

**21611 Ripplemead Drive, Laytonsville (a.k.a Fairhill) Forest Conservation Plan Amendment No. 11996071A
(In Response to a Forest Conservation Law Violation)**



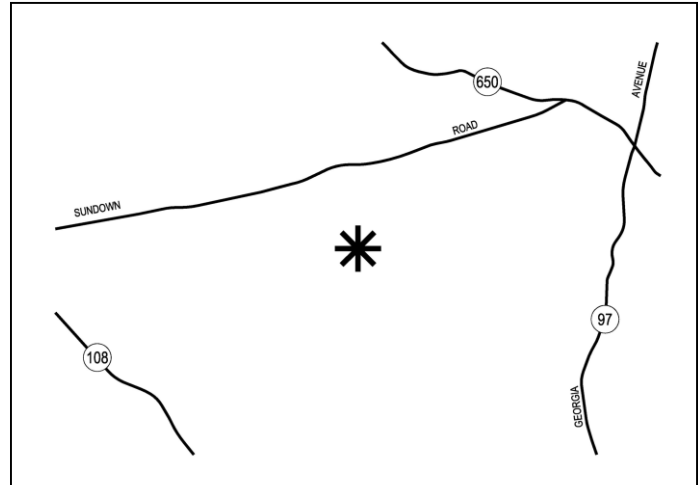
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Description

Completed: 7/15/2016

Limited Amendment, Forest Conservation Plan No. 11996071A, 21611 Ripplemead Drive, Laytonsville (in response to a forest conservation law violation)

- RDT (AR) Zone
- Fairhill Subdivision
- Lot 7, Block A
- Within Olney Master Plan
- Property Owner: Marquis McClure
- Submitted on May 17, 2016



Request to amend the Forest Conservation plan on Lot 7 Block A, 21611 Ripplemead Drive, Laytonsville by:

1. Removing approximately 2.484 acres square feet of Category I Conservation Easement from 21611 Ripplemead Drive and mitigate offsite by acquiring 4.97 acres square feet of forest mitigation credit at an M-NCPPC approved forest conservation bank.

STAFF RECOMMENDATION AND CONDITIONS

Staff recommends approval of the amendment to Forest Conservation Plan 11996071A with the conditions listed below.

1. The property owner must submit an executed Certificate of Compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite forest mitigation bank within 30 days of the mailing date of the Planning Board's resolution. The Certificate of Compliance must provide 4.97 acres of mitigation credit for the removal of 2.484 acres of Category I Conservation Easement.
2. The property owner must record in the Montgomery County Land Records a new Category I Conservation Easement that has been approved by the Planning Department to show the remaining Conservation Easement areas on the Property with 30 days of the mailing date of the Planning Board's resolution.
3. The property owner must record in the Montgomery County Land Records an easement abandonment that has been approved by the Planning Department within 45 days of the mailing date of the Planning Board's resolution. The Deed of Abandonment must be recorded after the new Conservation Easement is recorded in the Montgomery County Land Records.
4. The Property Owner must sign and post the remaining Category I Conservation Easement on the property within 45 days of the mailing date of the Planning Board's resolution.

SITE DESCRIPTION

The Subject Property, 21611 Ripplemead Drive (Lot 7, Block A of the Fairhill Subdivision), is a 5.21-acre flag lot located on the east side of Ripplemead Drive. The lot is approximately 2600 feet northeast of the intersection of Ripplemead Drive and Riggs Road. Access to the house on the subject property is via a 450-foot long driveway between Lots 6 and 8 Block A. Exhibit 1 shows the entire subdivision.

The house on the subject property is located on the highest point on the property and is at the same topographical contour, 538 feet above sea level, as are the houses on Lots 6 and 8 of Block A. Northeast of the house is the primary and reserve septic areas which consist of open grassy areas, trees, and some forest. Immediately behind the house are steep slopes that drop from an elevation of 530 feet to 502 feet over a 140 foot horizontal run. At approximately the 502 foot topographical contour a fenced horse paddock begins and the paddock extends to the back property line. The paddock area continues to drop in elevation to the lowest point on the property, which is at the back property line, at 482 feet above sea level. The distance from the base of the slope to the back property line is approximately 340 feet.

