




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


MCPB
Item # 12
11/13/08

MEMORANDUM

Date: October 31, 2008

TO: Montgomery County Planning Board

VIA: Jorge Valladares, Chief, Environmental Planning
Mark Pfefferle, Supervisor, Environmental Planning 

FROM: Marco Fuster, Senior Planner, Environmental Planning 

REVIEW TYPE: Forest Conservation Plan Review

APPLYING FOR: Amendment to remove portions of category I forest conservation easement and replace offsite.

PLAN NAME: Kentsdale Estates Lot 41

PLAN NUMBER: 119970560

REVIEW BASIS: Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-01AM (COMCOR) 18-01AM

ZONE: RE-2 Zone

LOCATION: Located on Willowbrook Drive East of Paytley Bridge Lane; Potomac.

APPLICANT: Potomac Hills Trust No.1

ENGINEER: Oyster, Imus Petzold & Associates I.LC

HEARING DATE: November 13, 2008

RECOMMENDATION: Denial

SITE DESCRIPTION

The subject property, shown below, is a within a 20.1-acre subdivision located on Willowbrook Drive East of Paytley Bridge Lane in Potomac. Immediately to the west of the subdivision are .25 acre lots developed in the R200 zone. Two acre lots in the RE-2 zone surround the subdivision to the north, west and south. The entire property is within the Cabin John Creek watershed, use I-P waters. There are no streams, wetlands, floodplains, or associated environmental buffers located on the subject lot. Presently the sub-division has one pre-existing residence and a second home underway, which began construction within the past year. The footprint of the existing forest conservation easements are shown by the green hatched areas in the image below.



BACKGROUND

The property is subject to a previously approved preliminary plan of subdivision and forest conservation plan. The Planning Board approved preliminary plan 119970560 on May 22, 1997 and the Opinion was mailed on May 28, 1997. The plan covers 20.1 acres and includes 7 residential lots, and necessary infrastructure. Environmental planning staff approved the final forest conservation plan on July 31, 2001. The FFCP was subsequently amended on December 7,

2006 to shift the locations of conservation easements on lot 44. However the previously approved amendment resulted in no net loss of conservation easement from the subdivision (or the lot which received the amendment).

The approved final forest conservation plan for the subject lot (and the associated record plat) provide approximately 1.3 acres of category I forest conservation easement on the subject lot, which is 4.09 acres in size. The 1.3 acres of existing easement consists of approximately 0.93 acres of tree/forest preservation and approximately .36 acres of reforestation. The reforestation plantings are designated within the easement foot print, over an area which temporary grading and earth disturbance is allowed.

During the process leading up to the approval of the preliminary plan of subdivision, Environmental Planning staff indicated to the applicant on February 19, 1997 "Make sure that the building envelopes shown are reasonable and large enough to accommodate houses that are compatible with others in the neighborhood".

The applicant initially submitted a proposal to amend the conservation easements on lots 39, 40, and 41. That proposal was modified and the current amendment applies to lot 41 only. No changes to the easements on lots 39 and 40 are proposed with this application. The letters from concerned citizens, included as attachments B through E are in response to the initial proposal.

PROPOSED FOREST CONSERVATION PLAN CHANGES

The applicant has submitted an amendment to the forest conservation plan for Lot 41 that proposes to reduce the onsite conservation easement from 1.3 acres to approximately 0.48 acres. The 0.48 acres of proposed easement consists of 0.32 acres of tree/forest preservation and 0.16 acres of forest reforestation. However, 0.13 acres of the proposed forest preservation does not qualify as forest since it is isolated, narrow and less than 10,000 square feet, and should not be included in the 0.48 acre easement. Therefore the proposed amendment effectively provides only 0.35 acres of easement area, almost 1 acre less than approved by the Planning Board and as shown on the final forest conservation plan.

The applicant proposes to meet the forest conservation planting requirements by purchasing credits in an unspecified forest mitigation bank.

PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulation requires Planning Board action of certain types of modifications to an approved forest conservation plan. Section 113.A.(2) of the Forest Conservation Regulation states:

Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Directory (depending on who approved the original plan). Notice of each major plan amendment must be given to adjacent property owners as part of the Planning Board or Planning Directory approval processes.

This amendment proposes more than 5,000 square feet of additional forest removal when compared to the original plan and therefore qualifies as a major amendment. Since the forest

conservation plan was approved as part of site plan, the Planning Board must review and approve the plan amendment.

