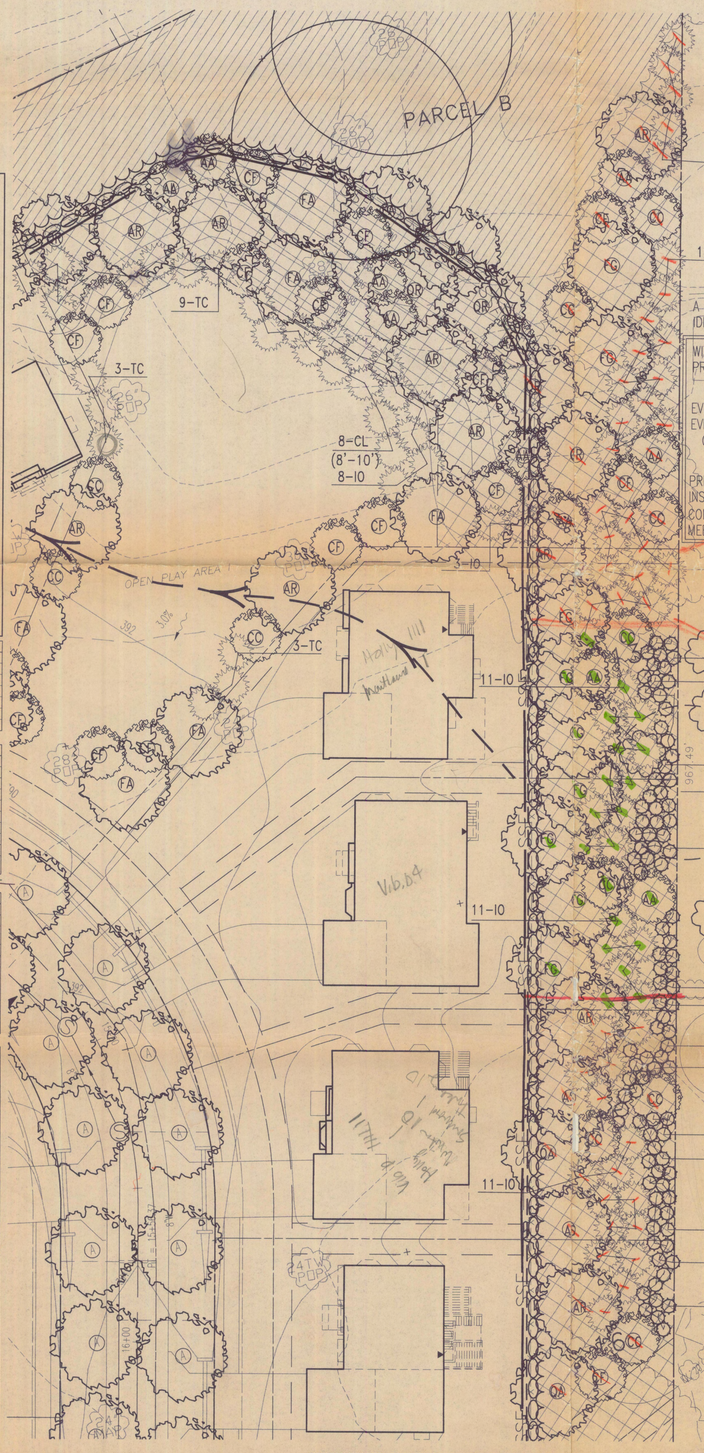
SYM	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWARDS LANDSCAPING
CF	10	Cornus florida	Flowering Dogwood	1 1/2" cal. B&B	n/a
QA	2	Quercus alba	White Oak	2 1/2" cal. B&B	n/a
AA	11	Amelanchier arborea	Common Shadbush	6'-8' high. B&B	n/a
IO	63	Ilex opaca	American Holly	6'-8' high. B&B	n/a
FG	9	Fagus grandiflora	American Beech	2 1/2" cal. B&B	n/a
VD	36	Viburnum dentatum	Southern arrowwood	5 gal. cont. 3' high	n/a
KL	15	Kalmia latifolia	Mountain laurel	5 gal. cont. 3' high	n/a
RM	3	Rhodendron maximum	Rosebay Rhodendron	5 gal. cont. 42" high	n/a
FA	5	Fraxinus americana	White Ash	2 1/2" cal. B&B	n/a
QR	4	Quercus rubra	Red Oak	2 1/2" cal. B&B	n/a
AR	4	Acer rubrum	Red Maple	2 1/2" cal. B&B	n/a
CS	25	Cornus stolonifera	Red twig dogwood	5 gal. cont. 3' high	n/a
IV	5	Ilex verticillata	Winterberry	5 gal. cont. 3' high	n/a
CC	8	Cercis canadensis	Eastern Redbud	1 1/2" cal. B&B	n/a
AS	2	Acer saccrhum	Sugar Maple	2 1/2" cal. B&B	n/a
TC	2	Tsuga canadensis	Eastern Hemlock	6'-8' high. B&B	n/a

SUPPLEMENTAL PLANTING SCHEDULE* .31 acres

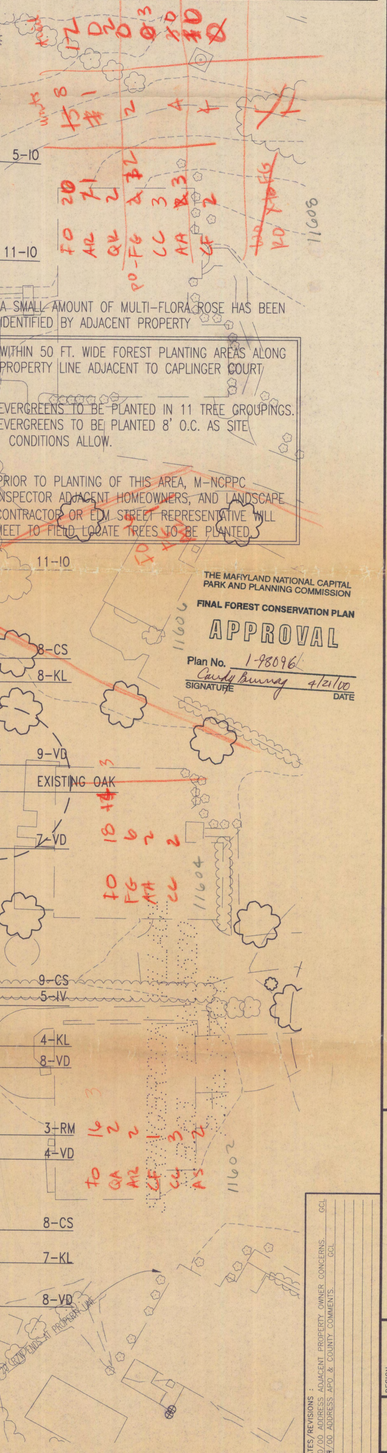
SYM.	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CREDIT TOWRDS LANDSCAPING
CF	14	Cornus florida	Flowering Dogwood	6'-8' high. B&B	50 s.f. each = 700 s.f. total
AR	2	Acer rubrum	Red Maple	2 1/2" cal. B&B	240 s.f. each= 6,480 s.f. total
AA	7	Amelanchier arborea	Common Shadbush	6'-8' high(multi-stem)	78 s.f. each= 546 s.f. total
IO	38	Ilex opaca	American Holly	6'-8' high. B&B	28 s.f. each= 1064 s.f. total
IO	8	Ilex opaca	American Holly	8-10' high. B&B	28 s.f. each= 224 s.f. total
TC	25	Tsuga canadensis	Eastern Hemlock	6'-8' high. B&B	176 s.f. each= 4400 s.f. total
QA	5	Quercus alba	White Oak	2 1/2" cal. B&B	132 s.f. each= 660 s.f. total
FA	11	Fraxinus americana	White Ash	2 1/2" cal. B&B	104 s.f. each= 1,144 s.f. total
QR	5	Quercus rubra	Red Oak	2 1/2" cal. B&B	240 s.f. each= 1,200 s.f. total
PA	9	Picea abies 'Concolor'	Blue Norway Spruce	6'-8' high. B&B	Not applicable
CC	3	Cercis canadensis	Red Bud	6'-8' high. B&B	78 s.f. each= 234 s.f. total
QP	8	Quercus palustris	Pin Oak	2 1/2" cal. B&B	240 s.f. each= 1,200 s.f. total
FG	3	Fagus grandifolia	American Beech	2 1/2" cal. B&B	240 s.f. each= 720 s.f. total

13,292 total= 0.31 acres

*Plantings to be credited towards landscaping must remain outside of designated reforestation areas and can only be credited at 25% of the trees mature canopy.



RECOMMENDED PLANTINGS BEHIND LOTS 13-15 BLK. A



CPJ Associates

Charles P. Johnson & Associates, Inc.
PLANNERS · ENGINEERS · LANDSCAPE ARCHITECTS · SURVEYORS
1751 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
Phone:(301)434-7000 Fax:(301)434-9594
E-mail:cjassoc@aol.com FAIRFAX,VA
FREDERICK, MD

FINAL FOREST CONSERVATION DETAIL SHEET
PARCEL 626
KAUFMAN PROPERTY
COLESVILLE (5th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

FSD #4-98251
PP #1-98096

CLIENT : 1340 STREET DEVELOPMENT
8401 GREENSBORO DRIVE, SUITE 201
MCLEAN, VA 22101

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DESIGN LMP
DRAFT GCL
APPROVED
DATE OCT. '99'
SCALE 1"=20'

SHEET 2 OF 3

FILE NO. 28-055-22 D

UPDATES/REVISIONS:
2/10/00 ADDRESS ADJACENT PROPERTY OWNER CONCERNS. GCL
4/19/00 ADDRESS APD & COUNTY COMMENTS. GCL

Plotted: April 19, 2000

TREE PROTECTION OR REFORESTATION SIGN

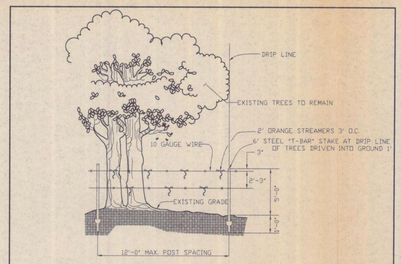
REFORESTATION AREAS 1" STOCK (NATIVE SPECIES ONLY)

FOREST TO BE RETAINED

SUPPLEMENTAL PLANTING LANDSCAPE STOCK

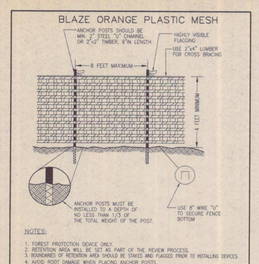
TREE PROTECTION FENCE & SEDIMENT CONTROL

CRITICAL ROOT ZONES OF TREES 24" OR GREATER



TREE PROTECTION DETAIL

N.T.S.

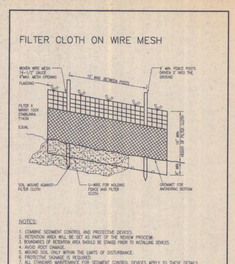


NOTES:

1. FOREST PROTECTION DEVICE ONLY.
2. RETENTION AREA WILL BE SET AS PART OF THE REVIEW PROCESS.
3. BOUNDARIES OF RETENTION AREA SHOULD BE STAKED AND FLAGGED PRIOR TO INSTALLING DEVICES.
4. AVOID ROOT DAMAGE WHEN PLACING ANCHOR POSTS.
5. AVOID INJURY TO ROOTS WHEN EXCAVATING DURING CONSTRUCTION.
6. PROTECTIVE SIGNAGE IS ALSO REQUIRED.

SOURCE: PRINCE GEORGES COUNTY APPROVED AND ADOPTED FROM MARYLAND STATE FOREST CONSERVATION MANUAL

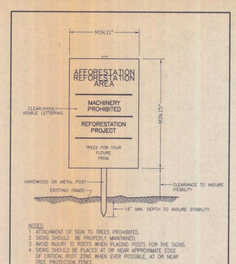
TREE PROTECTION FENCING (2)



NOTES:

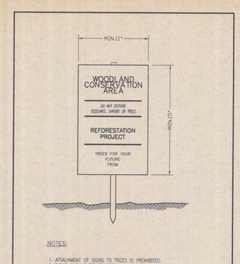
1. COMBINE SEDIMENT CONTROL AND PROTECTIVE DEVICES.
2. RETENTION AREA WILL BE SET AS PART OF THE REVIEW PROCESS.
3. BOUNDARIES OF RETENTION AREA SHOULD BE STAKED PRIOR TO INSTALLING DEVICES.
4. AVOID ROOT DAMAGE.
5. WORK SOIL ONLY WITHIN THE LIMITS OF DISTURBANCE.
6. PROTECTIVE SIGNAGE IS REQUIRED.
7. ALL STANDING MAINTENANCE FOR SEDIMENT CONTROL DEVICES APPLY TO THESE DETAILS.

TREE PROTECTION AND SEDIMENT CONTROL



NOTES:

1. ATTACHMENT OF SIGN TO TREES PROHIBITED.
2. SIGNS SHOULD BE PROPERLY MAINTAINED.
3. AVOID INJURY TO ROOTS WHEN PLACING POSTS FOR THE SIGNS.
4. SIGNS SHOULD BE PLACED AT OR NEAR APPROXIMATE EDGE OF CRITICAL ROOT ZONE WHEN EVER POSSIBLE, AT OR NEAR TREE PROTECTION FENCE.
5. SIGNS SHOULD BE PLACED AS TO BE VISIBLE TO ALL CONSTRUCTION PERSONAL AND FROM ALL DIRECTIONS.
6. AT A MINIMUM, THE INFORMATION INDICATED FOR EACH TYPE OF SIGN ABOVE SHALL BE SHOWN FOR EACH AREA BEING PROTECTED.
7. SEE PAGE J9 B STATE F.C.A. MANUAL FOR OTHER SIGN INFORMATION.



NOTES:

1. ATTACHMENT OF SIGNS TO TREES IS PROHIBITED.
2. SIGNS SHOULD BE PROPERLY MAINTAINED.
3. AVOID INJURY TO ROOTS WHEN PLACING POSTS FOR THE SIGNS.

