

Preliminary Plan Amendment 11994084A in Response to a Violation – Manor Oaks-Lot 21, Block A

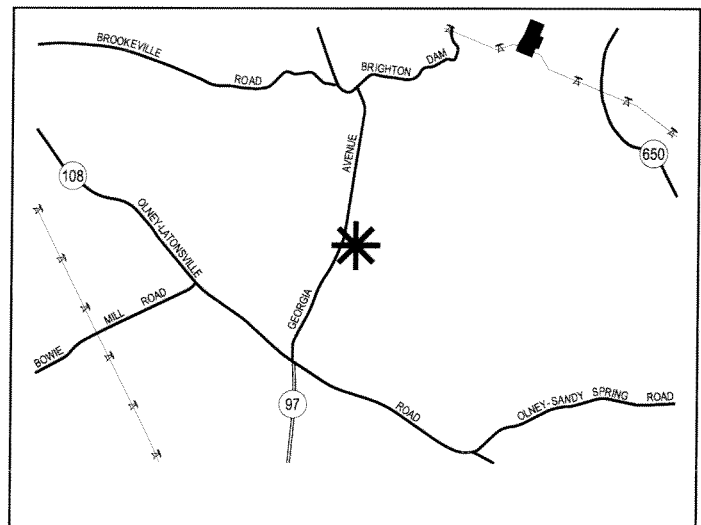
- Joshua Kaye, Senior Planner, DARC, Joshua.Kaye@montgomeryplanning.org, 301-495-4658
- Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730
-
-

Completed: 5-30-13

Description

Limited Amendment, Preliminary Plan No. 11994084A, Manor Oaks- Lot 21, Block A

RE-2/TDR zone; 0.19 acres; one existing lot containing a single-family residential dwelling; request to remove the existing Category I conservation easement offsite; located at 2822 Abbey Manor Circle, 500 feet east of Owens Road & Georgia Avenue in Brookeville; Olney Master Plan.



Summary

- Staff Recommendation: Approval with Conditions.
- Application submitted pursuant to a Notice of Violation issued on October 23, 2012.
- Proposal to remove 2,490 square feet of Category I conservation easement and mitigate offsite at a minimum 2:1 ratio.

STAFF RECOMMENDATION: Approval of the limited amendment to the Preliminary Plan and associated Forest Conservation Plan, subject to the following conditions:

1. Applicant must submit a complete record plat application within ninety (90) days from the mailing date of the Planning Board resolution approving the limited amendment to the Preliminary Plan. The existing easement remains in full force and effect until the new record plat is recorded.
2. Prior to Planning Board approval of the record plat, the Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank within ninety (90) days of the mailing date of the Planning Board Resolution approving 11994084A. The Certificate of Compliance must provide a minimum of 4,980 square feet of mitigation credit. The Certificate of Compliance must be approved by the M-NCPPC Office of the General Counsel and then be recorded in the Montgomery County land records by the Applicant.
3. All other conditions of Preliminary Plan No. 119940840 that were not modified herein, as contained in the Planning Board's resolution mailed November 23, 1994, remain in full force and effect.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 119940840 and Site Plan No. 819950040 "Manor Oaks", on October 27, 1994, and issued a written opinion on November 23, 1994, and February 14, 1995, respectfully. The approval granted three hundred seventy-five (375) lots on 242.16 acres of land and designated the property RE-2 /TDR-2 zone and developed under the optional method of development. The subdivision was subject to Forest Conservation Law (Chapter 22A of the County Code) and a Forest Conservation Plan (FCP) was required to be approved by staff. The Planning Board did impose that conservation easements be placed on the property in accordance with Condition No. 5 of the Preliminary Plan opinion that approves Preliminary Plan No. 119940840 (Attachment 1). Subdivision record plats were recorded in the Montgomery County land records on May 14, 1996, showing the delineation of the 100 year floodplain, stream valley buffers, wetlands, and forest conservation easements. A Category I conservation easement agreement was referenced on the plat and recorded in the Montgomery County land records in Liber: 13178 on Folio: 412.

The FCP associated with Preliminary Plan No. 119940840 was changed to be consistent with the Site Plan. The number assigned to the FCP is consistent with the numbering sequence used for all FCP's that have both Preliminary and Site Plans. Since the requirement to record the easements was a requirement of Preliminary Plan of subdivision No. 119940840 staff requested a Preliminary Plan amendment be submitted to change FCP No. 819950040.



**Figure 1: Manor Oaks Subdivision
(Green indicates Category I conservation easements)**

On October 23, 2012, Category I conservation easements were inspected throughout the community. At that time, a Notice of Violation (Attachment 2) was issued to the owner of Lot 21. The violations in the Category I conservation easement include; maintaining a lawn by continuous mowing, and construction of a stone patio within the easement area. The property owner revealed that he purchased the Lot and house in August 2012 in as-is condition. Staff evaluated the existing conditions onsite and agreed with current property owner that the stone patio and mowing preceded his ownership of the property, but that his continuation of those activities were still a violation of the terms of the easement. The property owner was instructed to either; (1) meet with staff to discuss a limited Preliminary Plan amendment application, proposing a portion or removal of the easement entirely, or (2) to comply with the terms of the recorded easement agreement and complete the remedial action specified in the Notice of Violation.