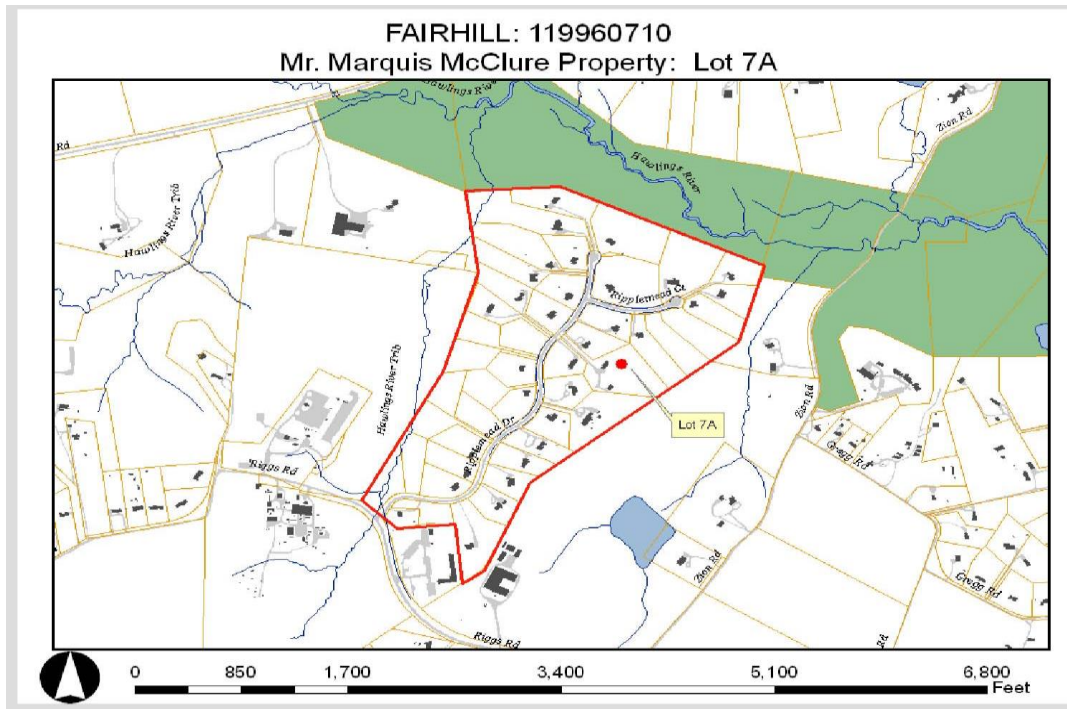


Exhibit 1. Fairhill Subdivision

There are three category I conservation easements on the property. Easement Area 1 is located to the southwest of the house and is adjacent to Lot 6 Block A. Easement Area 2 is located to the north of the house and adjoins Conservation Easements on Lots 8 and 9 Block A. The third conservation easement, Easement Area 3 is behind the house and it encompasses most of the slopes and horse paddock area. Exhibit 2 shows the existing Category I Conservation Easements and the existing improvements on Lot 7, Block A.

Background

The property was subject to Preliminary Plan 11974019R, which created 27 lots and 19 outlots. The Fairhill subdivision was platted in 1980 and recorded by plats 13188, 13189, and 13190 (Attachment 1). The subject property is identified as Lot 7, Block A, on plat 13190. The subdivision was approved prior to the effective date of the County Forest Conservation Law which took effect in 1992. In 1996, a new developer proceeded with the development of the 27 recorded lots and sought to convert 5 outlots to lots. The Planning Board approved preliminary plan of subdivision 119960710 on July 17, 1996 (Attachment 2) for the conversion of the 5 outlots. At the same time, the developer addressed the Forest Conservation requirements for the entire subdivision recorded in 1980. The Forest Conservation Law requirements became applicable to the entire subdivision due to the failure of the previous developer to pull a sediment control permit. The final forest conservation plan became part of plan 119960710 and was approved in 1996 (Attachment 3). The developer established

Category I Conservation Easements on all lots where the forest conservation plan showed areas of forest planting, forest retention or natural regeneration. The easements were recorded in the Montgomery County Land Records in 1997, starting at Liber 15627 and Folio 293 (Attachment 4).