SIGNAGE

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAN IS PREPARED IN ACCORDANCE WITH MONTGOMERY COUNTY FOREST CONSERVATION REGULATIONS. INFORMATION SHOWN IS TAKEN FROM AVAILABLE PLANS AND RECORDS

DATE 4/19/00

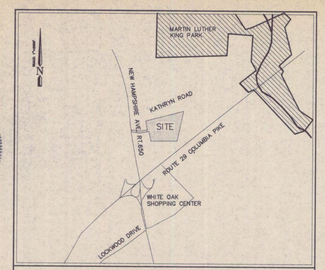
LESLIE POWELL
REGISTERED LANDSCAPE ARCHITECT
MD. #596

STATE OF MARYLAND — LESLIE ANN POWELL — No. 596 — REGISTERED LANDSCAPE ARCHITECT

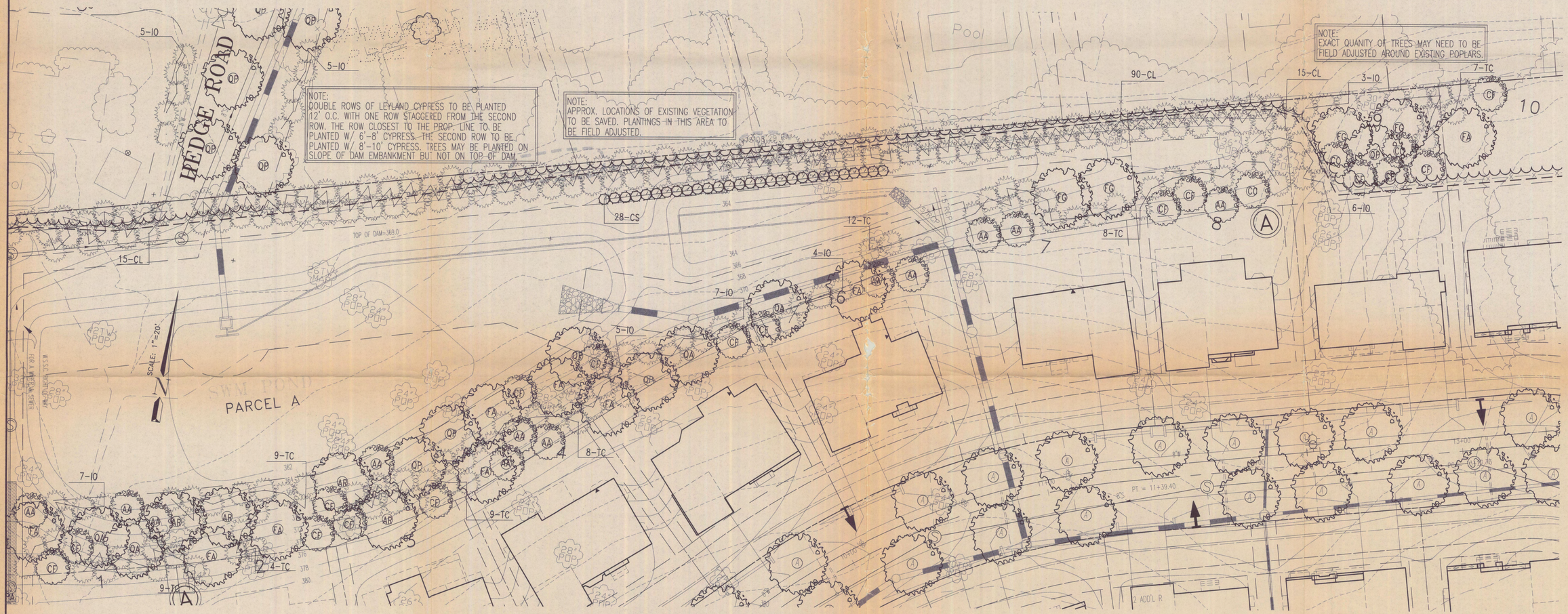
GRAPHIC SCALE

20 0 10 20 40 80

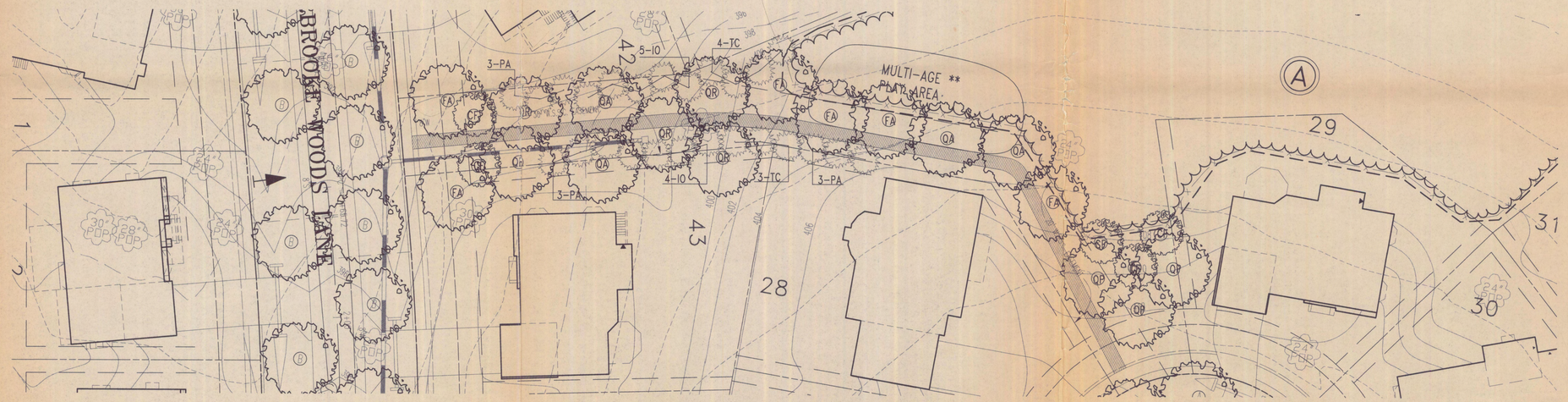
(IN FEET)
1 inch = 20 ft.



VICINITY MAP
MONTGOMERY COUNTY
1"=2000'



PLANTING ADJACENT TO PROPERTIES ALONGKATHRYN ROAD



PLANTINGS ADJACENT MULTI-AGE PLAY AREA

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

FINAL FOREST CONSERVATION PLAN

APPROVAL

Plan No. 1-98096

Cindy Bamsey 4/21/00
SIGNATURE

MONTGOMERY COUNTY SUBSTITUTION LIST
(ACCEPTABLE ALTERNATIVE PLANT SPECIES)

Juglans cinerea/ Butternut
Prunus serotina / Black Cherry
Nyssa sylvatica / Black Gum
Carya cordiformis / Bitternut Hickory
Carya glabra / Pignut hickory
Quercus rubra / Red Oak
Quercus alba / White Oak

Quercus rubra – Red oak
20 YEAR CANOPY COVERAGE
35' DIAMETER (962 S.F. + 25%) = 240 s.f. each
99 Trees along Heartsfield Drive
(Total area= 23,760 s.f. or .54 ac.)

Acer saccharum 'Bonfire'– Sugar Maple
20 YEAR CANOPY COVERAGE
30' DIAMETER (707 s.f. + 25%)=176 s.f. each
19 Trees along Sherbrooke Woods Lane
(Total area 3,168 or .07 ac.)

BOTH SPECIES APPROVED BY MCDOT AS BEING USED AS MAJOR STREET TREES.
SPECIES DESIGNATED ARE FAIRLY TOLERANT TO DEICING SALTS AND POLLUTANTS.

NOTE: APPLICANT WILL PROVIDE DISCLOSURE TO PARK AND PLANNING DISCLOSING ON LOT CONSERVATION EASEMENT AND POTENTIAL PROXIMITY OF HOUSES TO THE CONSERVATION EASEMENT ON LOTS 13,14,15,20.

UPDATES/REVISIONS
4/19/00 ADJACENT PROPERTY OWNER CONCERNS. GCL
4/19/00 ADDRESS AND & COUNTY COMMENTS. GCL

CLIENT : ELM STREET DEVELOPMENT
8401 ARLINGTON BLVD. SUITE 201
McLEAN, VA 22101

DESIGN LWP
DRAFT GCL
APPROVED
DATE OCT. 99
SCALE 1"=20'

SHEET 3 OF 3

FILE NO 28-055-22 D

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1751 ELTON ROAD - SUITE 300 SILVER SPRING, MARYLAND 20903
(301) 434-7000 FAX (301) 434-9394
FREDERICK, MD FAIRFAX, VA

FINAL FOREST CONSERVATION DETAIL SHEET
PARCEL 626

KAUFMAN PROPERTY
COLESVILLE (5th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

FSD #4-98251
PP #1-98096

Plotted: April 19, 2000

Acad Dwg: 22-00S3/46-099/53-00/PDS/21-00/44-099

Attachment 7

PLAT No 21783

OWNER'S CERTIFICATE

WE, GRAYSTONE, L.C. A VIRGINIA LIMITED LIABILITY COMPANY, OWNER OF THE PROPERTY SHOWN HEREON AND DESCRIBED IN THE SURVEYOR'S CERTIFICATE, HEREBY ADOPTS THIS SUBDIVISION RECORD PLAT AND ESTABLISHES THE MINIMUM BUILDING RESTRICTION LINES; DEDICATES THE STREETS TO PUBLIC USE; GRANTS PUBLIC UTILITY EASEMENTS, AS SHOWN HEREON AND DESIGNATED "P.U.E." TO THE PARTIES LISTED AND WITH THE TERMS AND PROVISIONS BEING SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF PUBLIC UTILITY EASEMENTS" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 3834 AT FOLIO 457, WHICH SAID TERMS AND PROVISIONS ARE INCORPORATED HEREIN BY THIS REFERENCE; ESTABLISHES THE PUBLIC IMPROVEMENT EASEMENTS SHOWN HEREON AND DESIGNATED "P.I.E." WITH THE TERMS AND PROVISIONS BEING SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF PUBLIC IMPROVEMENT EASEMENTS" AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 17393 AT FOLIO 424; ESTABLISHES THE CATEGORY I CONSERVATION EASEMENTS AS SHOWN HEREON WITH THE TERMS AND PROVISIONS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "CONSERVATION EASEMENT AGREEMENT, CATEGORY I" AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 13178 AT FOLIO 412; GRANTS TEMPORARY SLOPE EASEMENTS TO MONTGOMERY COUNTY, MARYLAND, 25 FEET WIDE, OR AS OTHERWISE SHOWN, ADJACENT, CONTIGUOUS AND PARALLEL TO THE STREET RIGHT OF WAY, SAID SLOPE EASEMENTS SHALL BE TERMINATED AFTER ALL PUBLIC IMPROVEMENTS ABUTTING SAID EASEMENTS HAVE BEEN LAWFULLY COMPLETED AND ACCEPTED FOR MAINTENANCE BY MONTGOMERY COUNTY, MARYLAND, SUBJECT TO ALL CURRENT AND APPLICABLE REGULATIONS OF ALL FEDERAL, STATE AND LOCAL GOVERNING AGENCIES.

THE OWNER HEREBY CERTIFIES THAT A LICENSED LAND SURVEYOR WILL BE ENGAGED TO SET ALL PROPERTY CORNER MARKERS IN ACCORDANCE WITH SECTION 50-24(e) OF THE SUBDIVISION REGULATIONS OF MONTGOMERY COUNTY, MARYLAND.

THERE ARE NO SUITS IN EQUITY, ACTIONS AT LAW, LEASES, LIENS, MORTGAGES OR TRUSTS ON THE PROPERTY INCLUDED IN THIS SUBDIVISION RECORD PLAT, EXCEPT A CERTAIN DEED OF TRUST AND THE PARTIES IN INTEREST THERETO HAVE BELOW INDICATED THIER ASSENT.

DATE: January 12, 2000

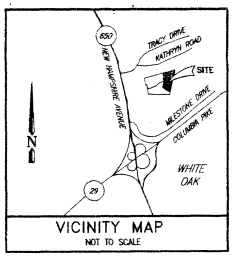
WITNESS: _____ BY: _____ JOHN M. CLARKE, MANAGER

WE HEREBY ASSENT TO THIS PLAT OF SUBDIVISION.

CHEVY CHASE BANK

DATE: 1/14/00 _____ THOMAS EWAN LIEBE, TRUSTEE

DATE: 1-14-00 _____ TIMOTHY A. CASTELLO, TRUSTEE



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT INFORMATION SHOWN ON THIS SUBDIVISION RECORD PLAT IS CORRECT. THAT IT IS A SUBDIVISION OF PART OF THE PROPERTY CONVEYED TO GRAYSTONE, L.C., A VIRGINIA LIMITED LIABILITY COMPANY FROM WHITE OAK LAND, LLC A MARYLAND LIMITED LIABILITY COMPANY BY DEED DATED DECEMBER 16, 1999 AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 17776 AT FOLIO 223

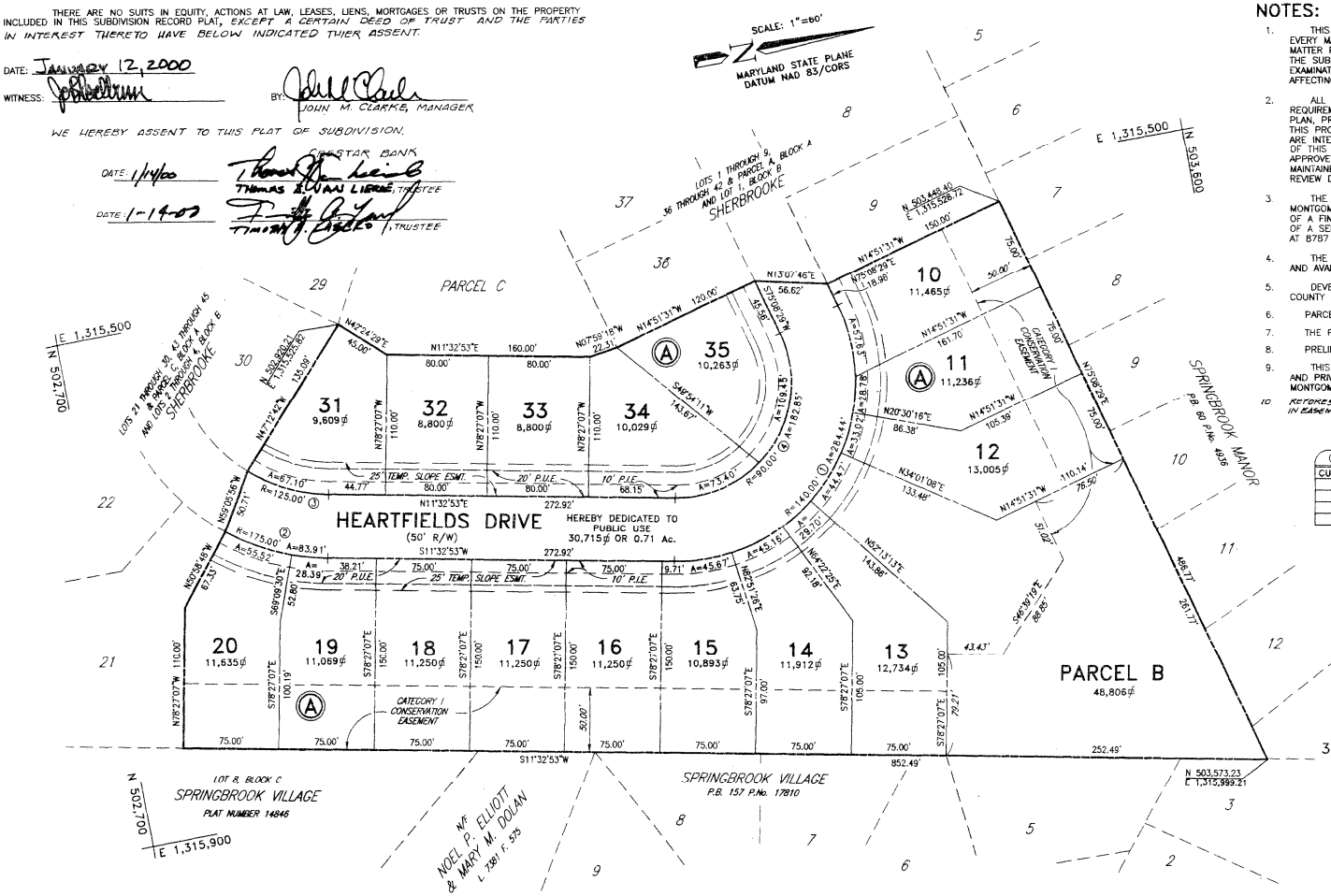
THAT THE TOTAL AREA INCLUDED IN THIS SUBDIVISION RECORD PLAT IS 254,721 SQUARE FEET OF 5.85 ACRES OF LAND, OF WHICH 30,715 SQUARE FEET OR 0.71 OF AN ACRE OF LAND IS DEDICATED TO PUBLIC USE FOR STREETS.

