



# MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB

Item No.

Date: 6/28/2018

## Sahady Property (a.k.a Fairhill) Forest Conservation Plan Amendment No. 11996071B (In Response to a Forest Conservation Law Violation)

**mp**

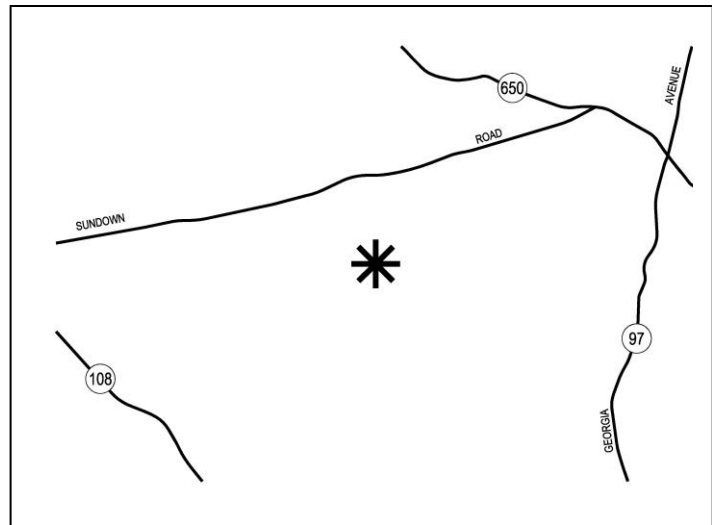
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### Description

Completed: 6/15/18

### Limited Amendment, Forest Conservation Plan No. 11996071B, 21533 Ripplemead Drive, Laytonsville (in response to a forest conservation law violation)

- AR Zone
- Fairhill Subdivision
- Lot 4, Block A
- 21533 Ripplemead Drive, Gaithersburg
- Olney Master Plan
- Applicants: Earnest and Stacey Sahady
- Accepted June 6, 2018



### Summary

Request to amend the Forest Conservation plan on Lot 4 Block A, 21533 Ripplemead Drive, Gaithersburg by:

1. Removing approximately 68,443 square feet of Category I Conservation Easement and mitigating offsite by acquiring 136,886 square feet of forest mitigation credit at an M-NCPPC approved forest conservation bank.

## **STAFF RECOMMENDATION AND CONDITIONS**

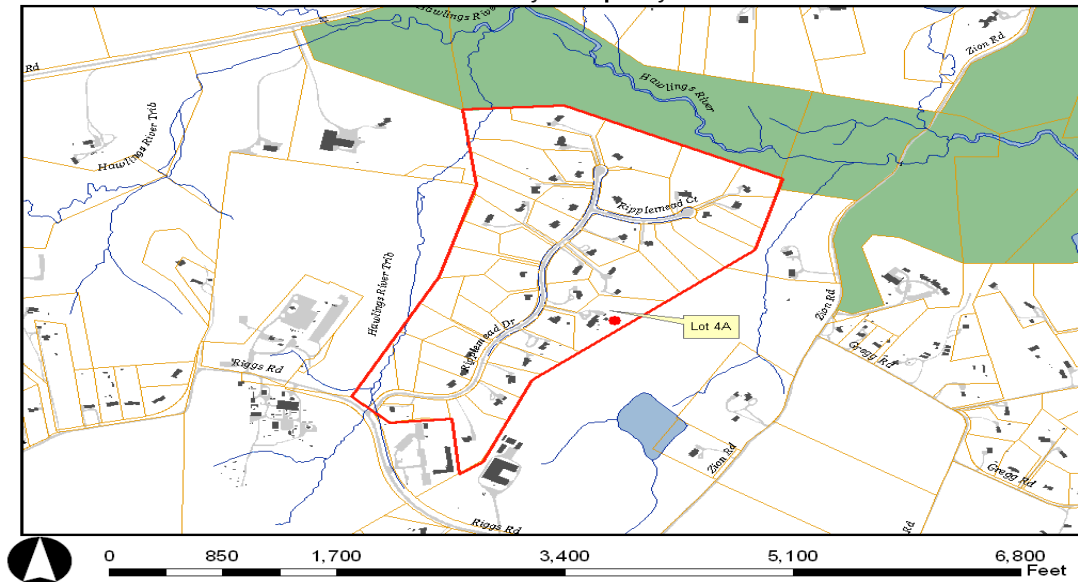
Staff recommends approval of the amendment to Forest Conservation Plan 11996071B with the conditions listed below:

1. Within 30 days of the mailing date of the Planning Board resolution approving the Amendment, the property owners must submit an executed Certificate of Compliance to the Planning Department that provides 136,886 square feet of mitigation credit for the removal of 68,443 square feet of Category I Conservation Easement.
2. Within 7 days of the Planning Department's approval of the Certificate of Compliance, the property owners must record the Certificate of Compliance in the Montgomery County Land Records.
3. Within 75 days of the mailing date of the Planning Board's resolution approving the Amendment, the property owners must record in the Montgomery County Land Records a deed of release of the existing conservation easement on the Property in a form approved by the M-NCPPC Office of the General Counsel. The deed of release must be recorded after the Certificate of Compliance to use an offsite forest mitigation bank is recorded.
4. Within 30 days of the mailing date of the Planning Board resolution approving the Amendment, the property owners must pay or otherwise secure, in a manner consistent with the Settlement Agreement between the Montgomery County Planning Department and Earnest A. and Stacey L. Sahady dated March 13, 2018, a \$20,532.90 obligation to the Montgomery County Planning Department, which is equivalent to a \$0.30 per square foot administrative civil penalty for 68,443 square feet of impacted easement.