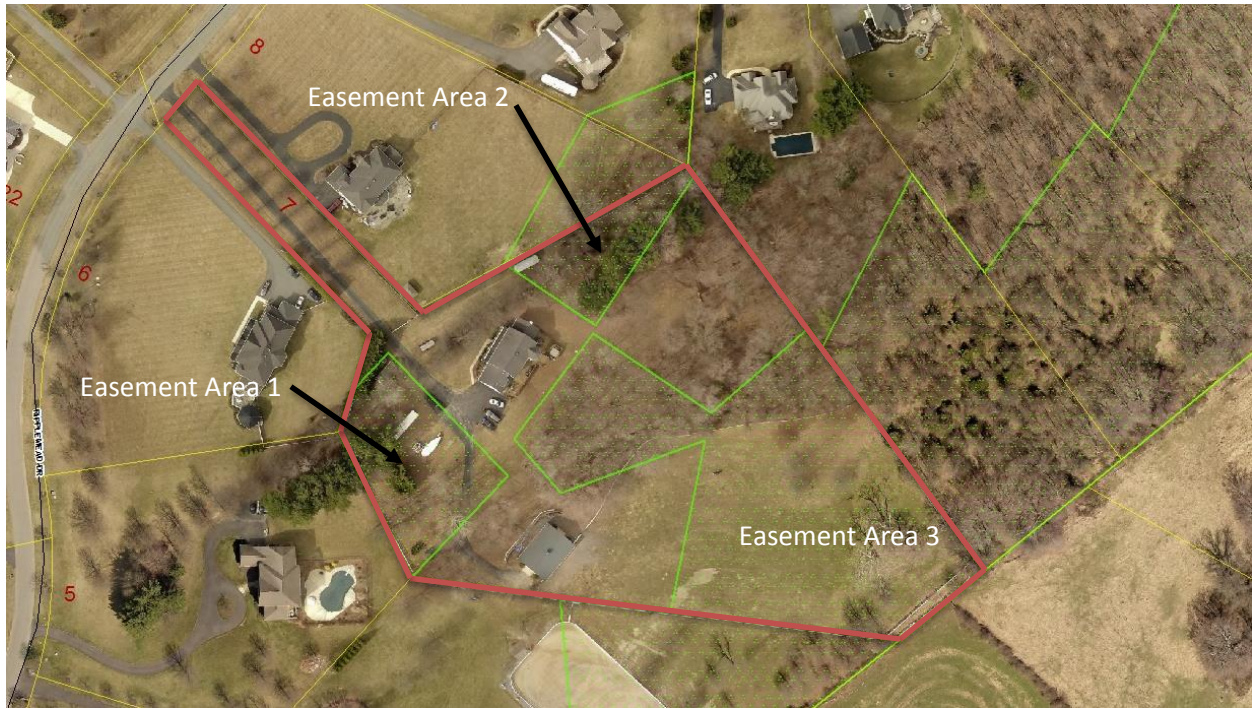


Exhibit 2: 21611 Ripplemead Drive Conservation Easements with 2015 Aerial Photo Overlay

The current property owner, Marquis McClure, is the original property owner and obtained the property in 2000. Within the conservation easements is a paddock, a driveway, boat and trailer storage, and lawn. Over the years the property owner was not in compliance with the terms of the conservation easements. The property owner did work with staff to achieve compliance for some of the non-compliance issues but, eventually, in 2010, the Planning Board held an enforcement hearing. At the end of the enforcement hearing the Planning Board determined that the property owner was in violation of the terms of the conservation easement and issued a civil administrative penalty. The property owner appealed the Planning Board’s decision to the Court. The Court ruled in favor the Planning Board but remanded the penalty phase back to the Planning Board for reassessment. In the meantime, the easement encroachments the Planning Department found in 2009 continued. Prior to a Planning Board enforcement hearing on the penalty, Planning staff and the property owner reached an agreement, in March 2016, to settle the outstanding violations. (Attachment 5) One of the settlement terms was for the

property owner to submit a forest conservation plan amendment to remove a portion of the existing conservation easements.

Violations

In the October 2009 Notice of Hearing the Planning Department identified the following violations:

1. Grass cutting in a Category I Forest Conservation Easement.
2. Asphalt and stone installed in a Category I Forest Conservation Easement.
3. Trailer storage and parking in a Category I Forest Conservation Easement.
4. Horse grazing in a Category I Forest Conservation Easement and natural regeneration area.
5. Fence installed in a Category I Forest Conservation Easement and natural regeneration area without approval.

Exhibit 3 below highlights the location of the Conservation Easements and the violations that were present in 2009 and are still present today.