REVIEW ISSUES

Applicant's Position

The applicant seeks to amend the final forest conservation plan 119970560 to accommodate the proposed 20,000 square foot home and associated utilities, retaining walls and infrastructure.

Community Issues

All adjoining property owners were notified (by a letter dated June 6, 2008) of the initially proposed amendment which had included modifications to easements on additional lots. A number of written correspondences from adjacent residents were received by the Planning Department expressing concerns and opposition to the proposed changes (see attachments included in this report). Additionally, a number of phone calls also expressing concerns for the proposal were received by Mark Pfefferle, the M-NCPPC Forest Conservation Program Administrator.

Staff Analysis/Position

Staff does not support the request to amend final forest conservation plan 119970560. Environmental Planning staff does not concur with the applicant's position that the permanent forest/easement removal is necessary to accommodate the utilities and sediment control. For example, the applicant is now showing a water and sewer easement through the existing conservation easement to connect to lot 40, but access could be provided in other locations outside the conservation easement such as through the pipe stem that provides frontage for that particular lot. The plan results in the removal of approximately 41,000 square feet of easement area (32,300 square feet retained forest and 8,700 square feet planted forest). Environmental Planning Staff finds the proposed clearing and easement removal to be excessive and therefore recommends denial of the plan.

SUMMARY

Staff recommends denial of the proposed amendment to forest conservation plan 119970560

ATTACHMENTS

- Attachment A – Letter from Eric Tidd P.E. of CAS Engineering, to adjacent property owners, dated June 23, 2008.
- Attachment B – Letter from Dr. and Mrs. Ronald Leven, to Mark Pfefferle, M-NCPPC Forest Conservation Program Administrator, dated July 14, 2008.
- Attachment C – Email correspondence between Earl Lissit and Mark Pfefferle, M-NCPPC, dated June 23 through July 2 of 2008.
- Attachment D – Email correspondence from Mark & Nancy Haffner to Mark Pfefferle, M-NCPPC, dated June 18, 2008.
- Attachment E – Email correspondence between Bruce & Myra Patner and Mark Pfefferle, M-NCPPC, dated June 11 & 12, 2008.
- Attachment F – Memo dated February 19, 1997 from environmental planning staff to the Development Review Committee (with Cc. to engineer/applicant).
- Attachment G – Submitted Amendment for Final Forest Conservation Plan (sheet 1 of 3) for Kentsdale Estates Lot 41, 119970560



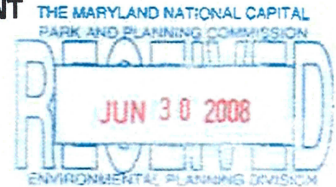
ENGINEERING

A Division of CAS Enterprises, Inc.

civil engineering • surveying • land planning

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FINAL FOREST CONSERVATION PLAN AMENDMENT
PLAN # 1-97056



Original Approval Date: 7/30/01
Name of Plan: Kentsdale Estates
Current Zoning: RE-2
Geographical Location: East of intersection of Willowbrook Drive and Paytley Bridge Lane

Date: June 23, 2008

Dear Property Owner:

An application for amendment for the above referenced Forest Conservation Plan was filed with the Maryland National Capital Park and Planning Commission (M-NCPPC) and is being reviewed under the provisions of Chapter 22A of the Montgomery County Code (Forest Conservation) and the Forest Conservation Regulation. A copy of the proposed amended plan is enclosed.

This amendment is necessary due to final design plans and existing site conditions not addressed on the previously approved plan. Lots 38, 39 and 40 are excluded from this revision. No adjoining property should be affected by this revision, as a forest buffer remains as previously approved on the periphery of the site. This plan proposes to move the conservation of 1.26 acres of forest off-site by establishing an off-site easement 2.52 acres in size.

If you have any questions or comments, please contact Mark Pfefferle, M-NCPPC Forest Conservation Plan Administrator by email (Mark.Pfefferle@mncppc-mc.org), phone (301-495-4730), fax (301-495-1303), or letter to MNCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910, within 14 days of this notice.

Sincerely,

A handwritten signature in blue ink that reads 'E. B. Tidd'.

