

R E C E I V E D
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JUL 25 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

12925 Circle Drive
Rockville, MD 20850
July 22, 2005

**Maryland National Capital Park and Planning Commission
Derick Berlage - Chairman
8787 Georgia Avenue
Silver Spring, MD 20910**

Dear Chairman Berlage:

I am writing to you to express my concern about the pending removal of a Category Two Conservation Easement from an ash tree. The tree has been under easement to Park and Planning since 1998. The tree is located at 12925 Circle Drive Rockville, MD 20850.

The owner of the property, Mr. Kevin Smart is being granted building permits to build a new home next to the ash tree. The construction of the new home, along with demolition of the existing home, threatens the welfare of the ash tree.

I received word from the owner's environmental consulting firm, Macris, Hendricks and Glasscock, that Park and Planning is in the process of removing the ash tree from the conservation easement. The consulting firm tells me that the basis for this easement removal is that too much of the tree's critical root zone will be affected by the building construction.

That leads me to conclude that the legal protection afforded a tree under conservation easement is nullified if someone stands to profit off of construction that is being blocked by the tree. Isn't the entire point of the easement to protect the tree from destructive actions such as construction?

I spoke with Steve Federline in the Environmental Planning Office on Friday July 22, 2005. He said he was not aware of this agreement to take the conservation easement off the ash tree. He looked through the case file and could not conclude who if anyone at Park and Planning made this agreement with the developer.

I have several questions regarding the ethics and legalities of this decision.

- 1) What exact legal protections does this tree have under a Category Two Easement?**
- 2) Who at Park and Planning decided that the tree should be stripped of its' legal protection?**

3) Under what legal reasons can a developer have a tree removed from its' conservation easement status?

The ash tree is healthy and certainly would have lived on for years to come. I find it ethically questionable to allow anyone to remove the conservation easement status on a perfectly healthy tree. My interpretation of this is that the builder's plans were being blocked by the tree under easement. At the very least the builder could have been required to move the new house far a way from the root system of the tree under easement. Instead, it appears that the tree is being cut down for the convenience of the builder.

Please respond to this letter as soon as you can. I would suggest that you stop this lifting of the conservation easement until you have had time to investigate this matter. Many in the community are concerned with the pending decision to strip the tree of protection and cut it down. I firmly believe the ash tree is well worth saving and should be kept legally protected.

I have lived as a tenant at 12925 Circle Drive since October 2003, and I would be deeply saddened if the tree is removed. Thank you for your immediate attention to this matter.

Sincerely,



Cynthia Fain

Cc
West Montgomery County Citizens Association
Sierra Club – Montgomery County Chapter
Maryland Native Plant Society

Milton M. Kaufmann
Conservation Consultant
19102 Roman Way
Montgomery Village, MD 20886-5061
Tel or Fax (301) 948-1831

PLEASE PRINT THE FOLLOWING ONES TO:

FAK NO.: 3 0 1 - 4 9 5 - 1 3 0 3

NAME: Steve Federline

FIRM: M-NGPPC

ADDRESS:

CITY: STATE:

FROM:

Mr. Milton M. Kaufmann
19102 Roman Way
Montgomery Vlg, MD 20886

TIME 8:15 AM

July 25, '05

TOTAL NUMBER OF PAGES INCLUDING THIS COVER PAGE

Dear Steve

This is the letter from Cynthia Fair that I referred to
in my msg to you on your answering machine.

I'll telephone you tomorrow.

Hope this document remains a legal obligation and
the developer will be advised to revise his planning
so as not to invade this specimen white ash's
CRZ.

All the best,

Milton

FROM : CYNTHIA FAIN

FAX NO. : 3019877063

Jul. 23 2005 01:14PM P1

12925 Circle Drive
Rockville, MD 20850
July 22, 2005

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FROM : CYNTHIA FAIN

FAX NO. : 3019877063

Jul. 23 2005 01:15PM P3

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Sincerely,

Cynthia Fain

301-309-9304

Cc
West Montgomery County Citizens Association
Sierra Club - Montgomery County Chapter
Maryland Native Plant Society

MCP-Chairman

From: rg steinman [lifeonearth@juno.com]
Sent: Saturday, July 30, 2005 2:26 PM
To: MCP-Chairman
Subject: URGENT - White Ash Tree Under Treat Despite Conservation Easement

July 31, 2005

Dear Chairman Berlage,

In June of this year I had the distinct privilege of visiting an exceptional White Ash tree (*Fraxinus americana*) located at 12925 Circle Drive in the Rockville/Potomac area. Due to my well known interest in trees, I took measurements and found it to be one of the largest examples of its species in Montgomery County.

My measurements indicate the tree to be over 5 feet in diameter at breast height (62") and approaching 100 feet in average crown spread. I estimated the height to be near 100 feet. Specifically, the circumference is 16' 2" (194 inches) and the crown spread measured 98' x 84' for an average of 91 feet.

At that time I was pleased to learn that this magnificent tree was protected by a conservation easement agreement established I believe in 1998. However, since then, I have learned that M-NCPPC is considering breaking the agreement to allow for a large home to be built on-site. How is it that such an agreement can be broken so easily? Isn't it the expressed purpose of such agreements to provide protection against harmful development?

This grand tree is an exceptional example of its species and is in good health. It grows beside a very old home. Despite close proximity to the home, I could not find any evidence that the tree trunk or the root system was causing any harm to the foundation or walls of the home. Due to the trees maturity, it will tend to grow at a slow rate and would be unlikely to pose a threat to the foundation in coming years.

Construction of a new home as shown on current site plans would surely kill this special tree. My recommendation is to revise the site plan and relocate the proposed new home well outside of the critical root zone of the tree. If the old home is to be demolished, the utmost care must be given to avoid harm to the critical root zone and above ground portions of the tree during demolition.