The property owner met with staff on December 4, 2012, to discuss the easement violations and the process to removal all, or a portion of the conservation easement from the property. On March 4, 2013, a limited Preliminary Plan amendment and associated FCP application was received by the Planning Department.

SITE DESCRIPTION

The subject property, Lot 21, is located at 2822 Abbey Manor Circle in Brookeville, MD. The Lot is 0.19 acres in size. The existing area of the conservation easement is approximately 29% of the total lot area, or 0.06 acres. The majority of the easement has been maintained as grass, and non-native Leyland Cypress trees were installed along the southern property line, screening the property from Owens Road. Flat topography exists on the Lot and it is located within the Hawlings River water shed, a Class IV-P stream. There are no sensitive environmental features such as streams, wetlands, floodplains, or associated buffers on Lot 21. The Countywide Stream Protection Strategy (CSPS) rates this watershed as good. The subdivision is serviced by public water and sewer, categorized as W-1 and S-1, respectfully.



Figure 2: Manor Oaks Subdivision, Lot 21

PROPOSAL

On March 4, 2013, the Applicant Malik Imam and Nazish Salahuddin, submitted a limited amendment to the Preliminary Plan of subdivision No. 11994084A and associated FCP No. 81995004A to abandon

approximately 2,490 square feet of existing Category I conservation easement on the southern portion of their property line (Attachment 3). The Applicant proposes to purchase mitigation credits at a minimum 2:1 ratio at an approved forest conservation bank within the Hawlings River watershed or where there is availability close to this region of the County.

If approved by the Planning Board, the Applicant will record a new record plat for the Lot without a Category I conservation easement.

PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulations and adopted Planning Board policy require Planning Board action when affecting or changing conservation easements granted by a grantor during the subdivision approval process, under Section 22A.00.01.15 Long-Term Protective Agreements.

Long-term protective agreements may include, but are not limited to: a) Covenants running with the land; (b) Deed restrictions; c) Conservation easements; and d) Land trusts.

Only the Planning Board has the authority to approve the removal of a conservation easement established through the subdivision process and associated FCP, or record plat.

STAFF REVIEW

The original Preliminary Plan for the subject property was approved in the mid 1990's. Lot 21 had a conservation easement of approximately 2,490 square feet proposed on the 8,469 square foot lot. The easement on Lot 21 was part of a larger easement which connected with two additional adjoining properties giving a total cumulative easement area of approximately 12,625 square feet. The easement is bifurcated from other forested easements within in the community and has no environmentally sensitive areas within it. The property is not located within the 100-year floodplain and no erodible soils were ever noted. The easement, which was intended to protect existing forest cover, encumbers almost 30% of the lot. After construction of the house in 1998, the conservation easement covered almost the entire rear yard and left a strip of land less than 13 feet wide between the house and easement.

The Applicant purchased the property in August of 2012. Two months after purchasing the property they were given notice by Staff that their stone patio was partially located within a Category I conservation easement and they were in violation of their easement agreement. Staff reviewed the aerial photos from 2000 to present, and it appeared that the patio was built by the previous owner sometime prior to 2006. Additionally, any trees which might have existed in the conservation easement were removed and replaced with lawn prior to the Applicants purchasing the property. No significant or specimen trees exist on the property. Considering the Applicant purchased the property in its existing condition and the conservation easement violation is a direct result of the actions by the previous owner, the Applicant quickly met with staff for a resolution. Based on circumstantial evidence, Staff determined that a limited Preliminary Plan amendment to revise the easement was appropriate. The Applicant seeks to address this matter by removing the conservation easement in its entirety.

There are several possible alternatives which would result in correcting the property from its current state of violation. One option would be to remove the portion of the patio encroaching into the easement, but this would still leave the house within 13 feet of the conservation easement and the homeowners would still have no useable backyard. Another option would be to remove a certain portion of the easement so that the patio would no longer be encroaching into the easement. However, this would result in only a small strip of conservation easement remaining, which does not contain any trees except for a hedgerow of leyland cypress at the rear of the lot intended for screening the property from the adjacent road. The Category I easement could be converted to a Category II, and written permission from staff would allow for hardscapes to remain and mowing to continue in a Category II easement, but there would virtually no benefit to keep the area as an easement because no forest cover exists and the owners would still have to compensate for the removal of the Category I easement at an offsite forest conservation bank, while incurring a large expense for going through the limited Preliminary Plan amendment process with minimal net gain

Staff does support the removal of the 2,490 square foot Category I conservation easement on Lot 21. The remaining forest stand and easement area still averages 50 feet wide and exceeds 10,000 square feet thereby meeting the minimum standard required by the Forest Conservation Law.

Staff agrees that a minimum 2:1 ratio of mitigation credits be purchased from an M-NCPPC approved forest conservation bank is appropriate compensation in this case.