Exhibit 3. Location of Category I Conservation Easement Violations (2015 Aerial)



Exhibit 4. Trailer storage and grass cutting within Conservation Easement Area 1(March and July 2016)

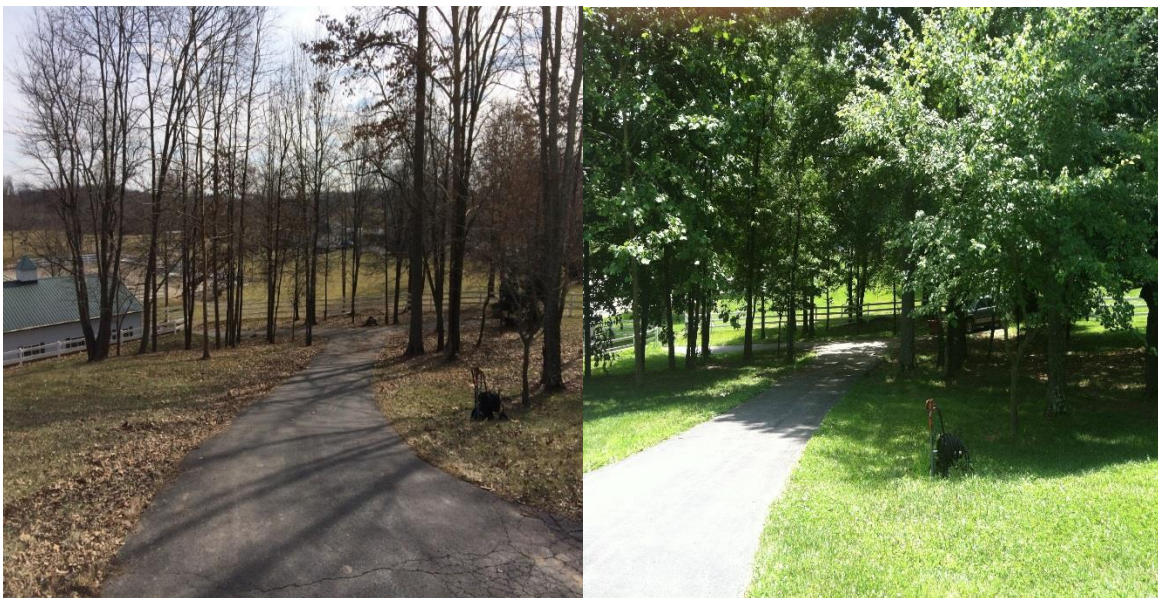


Exhibit 5. Asphalt Driveway and Grass cutting within Conservation Easement Area 1 (March and July 2016)



Exhibit 6. Paddock and Fence within Conservation Easement (March 2016)

Proposed Amendment

On May 18, 2016 an application was submitted to the Planning Department. The application was accepted as complete by the Planning Staff on June 9, 2016. The application was not accepted immediately because of deficiencies and the need to pay the application fee, which was rectified.

The Final Forest Conservation Plan for the subject property shows 2.77 acres of existing conservation easements in three unique easement areas. The applicant is proposing to remove all easements except for 12,571 square feet of easement that is immediately behind the house on the steep slopes. The submitted forest conservation plan is attached (Attachment 6). The Amendment proposes to remove a total of 2.484 acres of Category I Conservation Easement. The property owner will need to acquire 4.96 credit acres in an approved off-site forest conservation bank to compensate for the conservation easement removal. Exhibit 7, below, shows the conservation easements to be released and mitigated.