DATE: 6.22.99

RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MARYLAND NO. 20014

NOTES:

1. THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE OF THE PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPICT OR NOTE ALL MATTERS AFFECTING TITLE.
2. ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND ARE AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
3. THE PROPERTY SHOWN HEREON IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY FOREST CONSERVATION LAW OF 1992, INCLUDING APPROVAL OF A FINAL CONSERVATION PLAN AND APPROPRIATE AGREEMENTS PRIOR TO ISSUANCE OF A SEDIMENT CONTROL PERMIT. A COPY OF THE APPROVED PLAN MAY BE VIEWED AT 8787 GEORGIA AVENUE, SILVER SPRING, MARYLAND.
4. THE APPROVAL OF THIS PLAT IS PREDICATED ON THE ADEQUACY AND AVAILABILITY OF PUBLIC WATER AND SEWER.
5. DEVELOPMENT IS SUBJECT TO AN AGREEMENT WITH THE MONTGOMERY COUNTY PLANNING BOARD REGARDING ADEQUATE PUBLIC FACILITIES.
6. PARCEL B, BLOCK A IS TO BE CONVEYED TO THE HOMEOWNERS ASSOCIATION.
7. THE PROPERTY SHOWN HEREON IS ZONED R90.
8. PRELIMINARY PLAN NUMBER 1-98096
9. THIS PLAT IS SUBJECT TO A COVENANT FOR MAINTENANCE OF OPEN SPACES AND PRIVATE DRAINAGE SYSTEMS AS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 17058 AT FOLIO 496.
10. REFORESTATION REQUIREMENTS WILL BE MET OFF-SITE, IN EASEMENTS TO BE RECORDED AT A LATER DATE



CURVE TABLE

CURVE	RADIUS	ARC	DELTA	TANGENT	CHORD	
1	140.00'	284.44'	116°24'24"	225.83'	S46°39'19"E	237.98'
2	175.00'	83.91'	27°28'19"	42.78'	S25°17'02"W	83.11'
3	125.00'	67.10'	30°45'23"	34.38'	N26°55'35"E	66.30'
4	90.00'	182.85'	116°24'24"	145.17'	N46°39'19"W	152.99'

SUBDIVISION RECORD PLAT

LOTS 10 THROUGH 20,
31 THROUGH 35 & PARCEL B, BLOCK A

SHERBROOKE

COLESVILLE (5TH) DISTRICT
MONTGOMERY COUNTY, MARYLAND
SCALE 1"=60' APRIL, 1999

GRAPHIC SCALE
60 0 30 60 120
(IN FEET)
1 inch = 60 ft.

FILED
MAR 21 2001

CPJ Associates
Charles P. Johnson & Associates, Inc.
PLANNERS · ENGINEERS · LANDSCAPE ARCHITECTS · SURVEYORS
8701 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20910
Phone (301)565-2500 E-mail cpj@cpja.com Fax (301)565-2504
FREDERICK, MD FAIRFAX, VA

Acad Dwg: 15-01

2 OF 3
DAO | DED
28-055-15.01A

2.99266 1999AUG2000050Z

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

APPROVED: May 6, 1999

CHAIRMAN _____ ASST. SECRETARY-TREASURER _____ Barbara A. Geller

MNCP&PC Record File No. 615-06

DEPARTMENT OF PERMITTING SERVICES, MONTGOMERY COUNTY

APPROVED: August 30, 1999

DIRECTOR _____ Robert C. Hubbard

RECORDED: _____
PLAT BOOK: _____
PLAT NO.: _____

16 LOTS
1 PARCEL
JQ562

P.I.A. NO. 99.084

P 51389 MSA SSU 1249-57686-1 2216.95

615-06

Attachment 8

ELM STREET DEVELOPMENT

March 7, 2002

Robin & Christopher Pirtle
1020 Heartsfield Drive
Silver Spring, Maryland 20904

Re: Sherbrooke - Conservation Easement

Dear Mr. and Mrs. Pirtle:

Recently there have been numerous inquiries regarding the woodland areas in Sherbrooke. These areas, some located on private land and some on common land, are protected against clearing and other activities by a conservation easement. These areas were planned to remain forested. However, some of these areas were cleared to permit grading and will be replanted.

Enclosed is a copy of the conservation easement. A map showing the easement locations is available on the second floor of the Maryland National Capital Park and Planning Commission building at 8787 Georgia Avenue, Silver Spring, Maryland and on the individual lot plats that you have received or will be given at settlement.

If you have any questions regarding these easements please contact me at 703-734-9730 or Steve Cary of MNCP&PC at 301-495-4581.

Sincerely,

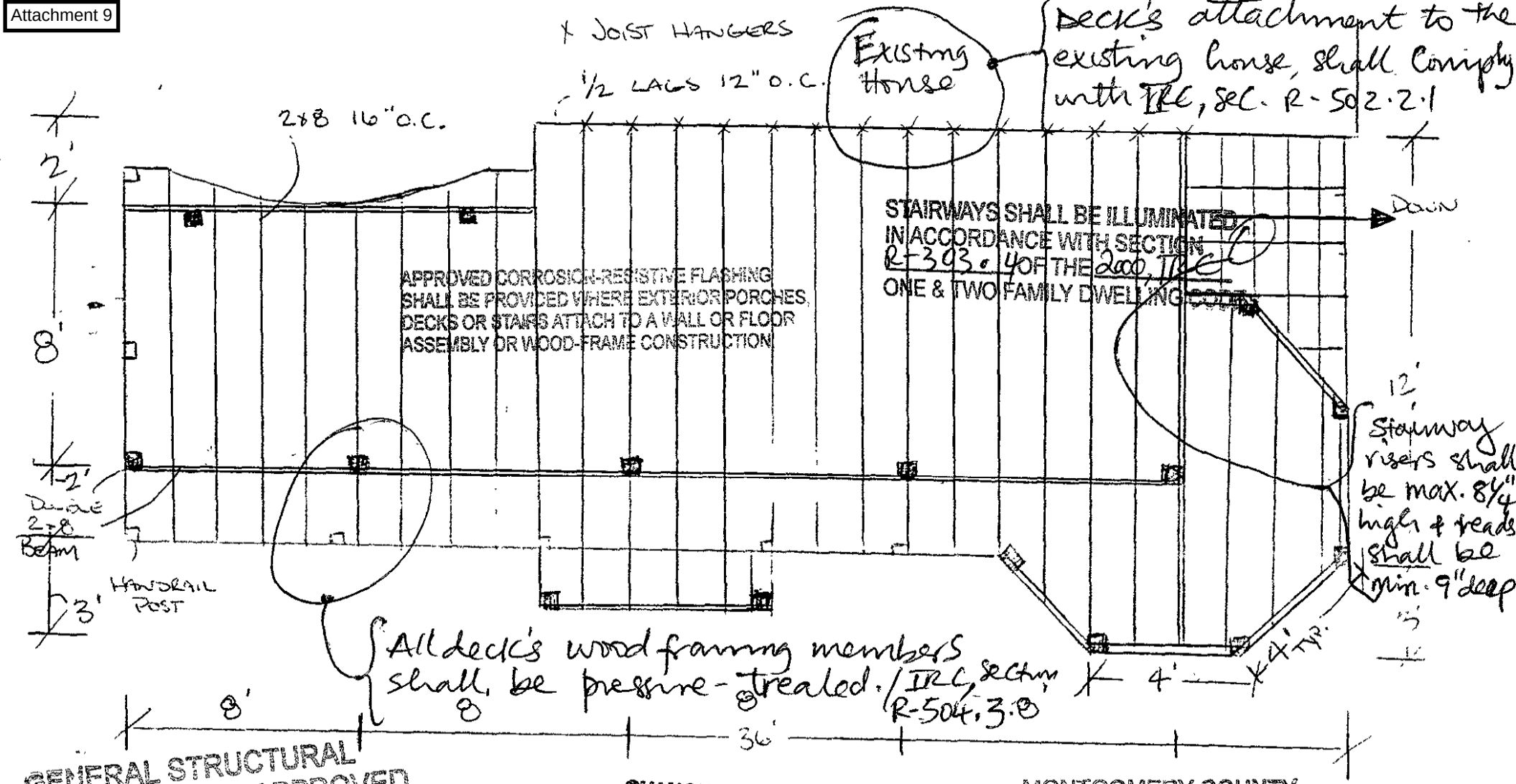
Mike Bingley

Mike Bingley
Project Manager

cc: John Clarke
Steve Cary
CMI Management

6820 Elm Street, Suite 200, McLean, Virginia 22101 Telephone: (703) 734-9730 • Facsimile: (703) 734-0322

Attachment 9



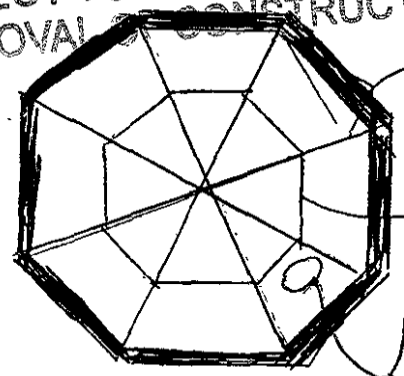
GENERAL STRUCTURAL ARRANGEMENT APPROVED SUBJECT TO FURTHER APPROVAL OF CONSTRUCTION

CHANGES OR MODIFICATIONS TO THESE PLANS MAY REQUIRE RESUBMITTAL WITH ADDITIONAL PERMIT FEES. NO CHANGES CAN BE MADE TO THE APPROVED DRAWINGS.

MONTGOMERY COUNTY
Department of Permitting Services

Approved
Date 09-03-2002

286636



Gazebos roof framing shall Comply with IRC, SEC. R-802

PINE CUSTOM BUILDERS INC

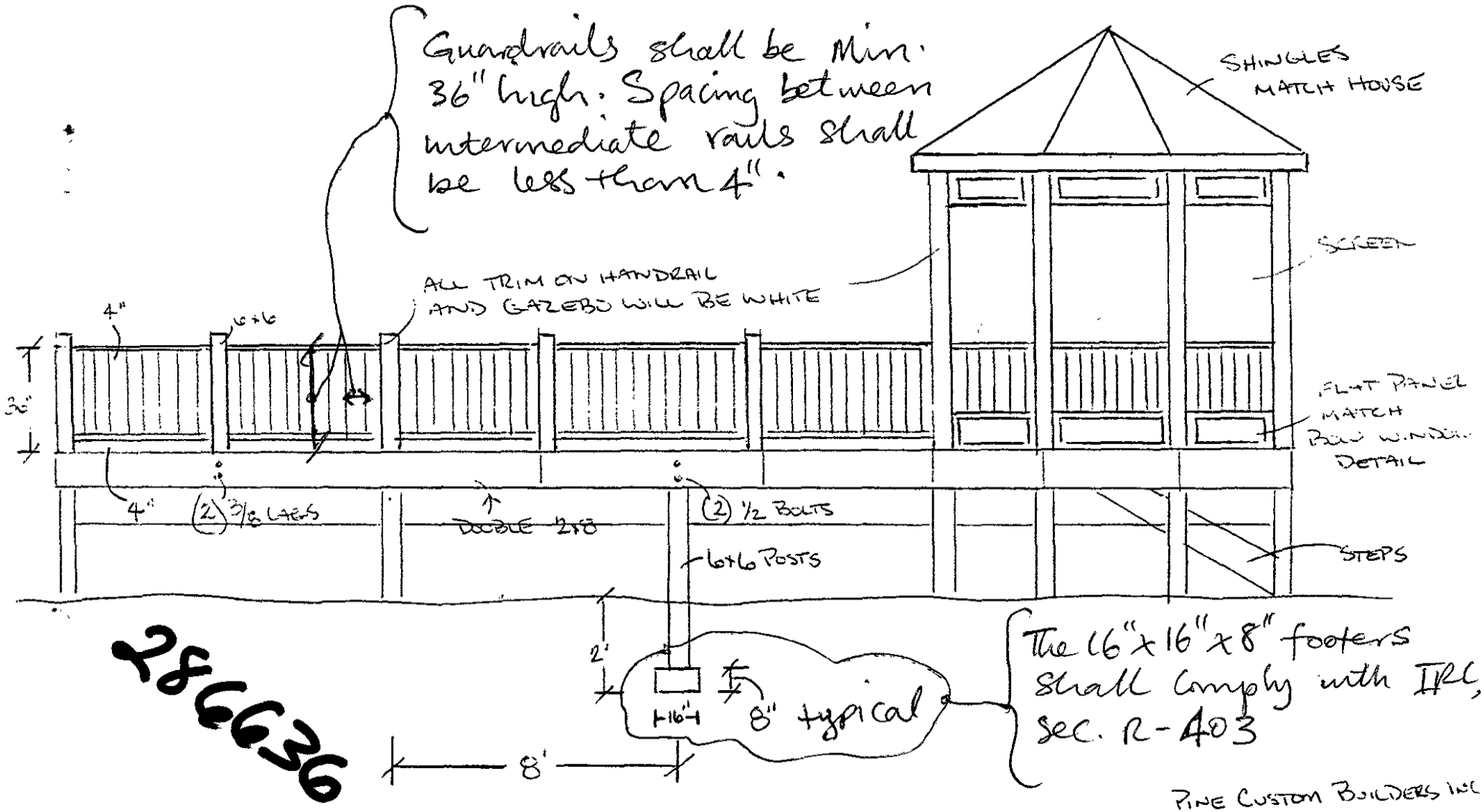
SCALE ¼ = 1'0"