Eric B. Tidd, P.E.
Project Manager
CAS Engineering

Cc: MNCPPC File #1-97056
Client

RONALD J. LEVEN, D.D.S.
MARLOW HEIGHTS DIAGNOSTIC CENTER
3710 RIVIERA STREET
MARLOW HEIGHTS MARYLAND 20740
TELEPHONE 423-0222

July 14, 2008

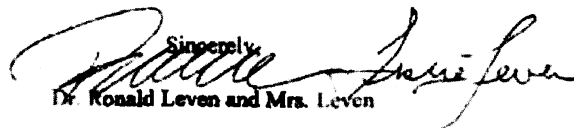
To: Mark Pfefferle
MNCPPC, Forest Conservation
Plan Administration

From: Dr. and Mrs. Ronald Leven, D.D.S.
10626 Great Arbor Drive
Potomac, MD 20854
Lot 12, Block A, Redcoat Woods

Reference: Lots 39-41, Block D, Kentsdale Estates

Dear Mr. Pfefferle,

We are writing to express our opposition to plan # 1-970576, the proposed Final Forest Conservation Plan for lots 39-41, Block D, Kentsdale Estates on Willowbrook Drive. The construction of two homes on Lot-41 will result in excessive deforestation of the neighborhood as well as encroach on the conservation easement, resulting in excess water run-off. The on-site forest area on lot #39 scheduled for removal is also unacceptable because of the potential for excessive water run-off, excessive noise pollution, and excessive light pollution, if a tennis court is constructed as proposed on the 06/03/2008 site plan.

Sincerely,

Dr. Ronald Leven and Mrs. Leven

Attachment C

Pfefferle, Mark

From: Earl Lissit [erlissit@gmail.com]
Sent: Wednesday, July 02, 2008 3:29 PM
To: Pfefferle, Mark
Subject: Re: Final Forest Conservation Plan Amendment; Plan # 1-97056, Kentsdale Estates

Thank you for the courtesy of a reply, sir.

Having reviewed CAS Engineering's new plans for our community, I will certainly look forward to a public hearing whenever it takes place.

Earl R. Lissit
10620 Great Arbor Drive
Potomac, Md. 20854

On Thu, Jun 26, 2008 at 4:50 PM, Pfefferle, Mark <Mark.Pfefferle@mncppc-mc.org> wrote:

Earl thank you for your comments.

It is my understanding that CAS engineering is sending a revised plan to the adjoining residents. Staff did not support the changes proposed in early June and therefore they changed their request. We received a copy of that new plan but have not reviewed it and therefore have no comments on it. Whatever happens, the Montgomery County Planning Board will have a public hearing on the proposed amendments and vote on any changes. That hearing won't occur until September at the earliest. You will be notified of the date of the public hearing.

Mark Pfefferle

Forest Conservation Program Manager

M-NCPPC - Environmental Planning

8787 Georgia Avenue

Silver Spring, MD 20910

Phone: 301.495.4730

Fax: 301.495.1303

mark.pfefferle@mncppc-mc.org

Attachment C -Continued

<http://mcparkandplanning.org/planning>

From: Earl Lissit [mailto:erlissit@gmail.com]
Sent: Monday, June 23, 2008 3:49 PM
To: Pfefferle, Mark
Subject: Final Forest Conservation Plan Amendment; Plan # 1-97056, Kentsdale Estates

June 23, 2008

To: Mark Pfefferle
Forest Conservation Plan Administrator
MNC PPC

Subject: Final Forest Conservation Plan Amendment: Plan #1-97056, Kentsdale Estates

Dear Mr. Pfefferle:

There are many questions that should be asked in a public hearing concerning the application of CAS Engineering referenced above.

One that immediately caught my attention revolves around an apparent misrepresentation of Lots 11, 12 & 13 on the Willowbrook Drive map presented to residents by CAS Engineering via mail on June 6, 2008. The map shows these three lots as contiguous to Lots 14 through 21. Whether that is accurate at the rear of the properties would have to be established through a site inspection, since Lots 11 & 12 take a full 90-degree turn from Lot 13 fronting on Great Arbor Drive. There is a shared driveway at a full 90-degree angle from Lot 13 with the structures on Lots 12 & 11 set back in turn from Lot 13. .

This is relevant because it would have a dramatic impact on the proposed new forest conservation easement of approximately 50 feet. Since lots 11 & 12 are not as represented on the map, the proposed easement either would have to be abandoned entirely, or the proposed Future Tennis Court would in fact be on Lot 11.