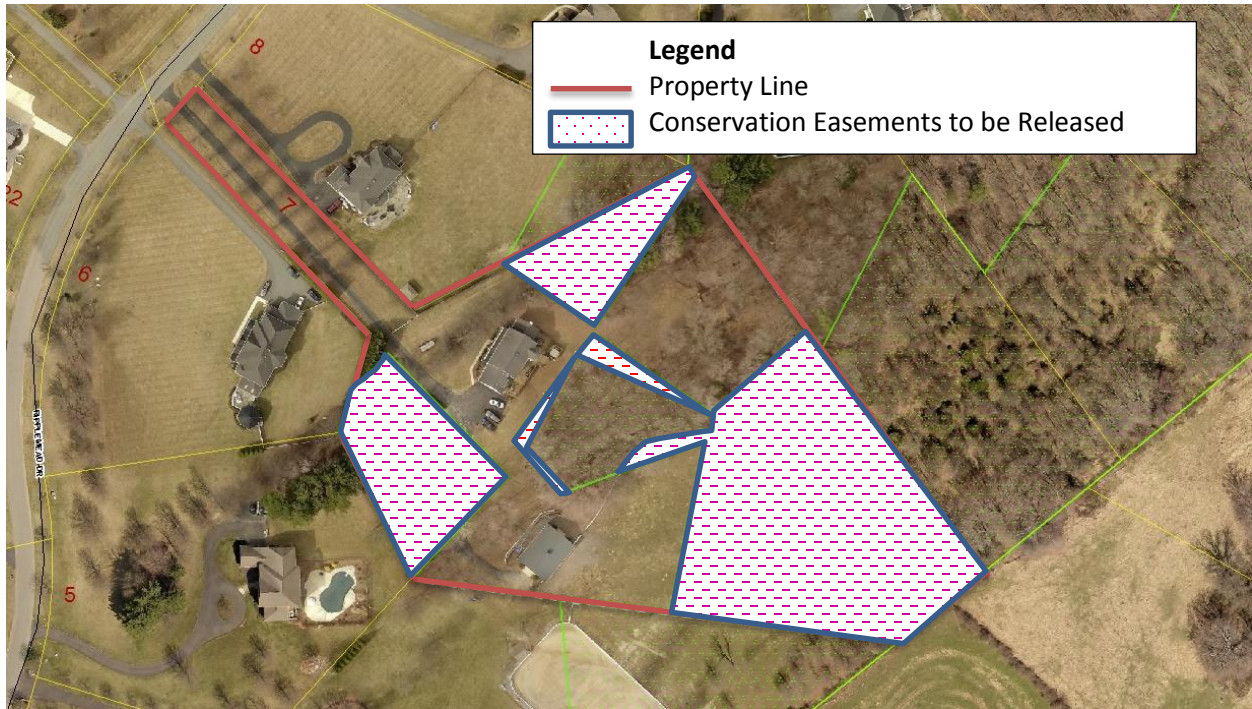


Exhibit 7. Applicant’s Proposal and Areas of Conservation Easements to be Released

PLANNING BOARD REVIEW AUTHORITY

The Planning Board approved a Forest Conservation Plan for the entire subdivision with Preliminary Plan No. 119960710 “Fairhill”. Lot 7, Block A was previously recorded and not part of the preliminary plan but was included in the forest conservation plan. The Planning Board has authority under the Forest Conservation Law (Chapter 22A of the Montgomery County Code) to review amendments to approved plans. In addition, the Planning Board has directed Staff to bring all requests for modifications to conservation easements to be considered in a public forum before them.

STAFF REVIEW AND RECOMMENDATION

The Property Owner proposes removing the 2.484 acres of conservation easement area from 21611 Ripplemead Drive (Lot 7, Block A on Plan 13190). The property owner will mitigate for the removal of the conservation easement offsite in a forest mitigation bank. As a result, the property owner will need to acquire 4.97 acres of forest mitigation bank credits to mitigate for the off-site removal of conservation easement. The proposal is consistent with the Planning Board’s policy of requiring 2 square feet of offsite forest planting for every 1 square foot of conservation easement released. The conditions of approval, in terms of what needs to occur,

and when, is consistent with the settlement agreement between the property owner and the Planning Department.

NOTIFICATION and OUTREACH

The Subject Property was properly signed with notification of the upcoming Preliminary Plan Amendment prior to the acceptance of the application. Staff received one correspondence from an adjoining property owner (Attachment 7). The adjoining property owner requests, for Easement Area 1, that the applicant:

1. Maintain a 30 foot deep easement, as measured from the shared property line;
2. Leave the large existing trees undisturbed;
3. Plant new evergreen trees, at least 7 feet tall, to fill in bare areas;
4. Ensure the vegetation within this 30 foot area be kept healthy to preserve the screening; and
5. The easement conveys to future property owners.

Maintaining an easement that is 30 feet wide on the subject property for the entire length of common property line for lots 5 and 6 of Block A would result in an easement of less than 10,000 square feet, which is not acceptable. This easement would not meet the minimum size requirements, to be classified as forest, established by forest conservation law in terms of area and width. The owner of Lot 6, Block A did erect a white picket fence along the rear property line but has not added trees or hedges to screen themselves from the house and parking areas at 21611 Ripplemead Drive even though there has been various encroachments into easement area 1 since 2008. For the reasons stated above, staff does not support the adjoining property owner's request

ATTACHMENTS

1. Record plats 13188, 13189, and 13190 - Fairhill
2. Planning Board Opinion for Preliminary Plan 1-96071 – July 17, 1996
3. Approved Forest Conservation Plan 1-96071
4. Category I Conservation Easement Agreement, Liber 15627 Folio 293
5. Settlement Agreement
6. Submitted Forest Conservation Plan Amendment 11996071A
7. Correspondence from Adjoining Property Owner