TREX DECKING BOARDS 2×6

TRIM PRIMED PINE

ALUMINUM SCREEN SYSTEM

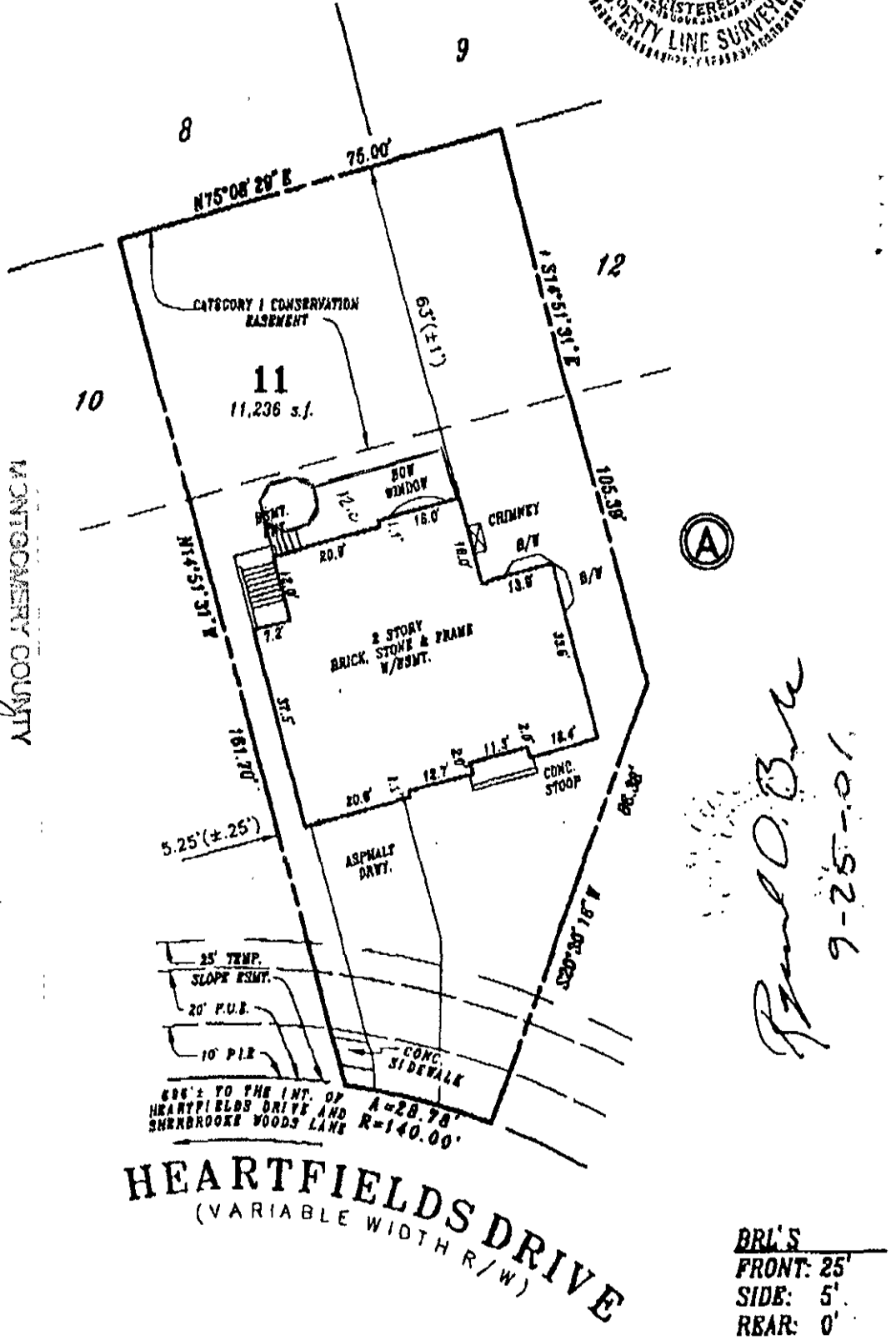
ROOF SHINGLES TO MATCH HOUSE



286636

PINE CUSTOM BUILDERS INC

SCALE 1/4 = 1'0"



MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
APPROVED _____ DATE 9.7.01
ZONING CLASS R-90 PAGE 4 of 4
BOARD OF APPEALS CASE _____

Rec'd 9-25-01

BRL'S
FRONT: 25'
SIDE: 5'
REAR: 0'
ZONE: R-90

NOTE: THIS SURVEY IS NOT VALID UNLESS IT CONTAINS A BLUE SURVEYORS SEAL.

" THE SUBJECT DWELLING DOES NOT LIE WITHIN A FLOOD HAZARD ZONE AS SHOWN ON HUD FLOOD INSURANCE STUDIES

SLOPE EASEMENTS SHALL BE TERMINATED AFTER ALL PUBLIC IMPROVEMENTS ABUTTING SAID EASEMENTS HAVE BEEN LAWFULLY COMPLETED AND ACCEPTED FOR MAINTENANCE BY MONTGOMERY COUNTY, MARYLAND

FINAL SURVEY: 9/25/01
FOUNDATION SURVEY: 06/30/01

PERMIT NUMBER: 244921

SURVEYORS CERTIFICATE

I hereby certify that the position of the existing improvements shown hereon have been carefully established by accepted land surveying practices and that, unless shown, there are no visible encroachments either way across the property lines. The plan is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. The plan is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. The plan does not provide for the accurate identification of property boundary lines, but such identifications may not be required for the transfer of title or securing financing

CPJ Associates
Charles P. Johnson & Associates, Inc.
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS
1751 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
Phone (301) 434-7000 E-mail cpj@cpja.com Fax (301) 434-9394
FREDERICK, MD FAIRFAX, VA

REFERENCE	Drawn by		Checked by	
		DAS		BBB

Attachment 10

Sherbrooke Homeowners Association, Inc.

Silver Spring, Maryland

Board Of Directors: Kamala Edwards, President Michael Galloucis, Vice President Grant DeMeritte , Secretary/Treasurer

June 16, 2003

Environmental Planning
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Conservation Area around Sherbrooke

Dear Sir/Madam,

What steps do we need to take to have a conservation easement changed from a category 1 to a category 2? Sherbrooke, located behind White Oak Library between Route 29 and New Hampshire Avenue, is bordered by a category 1 conservation easement around much of it's perimeter. Any help that you can provide on how to go about petitioning for a change in this status to a category 2 would be greatly appreciated. Thank you.

If you need to contact me, feel free to call me at (301)215-8542. Thank you.

Sincerely,

Grant F DeMeritte

Grant F DeMeritte
Secretary/Treasurer

cc: Kamala Edwards, Ph.D.

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
RECEIVED
JUN 18 2003
ENVIRONMENTAL PLANNING DIVISION

Attachment 11

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

July 17, 2003

Mr. Grant DeMeritte
Secretary/Treasurer
Sherbrooke Homeowners Association, Inc.
1002 Heartsfields Drive
Silver Spring, Maryland 20904

Re: Request to change conservation easements from Cateogy I to Category II in the Sherbrooke subdivision (preliminary plan no. 1-98096)

Dear Mr. DeMeritte:

This letter is in response to the Sherbrooke Homeowners Association's letter, dated June 16, 2003, requesting information on how to change a conservation easement from Category I to Category II.

As you and the other members of the HOA's board of directors are aware, there are Category I conservation easements on the back of some of the lots in the Sherbrooke subdivision. Some of the HOA common open space land also have Category I conservation easements. These easements were created to protect existing forest or forest planting areas, as required by the Montgomery County Forest Conservation Law. These conservation easements were created as part of the forest conservation plan approved by the Planning Board for the Sherbrooke subdivision.

Changing conservation easements from Category I to Category II in an entire subdivision is a major change to both the approved preliminary subdivision plan and the subdivision's forest conservation plan. A Category I conservation easement is used to protect native trees, shrubs, and understory vegetation in an existing forest or newly-planted forest in a natural setting. A Category II easement protects individual trees or stands of trees, but allows understory vegetation to be non-native or landscaped, as long as such plantings do not adversely affect the trees. Changing from Category I to Category II conservation easements in a large part or the entirety of the subdivision requires amendments to the preliminary plan and the forest conservation plan that have to be approved by the Planning Board through a public hearing process.

If the HOA is requesting a change to these conservation easements, the HOA would be the applicant for the proposed amendments to the preliminary plan and the forest conservation plan. Each property owner that has a conservation easement affected by the proposed amendments would have to agree to these changes. In addition, the

application would have to include a proposal to replace the areas of Category I conservation easements that would be lost under the proposed amendments. The proposed replacement areas would have to be of equal or greater value and amount than the forested areas that would be lost.

The proposed amendments would be reviewed by both staff and the Planning Board through a public hearing process. This process also allows comments from interested parties, such as homeowners adjoining the Sherbrooke subdivision.

It should be noted that staff would *not* support a request to convert conservation easements from Category I to II. This subdivision was extensively reviewed and discussed with respect to forest conservation requirements by both the Planning Board and its staff during the regulatory review process. There were lengthy discussions at the public hearing regarding the need to retain some forest on-site and the desire of surrounding residents for substantial vegetated buffers to provide screening between new and existing homes. To change the conservation easements to Category II would effectively remove long-term protection for the forested areas that have been retained or are planted on-site. Staff believes this change would be contrary to the intent of the Planning Board when it approved the preliminary subdivision plan. The final decision, however, will be made by the Board.

If you or other members of the HOA have additional questions regarding the subdivsion's forest conservation plan, please contact me at (301)-4954-4543. Questions related to the preliminary plan amendment process may be directed to Malcolm Shaneman in the Development Review Division at (301)-495-4587.

Sincerely,

Candy Bunnag

Candy Bunnag,
Environmental Planner
Countywide Planning Division

Cc: Michele Rosenfeld
Malcolm Shaneman
Cathy Conlon

Attachment 12

Citation No. DRD00000402

Civil Citation
The Maryland-National Capital Park and Planning Commission
vs.

Name: Christopher (First) (Middle) Pirtle (Last)

Company/Position:

Address: 1020 Heathfields Dr. 20904

Phone Number: Fax Number: Email:

Location and Description of Violation:

Address/location of site: 1020 Heathfields Dr.

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 8/7/08 (date) at the stated site location did commit the following:

Clearing understory, grading, and seeding in a Category I forest conservation easement

In violation of:

☒ Montgomery County Code, Chapter 22A ☐ Montgomery County Code, Chapter 59

☐ Approval of Plan No. plat # 21783 ☐ Other:

Civil Fine and Compliance:

1. (a) ☒ You shall pay a fine of $ 500.00 by 8/29/08 (date) and complete the remedial action listed below, if any, to avoid trial.

(b) ☒ You shall pay a daily fine of $ 25 if the original fine has not been paid and/or the remedial action has not been completed by 9/26/08 (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. ☒ Remove grass and replace w/ mulch
Replant area w/ native shrubs + (10) and or 1" caliper trees - (10)

by: 9/26/08 (date)

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.

Robin Pirtle 8/7/08

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.

8/7/08

Inspector's Signature Date

Print name: Josh Hage Phone number: 301-495-4658

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

Attachment 13

MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue, Silver Spring, Maryland 20910
Environmental Planning Division 301.495.4540 Fax: 301.495.1303
www.MontgomeryPlanning.Org

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, 2/19/10 (Date) the recipient of this **NOTICE,** Chris Pirtle (Recipient's Name)

who represents the property owner, (SAME AS ABOVE) (Property Owner's Name)

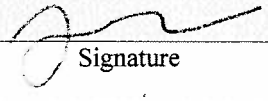
is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 1020 Heartfields Dr. Silver Spring, MD 20882

Plan No. 119980960	**Explanation: Category I Forest Conservation Easement Encroachments**

	VIOLATION:
	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
X	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector.
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
X	Other: Failure to comply with easement agreement: Violations include continual grass cutting and installation of a 6x6 timber post boarder and swing-set in a category I forest conservation easement.

Failure to comply with this NOV by 3/31/10 **may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at** 301-495-4658 **when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:**

	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-495-4540.
	Cease all cutting, clearing, or grading and/or land disturbing activity. Approval from Forest Conservation Inspector is required to resume work.
	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
X	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
X	Other: Remove the **swing-set** and timber boarder from the easement area. **Remove the grass** from the easement area and add bark mulch throughout. Install (2) 2" caliper shade trees and (1) 1" caliper deciduous tree within the easement.

MNCPPC Inspector Josh Kaye (Printed Name)  (Signature) 2/19/10 (Date)

RECEIVED BY: Chris Pirtle (Printed Name) SENT VIA CERT MAIL (Signature) (Date)

Attachment 14

Citation No. #1

Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission
vs.

Name: Chris (First) (Middle) Pirtle (Last)
Company/Position: HOMEOWNER.
Address: 1020 HEARTFIELDS Dr. SILVER SPRING, MD 20904
Phone Number: 202-413-9919 Fax Number: _____ Email: _____

Location and Description of Violation:
Address/location of site: 1020 HEARTFIELDS DR.

Pursuant of the M-NCPPC's authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on 5-26-10 (date) at the stated site location did commit the following:
1) Removal of vegetation in Cat I easement
2) Grass cutting in Cat I easement
3) Swingset & log timber edging installed in a cat I easement

In violation of:
☑ Montgomery County Code, Chapter 22A
☑ Approval of ECP Plan No. 119780960
☐ Other: _____

Civil Fine and Compliance:
1. (a) ☑ You shall pay a fine of $500 by 6/25/10 (date) and complete the remedial action listed below
(b) ☑ You shall pay a daily fine of $25 if the original fine has not been paid. by 6/25/10 (date). The daily fine shall accrue (until the original fine is paid.
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, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board's designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910 within 15 days of the citation.
Attn: Tim Anderson

Remedial Action:
1. ☑
1) Remove grass & install wood mulch
2) Remove swingset & Timber border
3) Install (3) 2" Native shade trees, install (10) Native Shrubs

by: 6/25/10 (date)
If remedial action is not completed by 6/25/10 (date), you shall pay a daily fine of $25 a day until work is completed.

2. ☐ You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:
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 request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

VIA CERTIFIED MAIL
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.

Inspector's Signature 5-26-10 Date

Print Name: Josh Kayer Phone Number: [illegible]-465-[illegible]

Attachment 15

MONTGOMERY COUNTY PLANNING DEPARTMENT	*	BEFORE STUART G. BRESLOW,
	*	AN ADMINISTRATIVE LAW JUDGE
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION	*	OF THE MARYLAND OFFICE
	*	OF ADMINISTRATIVE HEARINGS
v.	*	VIOLATION OF FOREST CONSERVATION
CHRISTOPHER PIRTLE,	*	PLAN #119980960
RESPONDENT		

* * * * * * * * * * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On November 16, 2010, the Montgomery County Planning Department (MCPD) of the Maryland National Capital Park and Planning Commission (MNCPPC or Agency) issued a Notice of Hearing (Notice) to Chris Pirtle (Respondent) alleging that the Respondent violated the Montgomery County Forest Conservation Law[1] as a result of removing the understory in a Category I Conservation Easement; cutting grass in a Category I Conservation Easement and installing a swing set and six foot by six foot timbers edging in a Category I Conservation Easement that is located on property owned by the Respondent and his wife.[2]

---

[1] Code of Montgomery County Regulations (COMCOR), Chapter 22A.

[2] An identical Notice of Violation was sent to the Respondent on October 27, 2010, but was returned to the MCPD as unclaimed. The case was previously postponed on November 3, 2010 at the request of the Respondent. The Respondent was personally served with the Notice by Joshua Kaye, Inspector, MCPD on November 16, 2010.

I held a hearing on December 8, 2010 at the MNCPPC offices located at 8787 Georgia Avenue, Silver Spring, Maryland 20910. Andree Green, Associate General Counsel, MNCPPC, represented the Agency. The Respondent was present and represented himself.

The contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings, the Montgomery County Planning Board Enforcement Rules (June 22, 2010) and the Rules for Hearings and Appeals of the Montgomery County Code govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 28.02.01; Montgomery County Planning Board Enforcement Rules, Chapters 1 through 4 (June 17, 2010) and COMCOR 22A-10.

ISSUES

1. Did the Respondent violated COMCOR 22A?
2. If the Respondent violated COMCOR 22A, should he be assessed an administrative penalty; and if so, in what amount?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Agency:

PD #1 Letter from Mark Pfefferie, Acting Chief of Environmental Planning, to the Respondent, dated October 5, 2010, attaching the Notice and the Agency's Enforcement Rules

PD#2 Notice, dated October 27, 2010

PD#3 Notice, dated November 16, 2010

PD#4 Montgomery County Planning Board Opinion, dated November 16, 1999

PD#5 Forest Conservation Easement Agreement, recorded December 30, 1994 among the land records of Montgomery County at Liber 13178, Folio 412

PD#6 Final Forest Conservation Plan plat, Kaufman Property

PD#7 Plan of the Kaufman Property

PD#8 Record Plat depicting the lot owned by the Respondent, dated January 12, 2000

PD#9 Letter from Mike Bingley, Project Manager, to the Respondent and his wife, dated March 7, 2002

PD#10 Letter from Grant F. DeMeritte, Secretary/Treasurer, Sherbrooke Homeowners Association, Inc. to the Agency, dated June 16, 2003

PD#11 Notice of Violation issued to Respondent, dated February 19, 2010

PD#12 Administrative Citation issued to Respondent, dated May 26, 2010

PD#13 Three black and white photographs, August 2008 investigation

PD#14 Three black and white photographs, November 2010 investigation

The Respondent did not offer any exhibits on his behalf.