In addition, the impact on Lots 14 & 15 as a result of this proposed amendment would be catastrophic. The proposed "Future House" on Lot 39 would be at an elevation 40 feet above my house on Lot 15. My house would also be as much as 50 feet below the terminus of the proposed "shared driveway". Contour lines suggest runoff from this driveway would head directly toward Lot 15. We already have seen the effects of such a structure on Lot 15 as a result of construction on Block D of Lot 38. The structure on Lot 38 is 40 feet above my home, and we have just finished a five year effort at stopping the runoff from Lot 38 flooding my property, at a cost of many thousands of dollars. A great deal of forest and ground cover were removed for the 14,000 square foot residence on Lot 38. The removal of still more trees and ground cover in the proposed amendment would cause a recurrence of the runoff problem. This would be compounded by the proposed construction, and loss of forestland, for Lot 41. There are likely additional implications for runoff affecting the Cabin John Watershed.

I need not ask questions about the efficacy of plans to relocate conservation forest land of your office, since that

Attachment C -Continued

office has a consistent record of protecting the environment in Montgomery County.

Finally, it might be worth raising the question of the appropriateness of CAS Engineering proposing a major amendment to a "Final Forest Conservation Plan" in a letter restricting comments or questions to a 14-day time period. Said letter ends by telling residents they may contact you with questions or comments "within 14 days of this notice". A copy of this letter was faxed to Jason Blackman in your office on 6/20/08.

Respectfully,

Earl R. and Arlene C. Lissit
10620 Great Arbor Drive
301 983 1431
erlissit@hotmail.com

Attachment D

-----Original Message-----

From: Mark Haffner [mailto:mphaffner@verizon.net]
Sent: Wednesday, June 18, 2008 6:23 PM
To: Pfefferle, Mark
Subject: Adjacent Owner Comments: PLAN #1-97056

June 18, 2008

To: Mr. Mark Pfefferle
Forest Conservation Plan Administrator
Maryland National Capital Park and Planning Commission

From: Mark and Marcy Haffner
10614 Great Arbor Drive
Potomac, MD 20854

Lot 18, Block A
Red Coat Woods
L. 11938; F. 61

Re: Final Forest Conservation Plan Ammendment; Plan #1-97056, Kentsdale Estates

Dear Mr. Pfefferle,

We respectfully and strongly disagree with the statement made by Mr. Eric B. Tidd, P.E. of CAS Engineering, in his June 6, 2008 letter to adjacent property owners, namely that "No adjoining property should be affected by this revision, as a forest buffer remains as previously approved on the periphery of the site."

Our estimate of buffer width, obtained by scaling from other features on the plan drawings, is approximately 17 yards. Since the great majority of surviving trees contained within this proposed buffer behind our home are deciduous, the visual buffer between our property and the new construction adjacent to proposed lots #39 and #40 will be effective only on a seasonal basis. Thus, several of the revisions tabulated in the "Forest Conservation Easement Area Table" in this plan; i.e., reduction and/or elimination of "Tree save" and "Tree plant" areas, will in fact directly alter and negatively impact our enjoyment of our property for at least one-half of each year.

Thus as a first order of business we would urge your reinstatement of previously proposed forest conservation measures. As property owners directly affected, we must strenuously object to the developer's apparent effort to evade local conservation guidelines by transferring such conservation efforts to an unspecified remote site.

We also have significant concern that both homes shown on lots 39 and 40 are shown as "schematic" only. Presumably this is because these homes are not now fully defined, and are to be developed at a future date. Thus, ideally, we would request that any decisions related to tree removal adjacent to lots 39 and 40 be deferred until such time that details of house orientations, footprints, and access driveway configurations can be properly defined.

Thank you for the opportunity to comment on this proposed plan. We will appreciate confirmation of your receipt of this letter, and notification of the date and time of your hearings on this matter.

Sincerely,

Mark P. and Marcy S. Haffner
(301) 299-0169
(301) 299-0374 fax
mphaffner@verizon.net

Attachment E

Pfefferle, Mark

From: Bruce D. Patner [patnerlaw@yahoo.com]
Sent: Thursday, June 12, 2008 8:43 PM
To: Pfefferle, Mark
Subject: RE: Plan #1-97056

Thank you for your response and the information. Sorry for any confusion. The letter was from CAS Engineering, signed by Eric B. Todd. It stated that if we "have any questions or comments, please contact Mark P, M-NCPP Forest Conservation Plan Administrator.. " giving your e-mail, telephone and fax #s, and address.

