



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

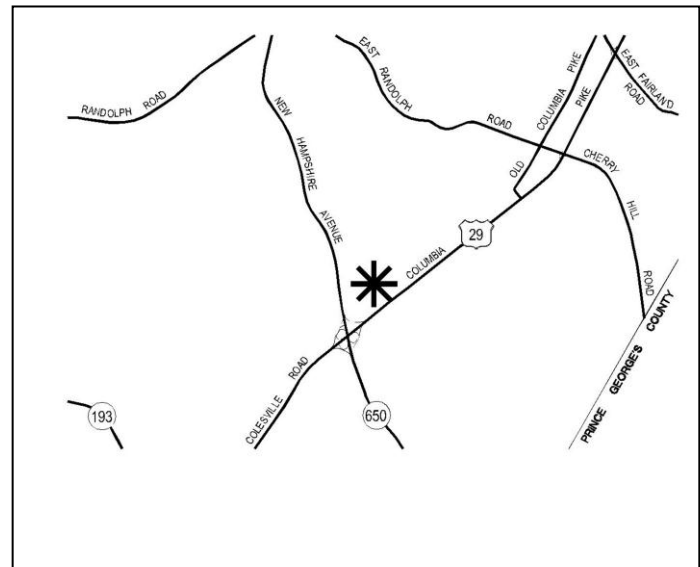
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Staff Report Date: 08/30/12

Description

Continuation of the April 12, 2012 hearing on Limited Amendment to Preliminary Plan 11998096B for the purpose of amending the Final Forest Conservation Plan to allow for a play area within a Category I 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 Zone
- 1997 *White Oak Master Plan*
- Applicant – Christopher M. and Robin Pirtle
- Filing date: 5/30/2012



Summary

- Staff recommends **denial** because the proposed plan does not meet the Planning Board’s direction to the Applicant to:
 - Submit a revised Final Forest Conservation Plan with the existing play area retained within the Category I Conservation Easement, appropriate new plantings in the easement area, and suitable stormwater management to alleviate downslope drainage issues; or
 - Submit a revised Final Forest Conservation Plan with the play area relocated outside of the Category I Conservation Easement and appropriate new plantings in the easement area.

Overview

On April 12, 2012, the Planning Board heard a request from the owners (the Applicant) of the Subject Property to amend Preliminary Plan 119980960 in order to amend the approved Final Forest Conservation Plan (FFCP) by replacing the existing Category I Conservation Easement with a Category II Conservation Easement (Attachment A – Staff report). The Subject Property is part of the Kaufman Property subdivision, and 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).

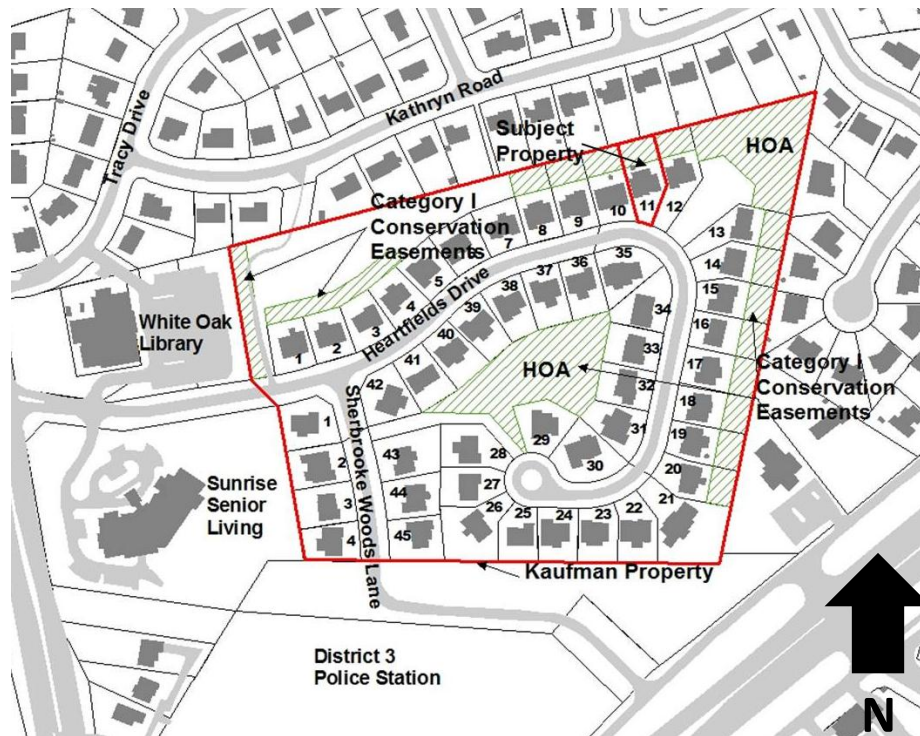


Figure 1 -- Existing Category I Conservation Easements on the Subject Property and the Subdivision

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 play area in a Category I Conservation Easement area.