Testimony

Joshua Kaye, Inspector, MCPD and Mark Pfefferle, Forest Conservation Program Manager, Supervisor of Inspectors and Acting Chief of Environmental Planning testified on behalf of the Agency.

The Respondent testified on his own behalf and did not present any additional witnesses.[3]

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. The Respondent is the owner of Lot 11A, located on the Kaufman property plan. It is also known as 1020 Heartfield Drive, Silver Spring, Maryland (Property).

2. Prior to the development of the Kaufman property, the Montgomery County Planning Board held a public hearing to consider the areas to remain forested and the areas that were to be cleared for development. The final forest conservation plan was approved for the

[3] The Respondent offered the testimony of Susan Marney, an owner of a lot in the Sherbrooke subdivision; however, I ruled, after objection by the Agency, that her proffered testimony was not relevant to the issues in this case.

Kaufman property on November 16, 1999.

3. The subdivision record plat for the Sherbrooke development, which includes part of the Kaufman property, also includes the Property. It was approved and recorded among the land records of Montgomery County at Liber 17693, Folio 424. (PD#8).

4. The record plat for the Sherbrooke development identifies the Category I Conservation Easements for the Property and others in the subdivision. It also references the agreement establishing Category I Conservation easements, which are found among the land records of Montgomery County at Liber 13178, folio 412.

5. The Respondent purchased the Property on October 12, 2001.

6. On March 7, 2002, the developer of the Sherbrooke property informed the Respondent and his wife that certain areas in the development were protected from clearing and other activities due to a conservation easement. Along with the letter, the developer enclosed a copy of the conservation easement and directed the Respondent to the MNCPPC office to review the map showing the easement locations. The Respondent received the copy of the conservation easement.

7. The Category I Conservation Easement covers 3,750 square feet of the Property behind the dwelling.

8. The Category I Conservation Easement extends from the property line at the rear portion of the Property to the Respondent's dwelling.

9. The Respondent graded, seeded and removed understory in the rear of the Property.

10. Of the 3,750 square feet of property affected by the Category I Conservation Easement, 3,250 square feet of the Property was affected by grading, seeding and removal of

understory by the Respondent. No trees were removed by the Respondent.

11. On June 16, 2003, the Secretary/Treasurer of Sherbrooke Homeowners Association, Inc., requested that the MNCPPC change the Conservation Easement that exists on the Sherbrooke property from a Category I Easement to a Category II Easement.

12. On July 17, 2003, the Environmental Planner of the Countywide Planning Division of the MNCPPC responded with instructions on the procedures for changing the easement designation and further explained that the staff would not support the requested change from a Category I Conservation Easement to a Category II Conservation Easement.

13. The Respondent supports changing the classification of the conservation easement from a Category I to a Category II, but has not initiated any action to apply for a change in easement designation.

14. On August 8, 2008, in response to a complaint, Joshua Kaye, MCPD Inspector, visited the Property.

15. Mr. Kaye observed that understory removal and grading had occurred on the portion of the Property located in the Category I Conservation Easement. In addition, Mr. Kaye observed six foot by six foot timbers in the same area that were going to be used as a boundary for a swing set.

16. Mr. Kaye advised the Respondent that a swing set was not permitted in a Category I Conservation Easement and was warned not to install the swing set.

17. On February 17, 2010, Mr. Kaye conducted a follow-up visit to the Property and discovered that the swing set was installed, despite his warning to the Respondent on August 8, 2008. The Respondent was issued a notice of violation as a result of this inspection. He was required to remediate the situation by March 31, 2010 but failed to do so.

18. The Respondent was issued an Administrative Citation for violating the Category I Conservation Easement on May 26, 2010 for failing to comply with the notice of violation remedial requirements.

DISCUSSION

The Agency has the burden of proof to establish by a preponderance of the evidence that the Respondent has committed the violation charged in the Notice of Hearing that was hand delivered to the Respondent on November 16, 2010. (PD#3). Montgomery County Planning Board Enforcement Rules, 3.11.

The Montgomery County Council finds that trees and forest cover provide a valuable and important resource for the county. COMCOR 22A-2(a). The purpose of the Montgomery County Forest Conservation Law is to:

> (1) save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;
>
> (2) establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;
>
> (3) establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;
>
> (4) establish a fund for future tree conservation projects, including afforestation and reforestation; and
>
> (5) provide a focused and coordinated approach for County forest conservation activities. (1992 L.M.C., ch. 4, § 1) COMCOR 22A-2(a).

On December 30, 1994, a Category I Conservation Easement was established by agreement which was intended, in accordance with the Forest Conservation Plan, to protect and preserve natural forest cover. (PD#5). The Category I Conservation Easement runs with the land. The subject Property falls under the Category I Conservation Easement. The Category I

Conservation Easement prohibits construction, grading and erection of play equipment. (PD#5, page 3, paragraphs 6a and b). The Respondent does not dispute that he graded and seeded an area behind the dwelling of his Property that fell within the boundary of the Category I Conservation Easement. He had prior notice that the rear portion of his Property was subject to the Category I Conservation Easement, and as a result, was prohibited from grading and removing the understory as well as building a swing set. He had an opportunity to carefully review the maps showing the easement boundaries prior to settling on his house.

Although he was fully aware prior to grading the Category I Conservation Easement on his Property and making preparations for a swing set that he would be in violation of the Category I Conservation Easement, he proceeded with the work to grade and seed his backyard and made preparations for building a swing set by placing a six foot by six foot timber boundary where the swing set was to be installed.

Not only did he knowingly violate the terms of the Category I Conservation Easement by taking these actions, he further violated the Category I Conservation Easement by installing a swing set after being warned not to install it by the MCPD Inspector. When questioned at the hearing on why he flagrantly disregarded the warning of the Inspector, the Respondent replied that his backyard was not suitable in its natural condition for his child to use as a play area; therefore, he cleared the area and installed a swing set so his son could play in the rear portion of his Property.

The Respondent did not dispute that he was in violation of the Category I Conservation Easement on his Property and admitted to the violations. The Agency has sustained its burden of proof by a preponderance of the evidence.

While not disputing the violations, the Respondent seeks a stay of this proceeding so that

he can apply to have the Category I Conservation Easement changed to a Category II Conservation Easement. A Category II Conservation Easement is not nearly as restrictive as a Category I Conservation Easement regarding what is allowed to be done to property that is subject to the easement. There was no evidence offered, however, that the Respondent had begun the process of applying to have the designation changed from a Category I Conservation Easement to a Category II Conservation Easement.

Remedies

The Agency is seeking both administrative civil penalties (COMCOR 22A-16) and corrective action. (COMCOR 22A-17) as a result of the Respondent's violations. As to the requested corrective action, the Agency is recommending that a professional survey be conducted at the expense of the Respondent that shows the boundaries of the Category I Conservation Easement on the Property. In addition, the Agency requests that the Respondent remove the grass and replace it with groundcover, native wildflower mix, or mulch within the planted forest area. The Respondent is to remove the swing set and the six foot by six foot timbers. The Agency also wants the Respondent to install signage to demark all forest Category I Conservation Easement boundaries on the Property and to plant three ¾ inch to 1 inch caliper native canopy trees and ten native shrubs.

The authority to seek corrective actions is found in COMCOR 22A-17(a). The Agency can seek the following corrective actions:

(1) stop the violation;

(2) stabilize the site to comply with a reforestation plan;

(3) stop all work at the site;

(4) restore or reforest unlawfully cleared areas;

(5) submit a forest conservation plan for the property;

(6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or

(7) submit a written report or plan concerning the violation.

Clearly, the Agency has the authority to stop the violation and require the Respondent to restore the area that was disturbed by his actions. Removal of the swing set and the timbers, along with mulching and planting wildflowers, will allow the area to return, in time, to its natural condition. As there was no evidence introduced that trees had been removed from the Property, the Agency's request that trees be planted is not supported by the corrective action authority found in COMCOR 22A-17(a). Furthermore, there is no authority to require the Respondent to conduct a survey or to demark the boundaries and post them with six by six foot posts and signage.

In addition to the corrective actions, the Agency is seeking an administrative civil penalty as well. COMCOR 22A-16. The Planning Board or Planning Director must consider the following eight factors in considering the amount of the administrative civil penalty. COMCOR 22A-16(d)(2). They are as follows:

(A) the willfulness of the violations;

(B) the damage or injury to tree resources;

(C) the cost of corrective action or restoration;

(D) any adverse impact on water quality;

(E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator;

(F) any economic benefit that accrued to the violator or any other person as a result of the violation;

(G) the violator's ability to pay; and

(H) any other relevant factors.

The administrative civil penalty may not be less than $0.30 per square foot. Md. Code Ann., Nat. Res.§ 5-1608 (2005). The maximum penalty is $9.55 per square foot, which was established by Montgomery County Resolution 15-1271. In this case, the Agency recommended a penalty of $1.08 per square foot after weighing all of the factors. There was no testimony concerning the Respondent's ability to pay and as a result, no value was assigned to this factor. Likewise, there was no penalty assigned to the "other" factor. As to "willfulness," the Agency recommended a penalty of $3.00 per square foot.

The Respondent did not disturb the easement by accident. He knew that the Property was subject to a Category I Conservation Easement when he purchased the Property. He acknowledged receiving the easement documents at settlement. He was warned by Joshua Kaye not to install his child's swing set, but ignored the admonition and installed it anyway. The Respondent's actions were a blatant disregard of the law. Rather than try and change the designation of the Category I Conservation Easement before clearing the land and installing the swing set, the Respondent decided to ignore the law, anticipating that he would be able to obtain a stay of the enforcement proceedings at a hearing. As outlined earlier, the only issues before me are whether a violation occurred, and if so, should an administrative penalty be assessed. The issue of whether the proceeding should be stayed is not an issue before me. Accordingly, I find that the $3.00 factor assigned to the willfulness category was not unreasonable and, if anything, was generous in light of the willfulness of the Respondent's actions.

I also considered the $1.00 per square foot assessment proposed for resource damage. The Respondent testified that he did not remove any trees from the Property. The resource damage calculation was based, in part, on the trees that were removed from the area. The Agency was not able to prove by a preponderance of the evidence that

there were trees on the Property that the Respondent had removed. As a result, I have elected not to assign a penalty to this factor. The water quality impact has also not been proven by the Agency by a preponderance of the evidence. The representative testified that trees and their root systems improve the water quality and, therefore, their removal would adversely affect water quality. If the Agency was unable to establish that trees were removed, then it follows that it is unable to establish by a preponderance of the evidence that the water quality was adversely impacted. Therefore, I have not assigned a penalty to this factor as well. The Respondent received an economic benefit for having a backyard that his child could play in. The Agency assigned a value of $1.00 per square foot for the economic benefit. This figure is not unreasonable given the benefit the Respondent received by his actions.

The actions of the Respondent in clearing the Property of understory took place over a period of time. In addition, the swing set was installed only after the Inspector warned against installing the swing set. This activity establishes a recurrent pattern of behavior that supports the penalty of $1.50 per square foot that was recommended by the Agency. As to the resource damage, the grading and removal of the understory clearly damaged the resource that was protected by the Category I Conservation Easement. As such, a $1.00 per square foot penalty is appropriate and not unreasonable.

Finally, the Agency allows for a credit to be considered for the cost of performing the corrective actions. The Agency assigned a credit of $1.00 per square foot. This credit would include not only the restoration of the affected area, but would also take into account all of the other corrective actions the Agency is seeking including the boundary survey and the planting and signage requirements. Since the corrective actions I am

proposing are not as comprehensive as requested by the Agency, I have reduced the credit by one-half to $0.50 per square foot. As a result, the average administrative penalty is now $0.83 per square foot. Since the total square feet affected is 3,250 square feet, the proposed administrative civil penalty is $2,697.50.

CONCLUSIONS OF LAW

I conclude that the Agency has established by a preponderance of the evidence that the Respondent has violated the Category I Conservation Easement located on the Property. Land Records of Montgomery County at Liber 13178, Folio 412; Montgomery County Planning Board Enforcement Rules, 3.11.

I further conclude that as a result of the violations, the Respondent is subject to administrative civil penalties in the amount of $2,697.50 and corrective actions. COMCOR 22A-16 and COMCOR 22A-17.

RECOMMENDED ORDER

I **PROPOSE** that the Montgomery County Planning Board of the Montgomery County Planning Department, Maryland National Capital Park and Planning Commission

ORDER that the Respondent be found in violation of a Category I Conservation Easement; and

ORDER that the Respondent pay an administrative civil penalty of $2,697.50; and

ORDER that the Respondent take corrective action to remove the grass and replace it with groundcover native wildflower mix, or mulch within the planted forest area. The Respondent is to remove the swing set and the six foot by six foot timbers and install ten native shrubs.

ORDER that the records and publications of the Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission reflect this decision.

January 6, 2011
Date Decision Mailed

Stuart G. Breslow
Administrative Law Judge

SGB/rbs
#119204

RIGHT TO FILE EXCEPTIONS

Upon mailing of this recommended decision, affected parties have fourteen (14) days to file exceptions with the Montgomery County Planning Board. Montgomery County Planning Board Enforcement Rules 4.2. Each exception must contain a concise statement of the issues presented, specific objections to one or more findings of fact and conclusions of law in the recommended decision and order; and arguments that present clearly the points of law and facts relied on in support of the position taken on each issue. A party may file an answer opposing any exception within fourteen days after the exceptions are served. Written exceptions should be addressed to the Chair of the Montgomery County Planning Board, 8787 Georgia Avenue, Silver Spring, Maryland 20904. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Andree Green, Associate General Counsel
Montgomery County Planning Department
Montgomery National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Carol S. Rubin, Office of General Counsel
Montgomery County Planning Department
Montgomery National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Mark Pfefferie
Acting Chief of Environmental Planning
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Chris Pirtle
1020 Heartfields Drive
Silver Spring, MD 20904

MONTGOMERY COUNTY PLANNING DEPARTMENT	*	BEFORE STUART G. BRESLOW,
	*	AN ADMINISTRATIVE LAW JUDGE
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION	*	OF THE MARYLAND OFFICE
	*	OF ADMINISTRATIVE HEARINGS
v.	*	VIOLATION OF FOREST CONSERVATION
CHRISTOPHER PIRTLE,	*	PLAN #119980960
RESPONDENT		

* * * * * * * * * * * * *

Exhibits

I admitted the following exhibits on behalf of the Agency:

PD #1 Letter from Mark Pfefferie, Acting Chief of Environmental Planning to the Respondent, dated October 5, 2010, attaching the Notice and the Agency's Enforcement Rules

PD#2 Notice, dated October 27, 2010

PD#3 Notice, dated November 16, 2010

PD#4 Montgomery County Planning Board Opinion, dated November 16 1999.