— On Thu, 6/12/08, Pfefferle, Mark <Mark.Pfefferle@mncppc-mc.org> wrote:

From: Pfefferle, Mark <Mark.Pfefferle@mncppc-mc.org>
Subject: RE: Plan #1-97056
To: patnerlaw@yahoo.com
Date: Thursday, June 12, 2008, 4:44 PM

Bruce and Myra.

I got the email and voice mail messages left with me. Myra referred to a letter that I sent, please send me a copy since I did not send a letter to you concerning the amendment to the forest conservation plan. It can be faxed to me at 301 495-1303. If it is true and the applicant wants to remove 1.88 acres of forest in a conservation easement there will need to be a hearing before the Montgomery County Planning Board, it will not be a staff approval. No date is set for a hearing and you will be notified prior to the hearing date.

As for the construction of a tennis court, as long as they construct a tennis court outside the conservation easement they can do so on the property. They will still need to comply with all sediment control and stormwater management issues. As for lighting of tennis court, if there are lighting standards that would be controlled by the Montgomery County Department of Permitting Services and not the Planning Department.

From: Bruce D. Patner [mailto:patnerlaw@yahoo.com]
Sent: Wednesday, June 11, 2008 6:55 PM
To: Pfefferle, Mark
Subject: Plan #1-97056

To: Mark Pfefferle, M-NCPPC Forest Conservation Plan Administration

Re: Plan #1-97056

East of intersection of Willowbrook Dr. and Paytley Bridge Lae

Attachment E –Continued

From: Bruce and Myra Patner

10628 Great Arbor Dr.

Potomac, MD 20854

Lot 11, Block A, Red Coat Woods

Dear Mr. Pfefferle:

We are writing to you with regard to the proposed Final Forest Conservation Plan Amendment, Plan # 1-970576.

We are totally opposed to moving the conservation of 1.88 acres of forest off-site by establishing an off-site easement 3.76 acres in size.

The planned 1.88 acres of forest conservation easement should be maintained and not disturbed in any way.

We are opposed to the construction and location of a tennis court on lot 39. This will require the destruction of forest land; cause run-off into the Cabin John Watershed; cause noise pollution.

We are totally opposed to allowing night lights on this tennis for this tennis court, which will cause noise and light pollution, disturbing the sanctity and solitude of our peaceful enjoyment of the adjacent property which we own.

The site plan is defective is designing an extraordinary amount of acreage to a driveway in order to reach lots 39 and 40, further destroying the forestland, requiring pavement and resulting in undue run-off into the Cabin John Watershed.

We hereby request responses to our concerns and an acknowledgement of receipt of this communication.

We hereby request a hearing before the MNCPPC on these and other related issues.

Your responds will be appreciated.

Attachment E –Continued

Sincerely,

Bruce and Myra Patner

EPD Recommendation to Dev Rev Div: Approve w/conditions as noted
below Hold for revision/additional information Disapproval

**MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
DEVELOPMENT REVIEW COMMITTEE RECOMMENDATIONS**

TO: Joe Davis / Malcolm Shaneman
Development Review Division

SUBJECT: Plan # 1-27056, Kentsdale Estates
DRC date: 2/24/97

The above-referenced plan has been reviewed to determine if it meets requirements of the Guidelines for Environmental Management of Development in Montgomery County, and other county regulations that may apply. The following recommendations are made for the SRC meeting:

SUBMITTAL ADEQUACY

- Plan is complete. (see recommendations below)
- Plan is incomplete. The following items must be submitted:
 - Forest Conservation Plan
 - NRI/FSD (Approved)
 - SWM Concept or Waiver Application
 - 100-YR Floodplain Study
 - Drainage Area Map
 - Other _____

EPD RECOMMENDATIONS:

- Approval
- Approval with conditions as specified below. (see comments)
- Disapproval of plan (see comments)
- Hold for the following Revisions/Additional Information before scheduling for Planning Board:
 - Revise forest conservation plan (see PCB recommendation sheet)
 - Water and/or sewer category change approval necessary (see comments)
 - DEP floodplain study approval necessary
 - DEP SWM waiver/concept approval necessary
 - Other (see comments)
- Comments
 - Make sure that parking envelope shown are reasonable and large enough to accommodate buses that are compatible with others in the neighborhood.

SIGNATURE: [Signature]
engineer/architect

DATE: 2/24/97

NOTE: OFF site drainage issue has been identified for resolution during the preliminary plan review. DO NOT NOTIFY the meeting until it we have resolved.