## **SITE DESCRIPTION**

The Subject Property, 21533 Ripplemead Drive (Lot 4, Block A of the Fairhill Subdivision), is a 5.04-acre flag lot located on the east side of Ripplemead Drive. The lot is approximately 2200 feet northeast of the intersection of Ripplemead Drive and Riggs Road. Access to the house on the subject property is via a 290-foot long driveway between Lots 3 and 5 Block A. Exhibit 1 shows the entire subdivision.

FAIRHILL: 119960710  
Mr. Earnest Sahady Property: Lot 4A



**Exhibit 1. Fairhill Subdivision**

The driveway enters the subject property from the public street at an elevation of 522 feet above sea level. The driveway quickly rises 4 feet in elevation and then topography slopes away to the back-property lines. The house is located at an elevation of approximately 520 feet above sea level. From the back of the house the land continues to fall to the lowest point, which is the northeast corner of the property at 490 feet above sea level. From the back of the house to the back-property line there is a 5 drop over 140 feet. North of the house is a grass field surrounded by fencing. The grass field, with soccer posts on each end was formerly a horse riding ring.

There is one 68,443 square foot conservation easement on the property. The conservation easement contains a horse riding ring. Exhibit 2 shows the existing Category I Conservation Easements and the existing improvements on Lot 4, Block A.



**Exhibit 2: 21533 Ripplemead Drive Conservation Easements with 2015 Aerial Photo Overlay**

### **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. The subject property is identified as Lot 4, Block A, on plat 13188 (Attachment 1). 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 for the conversion of the 5 outlots (Attachment 2). 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 obtain 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).

The current property owner, Earnest and Stacey Sahady, are the original property owners and purchased the property in 1999. Within the conservation easement is a play field surrounded by fencing (horse riding ring) and a paddock area for horses. Over the years the property owner was not in compliance with the terms of the conservation easement. In 2010, the

Planning Board held an enforcement hearing for the violations at 21533 Ripplemead Drive. At the end of the enforcement hearing the Planning Board determined that the property owners were in violation of the terms of the conservation easement and issued a civil administrative penalty and corrective action. The property owner appealed the Planning Board's decision to the Montgomery County Circuit Court. The Court ruled in favor the Planning Board but remanded the penalty phase back to the Planning Board for reassessment. The Planning Board did not appeal the Court's decision to remand the case to the Board for reassessment of the penalty and corrective actions. In the meantime, the easement encroachments continued. The Planning Department issued the property owners a Notice Hearing on February 1, 2018 to reconsider the penalty and corrective actions that were remanded by the Court. On March 13, 2018, prior to a hearing with an Administrative Law Judge, Planning staff and the property owners reached an agreement to settle the outstanding violations. One of the settlement terms was for the property owner to submit a forest conservation plan amendment to remove the existing conservation easements from the property. The agreement also required the property owner to secure a \$20,532.90 obligation to the Montgomery County Planning Department, equivalent to a \$0.30 per square foot administrative civil penalty for the 68,443 square feet of impacted easement.

### **Violations**

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

1. Grass cutting in a Category I Conservation Easement and natural regeneration area.
2. Fence installed in a Category I Conservation Easement and natural regeneration area.
3. Equestrian riding ring within the Conservation Easement and natural regeneration area.

Those violations remain today except the equestrian riding ring was converted to a recreational playing field in the recent past.

### **Proposed Amendment**

On June 6, 2018 a forest conservation plan amendment was accepted by the Planning Department. The existing Final Forest Conservation Plan for the subject property shows 68,443 square feet (1.61 acres) of existing conservation easements on the subject property. The applicant is proposing to remove all conservation easements. The submitted forest conservation plan is attached (Attachment 5). The property owner will need to acquire 136,886 square feet of credit (3.21 credit acres) in an approved off-site forest conservation bank to compensate for the conservation easement removal.

## **PLANNING BOARD REVIEW AUTHORITY**

The Planning Board approved a Forest Conservation Plan for the entire subdivision with Preliminary Plan No. 119960710 "Fairhill". Lot 4, 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 to remove 1.61 acres of conservation easement area from 21533 Ripplemead Drive (Lot 4, Block A on Plat 13188). 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 3.21 acres of forest mitigation bank credits to mitigate for the off-site removal of the 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 and is consistent with the settlement agreement. 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. Staff recommends approval of Forest Conservation Plan 11996071B with the conditions identified on page 2 of the staff report.

## **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 no correspondence at the time of this staff report.

## **ATTACHMENTS**

1. Record plat 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. Submitted Forest Conservation Plan Amendment 11996071B