PD#5 Forest Conservation Easement Agreement, recorded December 30, 1994 among the land records of Montgomery County at Liber 13178, folio 412

PD#6 Final Forest Conservation Plan plat, Kaufman Property

PD#7 Plan of the Kaufman Property

PD#8 Record Plat depicting the lot owned by the Respondent, dated January 12, 2000

PD#9 Letter from Mike Bingley, Project Manager to the Respondent and his wife, dated March 7, 2002

PD#10 Letter from Grant F. DeMeritte, Secretary/Treasurer, Sherbrooke Homeonwners Association, Inc. to the Agency, dated June 16, 2003

PD#11 Notice of Violation issued to Respondent, dated February 19, 2010

PD#12 Administrative Citation issued to Respondent, dated May 26, 2010

PD#13 Three black and white photographs, August 2008 investigation

PD#14 Three black and white photographs, November 2010 investigation

The Respondent did not offer any exhibits on his behalf.

AUG 1 2011

Attachment 16

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

MCPB No. 11-43
Forest Conservation Plan No. 119980960
Respondent: Chris Pirtle
Date of Hearing: March 10, 2011

ORDER

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board is vested with primary enforcement authority of the Montgomery County Forest Conservation Law; and

WHEREAS, on November 16, 2010 the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission issued a Notice of Hearing to Chris Pirtle (Respondent), alleging that the Respondent violated the Montgomery County Forest Conservation Law by removing forest understory, cutting grass, and installing a swing set and timber edging in a Category I Conservation Easement that is located on Respondent's lot; and

WHEREAS, on December 8, 2010, Administrative Law Judge, Stuart G. Breslow, of the Maryland Office of Administrative Hearings, held a hearing at the Commission offices located at 8787 Georgia Avenue, Silver Spring, Maryland 20910; and

WHEREAS, on January 6, 2011, the Administrative Law Judge filed a Recommended Order, attached herein, proposing that the Montgomery County Planning Board find that Respondent violated a Category I Conservation Easement, and order the Respondent to:

1. pay an administrative civil penalty of $2,697.50; and
2. take corrective action to:
    a. Remove the grass and replace it with groundcover native wildflower mix, or mulch within the planted forest area; and
    b. Remove the swing set and the six by six timbers and install ten native shrubs; and

WHEREAS, following review and analysis of the Recommended Order by Planning Board staff and the staff of other governmental agencies, on March 10, 2011 the Board held a public hearing to review the Recommended Order; and

WHEREAS, at the hearing, the Board heard arguments concerning the Recommended Order; and

Approved as to
Legal Sufficiency: _____
M-NCPPC Legal Department

WHEREAS, on March 10, 2011, the Planning Board adopted the Recommended Order subject to certain modifications on motion of Commissioner Dreyfus; seconded by Commissioner Wells-Harley; with Commissioners Alfandre, Carrier, and Presley voting in favor of the motion;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Montgomery County Planning Board hereby adopts and incorporates by reference the recommendation and analysis set forth in the Recommended Order except for the following modifications:

1. Respondent must pay an administrative civil penalty of $2,697.50 to the Commission within 60 days of the mailing date of this Resolution; and
2. Respondent must do one of the following:
    a. Respondent must file a preliminary plan amendment to modify the Category I Conservation Easement located on Respondent's property modified to a Category II Conservation Easement (herein "Conservation Easement Modification") subject to the following conditions:
        i. Respondent must submit a complete application for the Conservation Easement Modification no later than 60 days after the mailing date of this resolution; and
        ii. Respondent's application for the Conservation Easement Modification must be approved no later than 6 months after the mailing date of this Resolution.

    If Respondent timely complies with this condition he is not required to perform the corrective actions required by the Recommended Order.
    b. If Respondent does not timely comply with each of the requirements of condition (a) above, he must perform the corrective actions required by the Recommended Order no later than 60 days after failing to comply.

BE IT FURTHER RESOLVED, that this resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that the mailing date of this Resolution is AUG 1 2011; 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).

* * * * * * * * * * *

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 Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Commissioner Dreyfuss, and Commissioner Presley voting in favor of the motion, and Vice Chair Wells-Harley and Commissioner Alfandre absent, at its regular meeting held on Thursday, June 2, 2011, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board

SUE CARTER
200-B MONROE STREET
ROCKVILLE, MD 20850

PAUL H. WIESTMA
1109 KATHERYN ROAD
SILVER SPRING, MD 20904

CHRIS PIRTLE
1020 HEARTFIELDS DRIVE
SILVER SPRING, MD 20904

Attachment 17

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PARTIAL [FINAL 13 MINUTES]

TRANSCRIPT OF

ENFORCEMENT HEARING:

MONTGOMERY COUNTY PLANNING DEPARTMENT V. CHRISTOPHER PIRTLE

BEFORE THE

MONTGOMERY COUNTY PLANNING BOARD

MARCH 10, 2011

COMMISSIONERS PRESENT:

FRANCOISE M. CARRIER, CHAIR

MARYE WELLS-HARLEY, VICE CHAIR

JOE ALFANDRE

NORMAN DREYFUSS

COMMISSIONERS ABSENT:

AMY PRESLEY

MS. CHRISTINA SORRENTO, M-NCPPC LEGAL COUNSEL REPRESENTING THE PLANNING DEPARTMENT, THE PLAINTIFF: I do have to just say that the whole mitigation that the, that Mr. Pirtle has brought up of converting it to a Category II, it was in front of the Hearing Examiner, but the Hearing Examiner recommended Category I. So, in a way,

CHAIR FRANÇOISE M. CARRIER: But the Hearing Examiner didn't know that there was a neighbor directly behind

MS. SORRENTO: That's correct.

CHAIR CARRIER: who argues that he's suffering from stormwater damage. I mean, we have no way to assess that information. That is a, that is an adjudicatory function that we can't perform, to decide whether it's true, you know, whether

MS. SORRENTO: That's correct.

CHAIR CARRIER: engineering-wise that's actually what's happening

MS. SUE CARTER, ATTORNEY REPRESENTING THE RESPONDENT, MR. CHRISTOPHER PIRTLE: And may I just suggest that, I don't know, but it would seem to me that if we're going to be back here, if the Board were inclined to do what we've asked and to allow us to come back and to amend the plan, perhaps that issue could be addressed as part of the consideration.

CHAIR CARRIER: You know, if the applicant would, ah, you

know, that certainly

COMMISSIONER NORMAN DREYFUSS: That was where I was going.

CHAIR CARRIER: that is the obvious way to go about this, is to figure out a way for you to do something that would satisfy this problem. I don't know if you will succeed in that endeavor, and in a violation case, we don't want to go on indefinitely waiting to find out.

COMMISSIONER DREYFUSS: What are the, ah, Ms. Sorrento, if we follow your recommendation, does this Board see anything again or does the, ah, who gets to approve the plan that is submitted by Mr. Pirtle to, ah, go to a Category II?

MS. SORRENTO: The Planning Board does. The Planning Board approves all

COMMISSIONER DREYFUSS: So we will see a plan when it comes back.

MS. SORRENTO: Yes, the Planning Board approves all plans that change easements.

COMMISSIONER DREYFUSS: Okay. Okay.

MS. CARTER: And if I might, and this is, again, we're going sort of beyond, to me, the record, but to the, um, it's been pointed out to me that this gentleman's property only, um, a portion of the rear yard here, it's really a little bit further. And you know, again, this is getting all into the

testimony

CHAIR CARRIER: My feeling is if the applicant is willing to offer to undertake to try and find a way to satisfy Mr. Wiestma as part of a plan, I think that would be fine. And we can allow him to do that, right, Mr. Lieb?

COMMISSIONER DREYFUSS: Voluntarily.

CHAIR CARRIER: But if

MR. DAVID LIEB, LEGAL COUNSEL TO THE BOARD: Yes. I have concerns if that's unable to happen we're going to be back here …. [inaudible] in a potentially awkward position.

CHAIR CARRIER: If that doesn't happen then we have to decide whether to send it back to the Hearing Examiner to hear evidence on remedy. We have the authority to remand it, don't we? Ms. Sorrento?

MR. LIEB: Yes. You do have the authority to remand it.

MS. SORRENTO: The Planning Department, though, asks strictly for a decision on whether this should be, whether Mr. Pirtle should be allowed to submit for a Category II, for an amendment to convert his Category I easement to a Category II now. Otherwise, the other option is just to stick with what the Hearing Examiner originally recommended and doing those corrective actions.

COMMISSIONER DREYFUSS: I would make a motion to follow the recommendation of, ah, the revised recommendation

CHAIR CARRIER: It's actually the recommendation of the Hearing Examiner.

COMMISSIONER DREYFUSS: No, it was the recommendation of the staff as to mitigation, not the Hearing Examiner. The Hearing Examiner recommended that it goes back to Category I.

CHAIR CARRIER: Well, we have to start with the Hearing Examiner's recommendation, with a finding of violation.

COMMISSIONER DREYFUSS: Okay. We find there was a violation.

CHAIR CARRIER: And then we [inaudible] penalty.

COMMISSIONER DREYFUSS: I agree with the penalty.

CHAIR CARRIER: The penalty that the Hearing Examiner

COMMISSIONER DREYFUSS: The Hearing Examiner set a dollar amount. And I would recommend that the staff, or, is it staff or Planning Board, or Department of Environment, who is making the recommendation?

CHAIR CARRIER: What is it that you're trying to

VICE CHAIR MARYE WELLS-HARLEY: [simultaneous speaking-inaudible]

COMMISSIONER DREYFUSS: I'm trying to accept the revised

MR. LIEB: The staff has recommended that the Board order the respondent to file within 60 days an amended preliminary and forest conservation plan necessary to convert the Category I easement to a Category II.

COMMISSIONER DREYFUSS: Right. And pay the fine. All the recommendations that Ms. Sorrento brought out.

UNIDENTIFIED VOICE: Except. Except

COMMISSIONER DREYFUSS: All.

UNIDENTIFIED VOICE: Okay.

COMMISSIONER DREYFUSS: And then they have to come back here with a plan for approval for a new preliminary plan and a record plat and, so that [simultaneous speaking—inaudible] yeah the payments go into the [simultaneous speaking—inaudible]

CHAIR CARRIER: Does your motion include anything regarding Mr. Wiestma's allegations?

COMMISSIONER DREYFUSS: No.

CHAIR CARRIER: You would just ignore those?

COMMISSIONER DREYFUSS: Well, I would hope that the applicant doesn't ignore them, but I think it was clear that it's not part of the record and we can't add them.

CHAIR CARRIER: I would be inclined to remand it for another hearing, personally.

UNIDENTIFIED VOICE: May I ask a question?

CHAIR CARRIER: I mean, unless we're going to allow the applicant the chance to work something out. I just think we can't, how can we craft an appropriate remedy? Unless somebody's going to tell me that this is just beyond the

purposes of the forest conservation law

[simultaneous speaking—inaudible]

MS. SORRENTO: I would argue that this is beyond the violation specifically for Mr. Pirtle's property and putting a swing set in a Category I conservation easement. And I would argue that

CHAIR CARRIER: Well, ah, I'm sorry, go ahead and finish.

MS. SORRENTO: I would argue that this is outside of the scope of the purposes of what this violation hearing was brought forth.

CHAIR CARRIER: But isn't the forest conservation law partly to retain trees and forest because it has benefits for surrounding properties. Just like the allegations here, that when you take out forest and understory, it changes things like stormwater flow. So it seems to me that it is relevant to deciding whether in this individual case, it is appropriate and within the purposes of the forest conservation law, to allow a conversion to Category II. This may be a circumstance where the topography and so forth makes it inappropriate and, this particular property owner should be required to do what the Planning Department originally asked for, which was to plant some bushes, and plant some ground cover, and take out the swing set. That was not what I expected at the beginning of this, but

MR. LIEB: Maybe I can, ah, sorry, maybe I can suggest a solution. The Board has before it the issue of how to act, how to, um, what to do in response to the Hearing Examiner's recommended order, um, as in the modification of the Category I to Category II that's been proposed here, that contemplates this matter coming back before the Board.

CHAIR CARRIER: Right.

MR. LIEB: When a forest conservation plan is put before the Board, that itself, I think, is something that is subject to public testimony about the adequacy of that plan. And so there, I think, there would be an opportunity for this gentleman, he'll have to be a little vigilant and make sure he's aware that that plan is coming, but for him to come back and testify about the adequacy of that plan in the context of a plan review. And that might factor into whether the Board decides to accept the proposed forest conservation plan or not.

UNIDENTIFIED VOICE: Will that plan contain grading lines?

MR. LIEB: I think typically a forest conservation plan will contain

CHAIR CARRIER: No? Mr. Pfefferle?

UNIDENTIFIED VOICE: Will it show water flow?

MR. LIEB: a natural resources inventory that would show,

I think, some topography.

UNIDENTIFIED VOICE: Yeah, topography. The grading lines.

MR. MARK PFEFFERLE, ENVIRONMENTAL PLANNING STAFF: For the record, Mark Pfefferle. That plan would show existing topography; if there were any changes required that he's supposed to do, it would show new contours. If there are no changes, it would show existing contours.

UNIDENTIFIED VOICE: Okay. Fine.

VICE CHAIR WELLS-HARLEY: So, would there be any way at that juncture, that we would have, or information that was definitive, to determine that the actions of Mr. Pirtle was, in fact, the cause

MS. CARTER: Right. And that's what, I guess, I wanted to say is that, I mean, Mr. Pirtle, who's anxious to speak, is telling me that whatever problem there may be pre-existed even this Category I easement. So at that time, I think, we would have to address whether or not we, indeed, agreed that this was even a factor in whatever issues this gentlemen was experiencing. We'd have to address that, at the hearing.

VICE CHAIR WELLS-HARLEY: Is that something that we would take a look at when we were determining whether it was appropriate to change it to a Category II?

MR. PFEFFERLE: Yes, we would take it into consideration.

I would take into consideration a number of different things, and that is one of them. I'd also take into consideration what was the purpose of putting the easement there to begin with.

VICE CHAIR WELLS-HARLEY: Okay.

COMMISSIONER DREYFUSS: Can your review include recommendations for ground cover for an area for reasons of controlling stormwater flow, or absorption of the soil? Is that some comment you make in a Category II or not?

MR. PFEFFERLE: No. Typically we don't make that

COMMISSIONER DREYFUSS: Can an applicant proffer that?

MR. PFEFFERLE: An applicant could, yes.

CHAIR CARRIER: Well it sounds like we would have some leeway when we review a forest conservation plan to consider more than we can appropriately consider today.

MS. CARTER: To take into account any [inaudible] factual, because I think Mr. Pirtle would like the opportunity at that point, then, to respond, because it is his sense that whatever waters, any water problem is not, it's unrelated to his rear yard.

MR. LIEB: There would be an opportunity for

MS. CARTER: At that time.

MR. LIEB: At that time, Mr. Pirtle would be in the position of an applicant seeking to amend the forest

conservation plan.

MS. CARTER: Okay. So he would have the opportunity to provide

MR. LIEB: So there would be an opportunity to present information about that at that time, yes. So.

MS. CARTER: Okay.

MS. SORRENTO: If I may, I think I could offer something that might be a bit of a solution here. If Mr. Pirtle comes forward with his plan, and the Planning Board finds that conversion from a Category I to a Category II is not appropriate, then at that time, and maybe this can be written into the Planning Board's resolution from this enforcement case, at that time the Hearing Examiner's original recommendation of removing the swing set, six by six timbers, planting of native shrubs, and putting wildflower mix down, that that would then be required.

CHAIR CARRIER: I'm not sure that we want to decide right now that that is the inevitable outcome, but that certainly seems

MR. LIEB: As a practical matter, the Category I easement is going to remain here until there's an amended easement.

CHAIR CARRIER: I mean, if we reject the plan that Mr. Pirtle comes up with, then the obvious alternative is to go to the Hearing Examiner's recommendation.