I request that M-NCPPC contact the land owner immediately to prevent him from taking any action that would cause harm this exceptional tree. Thank you for considering my assessment and concerns.

Sincerely,



OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

John Parrish, Vice President
Maryland Native Plant Society
9009 Fairview Road,
Silver Spring, MD 20910

MCP-Chairman

From: CynthiaAFain@aol.com
Sent: Monday, August 01, 2005 8:02 PM
To: MCP-Chairman
Subject: URGENT - Protection of White Ash Tree Under Cons. Easement

Dear Chairman Berlage:

I sent you an important letter regarding the matter of a white ash tree at 12925 Circle Drive Rockville, MD. The tree is under easement to MNCPP. You received the letter last week. I have not heard back from you, and I am concerned about the future of the tree.

Please instruct the developer, Kevin Smart, not to cut the tree down before the issue is heard by the Planning Board. Of course, the tree should not be taken down under any circumstances for a developer. The entire integrity of the easement system will be under mined if you let a developer kill a perfectly healthy tree, so they can build a big house.

MNCPP, needs to re-visit what their mission is. And this mission is to balance the protection of nature, along with reasonable development.

Please remind the builder, that he must bring this matter to the planning board, and not assume he has permission to move forward with taking the tree down. Many people in the community have expressed their concern over the possibility of the tree being illegally cut down. No one is in favor of the tree being cut down.

The community is losing faith in MNCPP. These easements are supposed to be enforced with integrity. Sincerely,

Cynthia Fain
4016 Simms Drive
Rockville, MD 20895

CANDY
- PLEASE CALL IF THIS PERSON
CHANGES DATE FROM
SEPT 29

Bunnag, Candy

From: Zyontz, Jeff
Sent: Tuesday, August 02, 2005 9:55 AM
To: 'CynthiaAFain@aol.com'
Cc: Berlage, Derick; Krass, Dorothy; Bunnag, Candy; Federline, Steve
Subject: White ash tree 12925 Circle Drive

Dear Ms. Fain

I am responding to your e-mail to Chairman Berlage from yesterday.

I just had a conversation with the construction manager from Mr. Smart's firm. They are aware of the existing conservation easement. I was told that they do not intend to demolish the existing house or do anything to damage the tree, pending an amendment to their existing forest conservation plan. They have submitted an amendment to the forest conservation plan which has tentatively been scheduled for the Planning Board agenda on Thursday, September 29. (This date is subject to change. I will ask Candy Bunnag to notify you if it does change.) We will make sure that members of the Planning Board get copies of your e-mail before they reach any conclusions.

The Planning Board will have to consider the County's forest conservation law, changes to septic field requirements and the rights of the property owner in making its determination on approving or disapproving the applicant's request. Staff must consider those factors as well in making its recommendation to the Planning Board.

Jeff Zyontz,
Chief
Countywide Planning Division

Bunnag, Candy

From: CynthiaAFain@aol.com
Sent: Tuesday, August 02, 2005 5:50 PM
To: Zyontz, Jeff
Cc: Berlage, Derick; Krass, Dorothy; Bunnag, Candy; Federline, Steve
Subject: Re: White ash tree 12925 Circle Drive

Hi John,
Thought you might be interested in this response I got from Jeff at P&P. I think my letter hit a nerve with the Chairman.

- I guess my legal idea would only work if someone were to actually be out there with a chainsaw. Getting a restraining order would probably be too late, the damage would be done.
Have you gotten a response to your email from P&P?

Thanks for all your concern,

Cindy Fain

Bunnag, Candy

From: Gail Jankowski [janfam83@comcast.net]
Sent: Friday, September 23, 2005 9:20 AM
To: Bunnag, Candy
Subject: FCP File No. 1-98050

Candy,

Thanks for your call this morning. Attached is our letter opposing ANY changes to the forest conservation plan in our neighborhood. Recent history has shown that builders will agree to certain restrictions or to abide by county regulations, but then do whatever they want with regard to clearing trees, laying septic fields and creating serious runoff problems. After the fact the neighborhood is left to deal with the damages which cannot be repaired or replaced and the county is also helpless.

Gail Jankowski

**Joseph and Gail Jankowski
13404 Cleveland Drive
Rockville, MD 20850**

September 22, 2005

Mr. Derick P. Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Mr. Berlage:

RE: FCP File No. 1-98050

We oppose any amendment to the forest conservation plan. The Planning Board approved the limited development of lots on Circle Drive (and other locations in our neighborhood) with the caveat that certain areas were to remain forest, and therefore unbuildable, forever. Our neighborhood has not changed, the reasons for these forested areas still exist and there is no reason to amend the plan. Frankly, we are surprised that an amendment would even be considered.

Thank you for the opportunity to comment.

Sincerely,

Joseph and Gail Jankowski

ATTACHMENT H

PREMIERE HOMES

August 11, 2005

Ms. Candy Bunnag
MNCPPC
6767 Georgia Ave
Silver Spring, Md. 20910

Re: 12925 Circle Dr. Rockville

Dear Ms. Bunnag:

Please be advised that Smart Development/Premiere Homes will cease all activity at the above referenced property until such time as a disposition is completed by MNCPPC pertaining to the status of the White Ash tree on the said property.

Also, be advised that no construction activity has taken place within the drip line or critical root area of the tree. We have removed the failed septic tank and capped the city water connection at this time.

Thank you for your time pertaining to this matter and we will await your decision before taking any more steps towards demolition of the existing structure.

Thank you,

Steven A. Alexander
Director of field operations
Smart Development/Premiere Homes