At the public hearing on April 12, 2012, the Planning Board discussed the relative merits of protecting the easement area with a Category II Conservation Easement instead of a Category I Conservation Easement and the implications for both the Applicant and neighboring property owners. The Board heard testimony from adjacent property owners, who stated that the purpose of the Category I Conservation Easement was to alleviate the effects of the newer development on existing development. Specifically, the existing Category I Conservation Easement served as a means to control stormwater runoff for the properties to the north, as the lots in the Kaufman Property subdivision are significantly higher in elevation than the lots along Kathryn Road in the adjoining neighborhood to the north.

The Planning Board decided that maintaining the existing Category I Conservation Easement was the correct solution, and gave the Applicant two options to pursue:

- 1) to retain the play area within the Category I Conservation Easement, but provide additional planting to restore the forest outside the play equipment area, and install appropriate stormwater management mechanism to alleviate runoff onto adjacent properties; or
- 2) to remove the play area from the Category I Conservation Easement and install additional plantings to restore the forest.

Applicant's Proposal

The Applicant is pursuing option 1, and submitted a revised Final Forest Conservation Plan (FFCP) on May 30, 2012, which retains the play area within the Category I Conservation Easement and includes replacement of lawn with native seed grasses and 10 native shrubs arranged in two hedges in the easement area (Attachment B – proposed amended FFCP). The proposed stormwater management consists of three 50-gallon rain barrels to handle roof runoff. The Applicant has submitted a letter in support of the proposal (Attachment C – Applicant letter).

Staff found the submitted material to be insufficient to make a determination and asked the Applicant's engineer to provide additional information (e.g. calculations to support the sizing and use of the 50-gallon rain barrels) to complete its analysis. However, the Applicant was unwilling to work with the staff to determine the adequacy of the proposed solution and asked the staff to forward the plan, as submitted, to the Planning Board with a staff recommendation.

Analysis

Staff does not support the Applicant's proposed plan for the following reasons.

1. *The Applicant has provided no justification or analysis for the three 50-gallon rain barrels and it is impossible for staff to determine if the proposed solution will provide any stormwater runoff relief to downhill neighbors as intended by the Board's direction at the April 12, 2012 public hearing.*

The goal of requiring additional stormwater management was to provide some relief from stormwater runoff from the Subject Property onto adjacent properties caused by the degradation of the Category I Conservation Easement area. In order to accurately determine whether the proposed use of three 50-gallon rain barrels will appropriately control enough stormwater to provide any relief, more information is necessary. Like all stormwater management devices, appropriate sizing is determined by the area controlled and the inches of rainfall. Rain barrels are designed to handle the flow from downspouts, which in turn discharge the rainwater from defined areas of rooftop. The area of rooftop handled by any given downspout is dictated by the design of the roof and this area often varies across a single structure. Therefore the rain barrels associated with each downspout are designed to handle the runoff from that particular downspout. Staff is unable to determine with certainty the roof area associated with the downspouts that will discharge into the three rain barrels, and whether the rain barrels have enough capacity to handle that much runoff.

Additionally, rain barrels must be designed with safe discharge locations to handle any overflow after capacity is reached. For example, if a rain barrel is designed to handle 0.2 inches of rainfall, there needs to be a plan to handle the additional rainfall. The Applicant has not

provided any information as to what happens to the additional discharge if a heavy downpour exceeds the capacity of the rain barrels. While the details provided on the plans indicate that overflow is to be directed to “stable discharge points”, no delineation of the stable discharge points is provided. This means that once the rain barrel capacity is reached, any additional rainfall will be discharged directly into the backyard area and, in the absence of typical understory and forest floor in a Category I Easement area, flow unimpeded onto the adjoining downhill properties.

Without more information, staff cannot adequately evaluate the proposal to determine if the proposed remedies will alleviate the stormwater runoff for the adjoining properties.

2. *The proposed plantings do not restore the Category I Conservation Easement area to forest.*

The goal of the proposed plantings was to restore, as much as feasible, the form and function of the easement area to forest, as is appropriate within a Category I Conservation Easement. While staff has no issue with the quantity or species of shrubs shown on the proposed plan, the proposed design of the plantings does not help restore the easement area. Essentially, the two species of shrubs are shown as hedges at the rear corners of the easement area. This planting pattern does not take into account the vegetation already present in those areas nor does it create a natural pattern of growth. The shrubs should be scattered towards the center of the easement area in a more natural pattern. The plantings can be aesthetically pleasing and still meet the purposes of restoring the Category I Conservation Easement.

Notification and Outreach

The Subject Property was properly signed with notification of the proposed Preliminary Plan amendment prior to the initial 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.

Conclusion

Since the applicant is not willing to work with staff to complete its analysis, staff cannot recommend approval of the plan as submitted and therefore recommends:

1. Denial of this application; and
2. Implementation of the recommendations of the Administrative Law Judge, within 30 days of the mailing date of the Planning Board resolution. (Attachment D– Administrative Law Judge Recommended Order).

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List of Attachments

Attachment A –Staff report, April 12, 2012 Planning Board Hearing

Attachment B – Submitted amended FFCP

Attachment C – Applicant letter

Attachment D – Administrative Law Judge Recommended Order