MS. SORRENTO: Well, okay. As long as the Board is comfortable with that, just because right now we have a swing set in a Category I conservation easement, and if they submit for a plan now, it's going to remain in a Category I conservation easement until that's resolved. So, I don't know if it's such a natural assumption on Mr. Pirtle's part that if his plan doesn't go through, that he would have to go and do those things.

MS. CARTER: I think we understood that, that this would enable us to have an opportunity to attempt to amend that plan without him having to go out, tear down the swing set, put back, tear out the grass, put everything back, then apply and then come back and undo it all if we were successful. We suggested this with the understanding that there would be enforcement measures consistent with what the Hearing Examiner had recommended if he's unsuccessful.

MS. SORRENTO: I just ask that the Planning Board's resolution reflect that, so that it ties this enforcement case up, completely, and that there's no need to remand back to a Hearing Examiner.

CHAIR CARRIER: Okay. Well, Mr. Dreyfuss, would your motion include the idea that if the plan is not approved, if we do not approve a plan within six months of its submission, then the ah, we will revert to the remedy recommended by the

Hearing Examiner, which was to return the property to its original condition

VICE CHAIR WELLS-HARLEY: And maintain the Category I

CHAIR CARRIER: And maintain the Category I easement.

COMMISSIONER DREYFUSS: Yeah. I was just going to say, that doesn't automatically happen if we don't, if the time frame that you've set

CHAIR CARRIER: I think you have to say it.

VICE CHAIR WELLS-HARLEY: Yeah.

MR. LIEB: I think there's a good argument that it ought to automatically happen that way, but I think Ms. Sorrento has helpfully, ah, suggested that it just be tied up in the language of the resolution so there isn't any question

COMMISSIONER DREYFUSS: Okay. I agree with that language. And then one other thing that Mr. Alfandre reminded me of, that the applicant asked for 60 days instead of 30 days, which is, I think okay with me

CHAIR CARRIER: To pay the penalty?

COMMISSIONER DREYFUSS: Yeah to pay the penalty. It's okay with me, so I'll modify my motion, and also add Ms. Sorrento's penalty phase, or, end result if it doesn't work. Whatever you want to call it.

VICE CHAIR WELLS-HARLEY: I would support that.

CHAIR CARRIER: Is that a second?

VICE CHAIR WELLS-HARLEY: Second.

CHAIR CARRIER: Is there any further discussion? Hearing none, all those in favor, say Aye.

UNANIMOUS: Aye.

CHAIR CARRIER: Any opposed? The motion carries. So the upshot of this is that the applicant has to submit a plan within 60 days and then he has six months to get it approved.

UNIDENTIFIED VOICE: Okay.

CHAIR CARRIER: And I'm sure that you will hear from the applicant in that time frame.

MR. PFEFFERLE: Yes, you would be notified as an adjoining or confronting property owner.

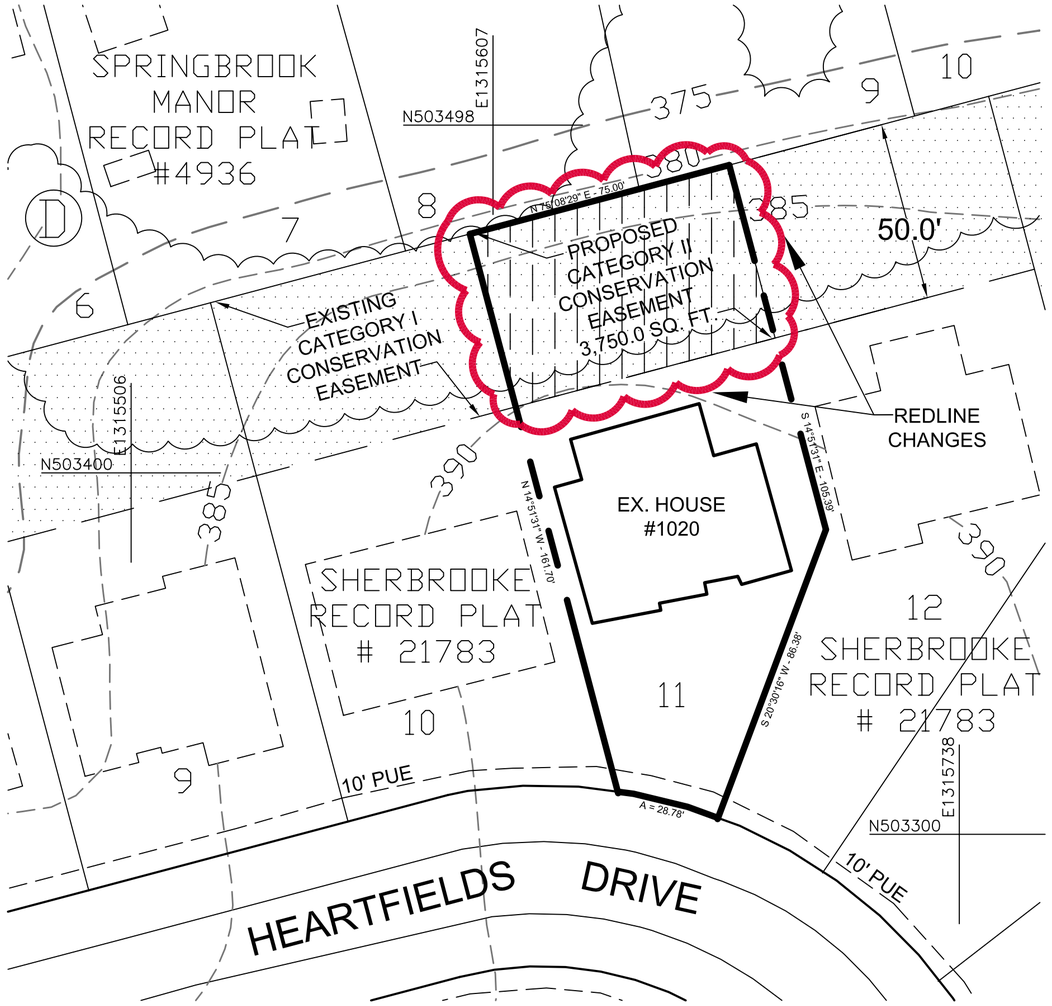
CHAIR CARRIER: Good.

CERTIFICATION

This is to certify that the attached proceedings before the Maryland-National Capital Park and Planning Commission, Montgomery County Planning Board, in the matter of Enforcement Hearing; Montgomery County Planning Department v. Christopher Pirtle, held in the auditorium at 8787 Georgia Avenue, Silver Spring, Maryland, on Thursday, March 10, 2011, were held as herein appears, and that this is a transcript of the final 13 minutes of the hearing, taken from the recording.

Ellyn Dye
Technical Writer

Attachment 18



Scale: 1" = 30'

0' 30' 60' 120'

LEGEND:

- Existing House
- Existing Contour
- PUE (10' PUE)
- BRL (BRL)
- Lot Line
- Existing Conservation Easement
- Proposed Conservation Easement

LIST OF AMENDMENT ITEMS:

1. REVISION TO EXISTING CATEGORY I CONSERVATION EASEMENT

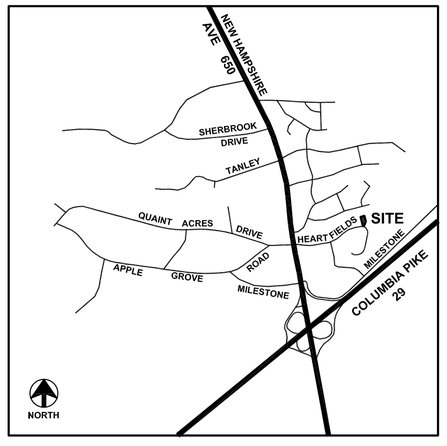
FINAL FOREST CONSERVATION PLAN NOTES:

1. EXISTING CATEGORY I CONSERVATION EASEMENT ON PROPERTY: 3,750 SQUARE FEET
2. PROPOSED TO CHANGE TO A CATEGORY II CONSERVATION EASEMENT: 3,750 SQUARE FEET
3. MITIGATION FOR CHANGE TO CATEGORY OF CONSERVATION TO BE SATISFIED BY PURCHASING CREDITS AT A FOREST CONSERVATION BANK

NOTES:

1. AREA OF PROPERTY - 11,236.0 SQUARE FEET
2. EXISTING ZONING - R-90
3. SITE IS SERVED BY PUBLIC WATER AND SEWER
4. EXISTING SEWER & WATER SERVICE CATEGORIES: S-1, W-1
5. LOCATED IN CABIN PAINT BRANCH WATERSHED
6. PROPERTY LOCATED ON TAX MAP JQ562; WSSC SHEET 215NE01
7. UTILITIES (as available): Washington Gas, Verizon, PEPCO

VICINITY MAP
1" = 2000'



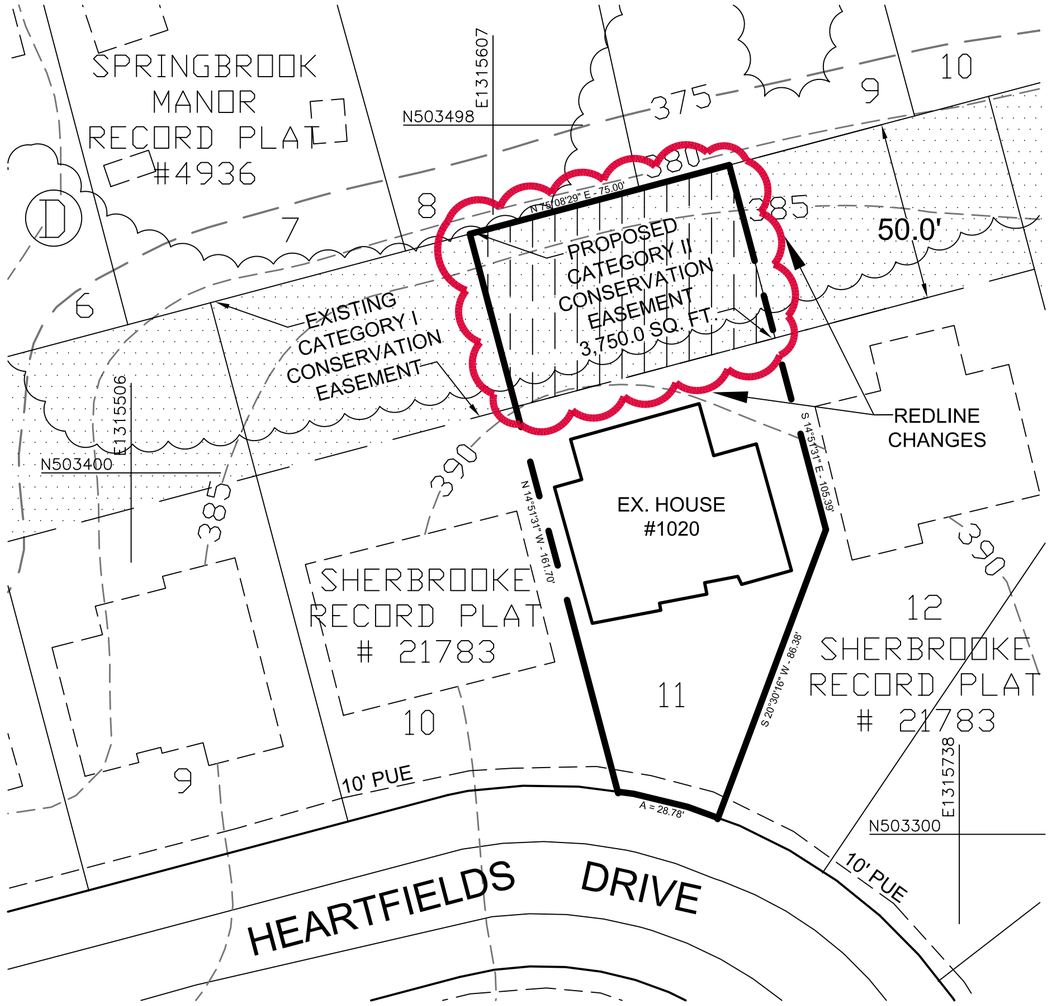
Prepared for:
Christopher & Robin Pirtle
1020 Heartfields Drive
Silver Spring, MD 20904
(301) 650-9188

FINAL FOREST CONSERVATION PLAN - LIMITED PLAN AMENDMENTS
KAUFMAN PROPERTY LOT 11; BLOCK A
(1020 Heartfields Drive)
Montgomery County, Maryland

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240

date: 09/29/2011

scale: 1"=30'



Scale: 1" = 30'

0' 30' 60' 120'

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6. PROPERTY LOCATED ON TAX MAP JQ562; WSSC SHEET 215NE01
7. UTILITIES (as available): Washington Gas, Verizon, PEPCO

LEGEND:

Existing House

Existing Contour

PUE — 10' PUE

BRL — BRL

Lot Line

Existing Conservation Easement

Proposed Conservation Easement

Surveyor's Certificate:

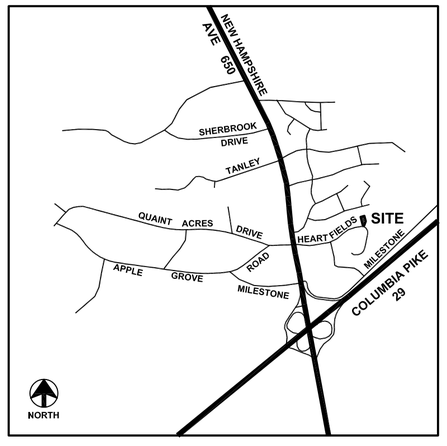
I hereby certify that the boundary shown hereon is correct to my best knowledge and belief based upon existing records and visual observations.

09/29/2011 04/11/2011

Signature Date Exp. Date

VICINITY MAP

1" = 2000'



Prepared for:

Christopher & Robin Pirtle
1020 Heartfields Drive
Silver Spring, MD 20904
(301) 650-9188

PRELIMINARY PLAN-LIMITED PLAN AMENDMENTS

KAUFMAN PROPERTY LOT 11; BLOCK A

(1020 Heartfields Drive)

Montgomery County, Maryland

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240

date: 09/29/2011

scale: 1"=30'

Attachment 19

Lindsey, Amy

From: Paul H. Wietsma <phwietsma@verizon.net>
Sent: Saturday, October 22, 2011 1:40 PM
To: Butler, Patrick
Cc: Lindsey, Amy
Subject: Re: Forest Conservation Plan #119980960-Chris Pirtle

Mr. Butler & Ms. Lindsey,

Thank you for responding. Mr. Joshua Kaye referred me to you as the Lead Reviewer on this case. Future correspondence will be through Ms. Lindsey.

Spring/Summer of 2008 I reported to MNCPPC the neighbor behind me was clearing the understory of I what believed to be a Forest Conservation Easement. Mr. Kaye was the MNCPPC representative who responded to my enquiry.

Subsequently Mr. Mark Pfefferle informed me of my right to testify at the March 10, 2011 Planning Board hearing on the Pirtle Enforcement case to voice my concerns/issues. I did testify and can forward the testimony to you. Montgomery County Planning Board copied me on August 1, 2011 the Resolution MCPB No.11-43 ORDER which defines the Resolution.

This week I received a copy of NOTICE OF APPLICATION Preliminary Plan for the Kaufman Property, Lot 11; Block A as prepared by B&A, Inc. Land Planning Consultants dated October 14, 2011. The description states I may participate in the review by either sending written comments to M-NCPPC or by contacting the M-NCPPC Lead Reviewer. The Plan depicts a portion of my property, it is Lot 9; Block D Springbrook Manor.

Thank you for your time.

Paul H. Wietsma AIA

----- Original Message -----
From: Butler, Patrick
To: Paul H. Wietsma
Cc: Lindsey, Amy
Sent: Friday, October 21, 2011 3:43 PM
Subject: RE: Forest Conservation Plan #119980960-Chris Pirtle

Hello Sir.

The environmental review on this case is Amy Lindsey. Her email is attached and her phone number is 301-495-2189. Let us know how we can help.

Thanks

Patrick Butler
Planner
Mid-County, Team 2
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
301-495-4561
patrick.butler@mncppc-mc.org

From: Paul H. Wietsma [mailto:phwietsma@verizon.net]
Sent: Friday, October 21, 2011 3:25 PM
To: Butler, Patrick
Subject: Forest Conservation Plan #119980960-Chris Pirtle

Mr. Butler,

As the original complainant I wish to participate in the review of the Proposed Plan to Modify the Forest Conservation Plan.

My cell number is 301 633 7173.

Paul H. Wietsma AIA

Lindsey, Amy

From: Paul H. Wietsma <phwietsma@verizon.net>
Sent: Monday, October 24, 2011 12:36 PM
To: Lindsey, Amy
Subject: Re: Forest Conservation Plan #119980960-Chris Pirtle

Ms. Lindsey,

Thank you for your timely and informative response.

I'm somewhat familar with the difference between a Category I and a Category II Forest Conservation Easement. Mr. Pfefferle previously had referred me to the MontgomeryPlanning.org web site Types of Conservation Easements.

The clearing of the understory has increased the amount of surface water coursing downhill. This water is causing erosion/silting on my property. I have photos showing the amount of water and damage to my property.

The concern is the amendment will establish a precedence for the other homeowners uphill from my property.

I'll review the plans as submitted on the link and call you.

Thank you,
Paul H. Wietsma AIA
301 633 7173

----- Original Message -----
From: Lindsey, Amy
To: Paul H. Wietsma ; Butler, Patrick
Sent: Monday, October 24, 2011 10:02 AM
Subject: RE: Forest Conservation Plan #119980960-Chris Pirtle

Mr. Wietsma,
Here is a link to the plans as submitted -
http://www.daicsearch.org/imageENABLE/search.asp?Keyword=11998096B
Essentially, the applicant is proposing to amend the forest conservation easement from a Category I to a Category II. A Category I Forest Conservation easement protects forest (tree cover and understory); a Category II Forest Conservation easement protects tree cover.

Please let me know if you have any questions.
Amy

Amy Lindsey, Senior Planner
Area 2 - East County Team
301.495.2189

From: Paul H. Wietsma [mailto:phwietsma@verizon.net]
Sent: Saturday, October 22, 2011 1:40 PM
To: Butler, Patrick

Cc: Lindsey, Amy
Subject: Re: Forest Conservation Plan #119980960-Chris Pirtle

Mr. Butler & Ms. Lindsey,

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Thank you for your time.

Paul H. Wietsma AIA

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To: Paul H. Wietsma
Cc: Lindsey, Amy
Sent: Friday, October 21, 2011 3:43 PM
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Patrick Butler
Planner
Mid-County, Team 2
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
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patrick.butler@mncppc-mc.org

From: Paul H. Wietsma [mailto:phwietsma@verizon.net]
Sent: Friday, October 21, 2011 3:25 PM
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As the original complainant I wish to participate in the review of the Proposed Plan to Modify the Forest Conservation Plan.

My cell number is 301 633 7173.

Paul H. Wietsma AIA

Lindsey, Amy

From: Barry Wides <barrywides@gmail.com>
Sent: Sunday, November 06, 2011 3:54 PM
To: MCP-Chair
Cc: Lindsey, Amy; Barron, Bill; Bunnag, Candy; Oconnor, Kristin; Carter, John
Subject: 1020 Heartfields Drive Application (11998096B)

Dear Ms. Carrier:

I am writing concerning the application by the owners of 1020 Heartsfield Drive to convert their Category 1 conservation easement to a Category 2 easement. While I have served as President of the North White Oak Civic Association for the past 13 years, I am writing this letter in my personal capacity as this issue has not yet been brought before the members of our association for a vote and I was encouraged by Amy Lindsey to express my views to you as quickly as possible concerning this matter. I support keeping the type 1 conservation easement at 1020 Heartfields in order to mitigate the storm runoff from this property to adjacent property owners.

Prior to 1998, the land on which this and other homes in the Sherbrooke subdivision was a heavily forested area known as the Kaufman property. The Kaufman property backed up to homes along Kathryn Road, Eden Drive, and Caplinger Road. For the homes on Kathryn Road and Eden Drive, this forested area was elevated by about 10-30 feet from existing homes. The slopes along the back of the property lines in some cases was quite steep. When the Sherbrooke subdivision was proposed, our association testified at the public hearing in favor of a 100 foot forest conservation area between existing homes and the new homes. Our concern was that maintaining this forest conservation buffer would mitigate the impacts of runoff from this new subdivision on existing homes. Our concern about environmentally sensitive development of this property was the subject of the cover story in the Washington Post Sunday magazine section on July 2, 2000 entitled "Whose Back Yard: The Problem with the Solution to Suburban Sprawl."

The planning board approved the Sherbrooke development with a Type 1 forest conservation easement being placed in the back yards of the the properties that abutted many of the existing properties on Caplinger Road, Eden Drive, and Kathryn Road. 1020 Heartfields Drive is one of the properties with such a Type 1 easement.

I'm told that in 2008, much of the foliage in the conservation easement at 1020 Heartfields was removed and grass was planted in its place. Now only a small strip of foliage remains at the back of this property between this home and those immediately behind it. One of the neighbors immediately behind 1020 Heartfield (Mr. Wietsma at 1009 Kathryn Road) tells me that he has been experiencing significantly greater runoff since grass was planted in place of the foliage at 1020 Heartfields. Mr. Wiestma tells me he has incurred significant costs in his attempts to remediate the runoff.

I would ask that the Planning Board refrain from changing from a Type 1 to Type 2 easement at 1020 Heartfields.

Thank you for your consideration of my views on this matter.

Barry Wides
11803 Ithica Drive
Silver Spring, MD 20904

Lindsey, Amy

From: Wides, Barry <Barry.Wides@occ.treas.gov>
Sent: Monday, November 07, 2011 11:27 AM
To: MCP-Chair
Cc: Lindsey, Amy; phwietsma@verizon.net
Subject: Correction: 1020 Heartfields Drive Application (11998096B)

Dear Ms. Carrier,

There is a correction to my previous correspondence on this case. Mr. Wietsma's address is 1109 Kathryn Road.

Thank you.

Barry Wides
11803 Ithica Drive
Silver Spring, MD 20904

From: Barry Wides [mailto:barrywides@gmail.com]
Sent: Sunday, November 06, 2011 3:54 PM
To: MCP-Chair@mncppc-mc.org
Cc: amy.lindsey@montgomeryplanning.org; bill.barron@mncppc-mc.org; candy.bunnag@mncppc-mc.org; kristin.oconnor@mncppc-mc.org; john.carter@mncppc-mc.org
Subject: 1020 Heartfields Drive Application (11998096B)

Dear Ms. Carrier:

I am writing concerning the application by the owners of 1020 Heartsfield Drive to convert their Category 1 conservation easement to a Category 2 easement. While I have served as President of the North White Oak Civic Association for the past 13 years, I am writing this letter in my personal capacity as this issue has not yet been brought before the members of our association for a vote and I was encouraged by Amy Lindsey to express my views to you as quickly as possible concerning this matter. I support keeping the type 1 conservation easement at 1020 Heartfields in order to mitigate the storm runoff from this property to adjacent property owners.

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I would ask that the Planning Board refrain from changing from a Type 1 to Type 2 easement at 1020 Heartfields.

Thank you for your consideration of my views on this matter.

Barry Wides
11803 Ithica Drive
Silver Spring, MD 20904

Lindsey, Amy

From: Maria Germany <chica_germany@hotmail.com>
Sent: Saturday, November 12, 2011 5:30 PM
To: patrick.buttler@montgomeryplanning.org
Cc: Lindsey, Amy
Subject: Plan # 11998096B
Attachments: IMG_2064.JPG; IMG_2065.JPG

Dear Mr. Buttler,

Thanks again for taking my call regarding plan # 11998096B where applicant Chris Pirtle asks for converting his easement in the former Kaufman Property from category I to category II. I live right next to his development and intend to testify opposing this application. I therefore would appreciate it if you could notify me of the hearing date once it has been set.

In developing the Kaufman Property the easement was established after a long and intense process of participation between the community, the developer, and staff of Park and Planning and Permitting Services. Plans were revised and re calibrated until neighbors were satisfied, among other things, that water run off and water pressure from the new development would not cause damage to adjacent properties, as they are located down hill from it.

The plan can serve its intended purpose only if it is preserved as originally designed. Changes do have serious consequences and I am familiar with three instances: 1) When owners of the property behind my house literally razed the easement in their (lot 13) property, a cement retaining wall in front of my basement door bowed (see attached pictures). An engineer we consulted told us the below-the-surface water pressure was causing the bowing. The bowing stopped after the owners were forced to restore the easement. 2) The neighbor's yard below the applicant's easement (lot 11) has suffered enormous damage after the easement was converted into a lawn. The affected gentleman has spent $8,000 and he still has water run off problems. 3) My next door neighbor bought his house 5 years ago after researching the area and being assured that his backyard abutted a category II easement, but he has battled water and privacy issues as the easement behind his house is now effectively a category II following underbrush removal and a lawn established instead.

Allowing one owner to convert the easement to category II pocks holes in the original plan and sets a precedent that invites other owners to apply for the same ruling. This not only makes water run offs and other ills worse and more wide spread but influences the market value of properties. As you may imagine, a house located below a property with a category I easement will command a different price than the house next to it located below a category II easement. By the same token, owners with category I easements will market value their properties differently than those with category II. Moreover, allowing individual conversions will only reinforce the widespread conviction that the county is not serious about easements and that by paying a modest fee you can legally change the character of your property. That will invite even more brazen violations like the one perpetuated behind my backyard where the owners erased the easement the very first weekend they moved in, despite fervent pleas from everybody to stop.

The applicant asking for conversion to category II states in his application that he has small children that need a bigger yard to play. I can sympathize with his desire for more playing space but he has other options available to him, namely a large community open space a stone throw away from his house, in addition to the development playground located quite close to his property.

Having an easement in one's property is an obligation that is acquired voluntarily after signing a document that clearly spells out the conditions and obligations involved. Yet some home buyers choose to buy the property even when they consider the easement to be an inconvenience because they figure that they can can easily violate the terms of the contract and get away with it. Enforcement of compliance should be for everybody just as it is expected of any other legal obligation, namely property taxes, zoning, permits, HOA dues, condo fees, etc. Making exceptions and converting from Category I to Category II just because it is more convenient to the particular owner cheapens the environmental policy of the county and sends the wrong message to neighborhoods.

Our neighborhood has already had its share of exceptions granted by Park and Planning in the form of a police station to

be built next door (accompanied by a future tall building), and off-site reforestation of the Kaufman property. We think they are more than enough. We are urging you to keep the easements as originally agreed.

Thanks in advance for your attention to this matter.

Maria C. Germany
11604 Caplinger Rd.
Silver Spring, MD 20904
(301) 622-3560

Documents and Photos from Mr. Wietsma

KART Landscape
13711 Travilah Road
Rockville, MD 20850
Phone: (301) 424-0238
Fax: (301) 424-4453
KARTLANDSCAPE@COMCAST.NET

PROPOSAL
May 4, 2011

Customer: Mr. Paul Wietsma	**Company**:
Address: 1109 Kathryn Road Silver Spring MD 20904	**Property Address** (if different):
CC:	**Home Phone**: 301-633-7173 **Work Phone**: **Email**:

We hereby submit specifications and estimates for: LANDSCAPE WORK TO ELIMINATE DRAINAGE AND EROSION DEFICIENCIES AT THE BACK SLOPE OF THIS HOME

1. At a number of places in the back of your home near your property line, water is flowing through from your neighbor's property and eroding the slope at the back of your house. This is particularly notable on the right corner near the property line and on the left portion of your backyard from the middle of the yard over to the timber retaining steps. At several places behind a stone retaining wall, the hillside has washed out, including washing out some of your boxwoods. To correct this deficiency, we would fill in the existing washed out areas with a soil mixture including a clay-base to help hold the soil in place and then topdress it with composted topsoil.

2. We would install 1 x 4 wood bed edgers at several places on the slope to help hold the groundcover plantings discussed below.

3. We would then provide and install a combination of Ivy and Periwinkle plants in 2 ¼" peat pots. We estimate approximately 1,800 plants to be installed 6" on center to cover all of the eroded areas.

4. Once the planting has been completed, we would mulch all of these areas with a hardwood shredded mulch.

5. We would also use Periwinkle plants in the stone retaining wall so that would grow out and drape over this wall. These plants are included in the total figure mentioned above.

KART Landscape
13711 Travilah Road
Rockville, MD 20850
Phone: (301) 424-0238
Fax: (301) 424-4453
KARTLANDSCAPE@COMCAST.NET

PROPOSAL

May 4, 2011

Customer: Mr. Paul Wiestma
Address: 1109 Kathryn Road
Silver Spring MD 20904

Company:
Property Address (if different):

NOTES: The above described work should help to eliminate the erosion caused by the water draining from the neighboring property. However, we cannot guarantee there will be no future erosion. This work can be done approximately 5-6 weeks from acceptance of this proposal and receipt of deposit. The work will take 2-3 days for completion. Our Home Improvement License is #18642. We will use top quality groundcover plantings. However, because of the erosion nature of the area, we cannot guarantee these plants.

WE HEREBY PROPOSE to furnish material and labor – complete in accordance with the above specifications, for the sum of :
Four Thousand Seven Hundred Sixty Dollars **$4,760.00**

Payment to be made as follows: A deposit of $1,585.00 will be made with the acceptance of this proposal. The balance will be paid upon completion of the job.

All work is to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.

Note: This proposal may be withdrawn by us if not accepted within 15 days.

ACCEPTANCE OF PROPOSAL: The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature: _____
Robert B. Ramsburg

_____ Client Signature

_____ Date

PLEASE RETURN ACCEPTED COPY WITH DEPOSIT

MHIC #42490 MEMBER BBB
VHIC #2705 MEMBER LCA
ICPI Certified NCMA CERTIFIED

PROPOSAL

Paul Wietsma
1109 Kathyrn Rd.
Silver Spring, MD 20904
Client's email adress
(301) 633-7173

Date: 5/28/2011

Estimate #W006

QTY	WORK DESCRIPTION
	BACKYARD EROSION SOLUTION
	Construct two sets of mini retaining walls using existing and new 6x6" pressure treated ties.
3	**Yards of top soil to fill in low spots, holes and eroded areas.**
30	**Flats of Pachysandra on top of section approximately 6-8" apart.**
	Add mulch.
	Middle section will remain as a grassy area for now.

We PROPOSE hereby to furnish material and labor complete in accordance with above specifications: 1/3 down, 1/3 mid way through, and the balance due upon completion.

Office: (301) 421-4141 *2000 Spencerville Road*
Spencerville, Maryland 20868

Total: $4,482.00