NOTIFICATION and OUTREACH

The subject property was properly signed with notification of the upcoming Preliminary Plan amendment prior to the March 4, 2013 submission. All adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the upcoming public hearing on the proposed amendment. As of the date of this report, staff has received one inquiry from a community resident regarding the Applicant's proposal. Staff answered questions from the resident, which mainly consisted of why the request was being made. No further correspondence was received. Any comments received hereafter will be forwarded to the Planning Board.

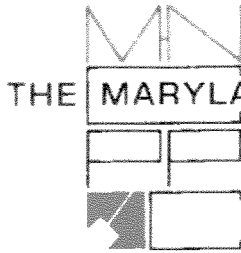
RECOMMENDATION

Staff recommends that the Planning Board approve this limited Preliminary Plan of subdivision and corresponding FCP amendment with the conditions specified above.

ATTACHMENTS

1. Planning Board Opinion for Manor Oaks Subdivision Plan No. 119940840
2. Notice of Violation
3. Limited Preliminary Plan Amendment

Date of Mailing: November 23, 1994



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications
(Motion of Comm. Richardson, seconded by Comm. Aron, with
a vote of 5-0; Comms. Richardson, Aron, Baptiste, Holmes
and Hussmann voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-94084
NAME OF PLAN: MANOR OAKS

On 04-15-94, MANOR OAKS JOINT VENTURE , submitted an application for the approval of a preliminary plan of subdivision of property in the RE2 zone. The application proposed to create 397 lots on 242.16 ACRES of land. The application was designated Preliminary Plan 1-94084. On 10-27-94, Preliminary Plan 1-94084 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-94084 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-94084, subject to the following conditions:

APPROVAL of 375 lots, subject to:

- 1) Compliance with Planning Department approval regarding the requirements of the forest conservation legislation as part of combined preliminary/site plan approval. Applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Environmental Protection (MCDEP) issuance of sediment and erosion control permit, as appropriate
- 2) Agreement with Planning Board to limit development to a maximum of 375 dwelling units and provide for the necessary roadway improvements as outlined in 10-27-94 Planning Department memorandum as revised by Planning Board as follows:
 - (a) Construction of required sidewalks shall be in accordance with the phasing required in site plan Condition No. 1(a)(2) and
 - (b) In lieu of bikeway on Georgia Avenue (MD 97) along property frontage, applicant to construct a 5' sidewalk (expandable to 8') either in the Georgia Avenue right-of-way or on the property

- 3) Access and improvements as required and approved by MCDOT and MDSHA
- 4) Conditions of MCDEP stormwater management approval dated 10-14-94
- 5) Record plat(s) to reflect delineation of easements which include the 100 year floodplain, stream valley buffers, wetlands and forest conservation areas
- 6) Record plat to identify all open space and homeowner association (HOA) areas
- 7) Dedication of Georgia Avenue (MD Rt. 97) for 150' right-of-way and full-width dedication of Old Baltimore Road and Owens Road for 70' right-of-way
- 8) Existing driveway access to Georgia Avenue (MD Rt. 97) to be abandoned upon completion of Street "B" from Owens Road to its intersection with Street "A". Subject to SHA approval, this existing driveway may also serve as temporary access for model homes (Lots 212-215 and Lot 47). Record plat to reflect denial of access along Georgia Avenue (MD Rt. 97) except for temporary access for models and one "emergency access only" entrance as shown on the plan
- 9) Final number, location and mix of units as shown on approved site plan
- 10) Clearing and grading as specified on site plan
- 11) 257 TDR's required dependent on Condition No. 9 above
- 12) Other necessary easements
- 13) The Planning Board concurs with the finding of the PROS Plan that an additional local park in the northeast quadrant of the Olney Planning Area is needed to serve existing and planned development called for in the Olney Master Plan. Since a project to fulfill this need was not provided for in the master plan, applicant shall dedicate that portion of the RE-2/TDR zoned area east of Old Baltimore Road and north of the proposed townhouse area as a future local park. Applicant to receive credits both for density and under forest conservation legislation (FCL) for area of parks dedication; however, applicant responsible for implementing all requirements under FCL prior to dedication. The RE-2 zoned balance of applicant's property included in preliminary plan will be studied for identification of area appropriate for future acquisition as a local park. Applicant to revise plans for staff approval showing appropriate relocation of Street "J" near the gas line right-of-way
- 14) This preliminary plan will remain valid until December 23, 1997. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8787 Georgia Avenue, Silver Spring, Maryland 20910
 Environmental Planning Division 301.495.4540 Fax: 301.495.1303
 www.MontgomeryPlanning.Org

(ATTACHMENT 2)

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, 10/23/12 the recipient of this NOTICE, Malik Imam
Date Recipient's Name
 who represents the property owner, Malik Imam
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 2822 Abbey Manor Circle, Brookeville, MD 20833

Plan No. 819950040	Explanation: Encroachments into a Category I conservation easement
---------------------------	---

VIOLATION:

- Failure to hold a required pre-construction meeting.
- Failure to have tree protection measures inspected prior to starting work.
- Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
- Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector.
- Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
- Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
- Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
- X** Other: Violation of easement agreement found in Montgomery County Land Records under Liber: 13178 Folio: 412. Continual mowing, and a stone patio was partially installed in a Category I conservation easement.

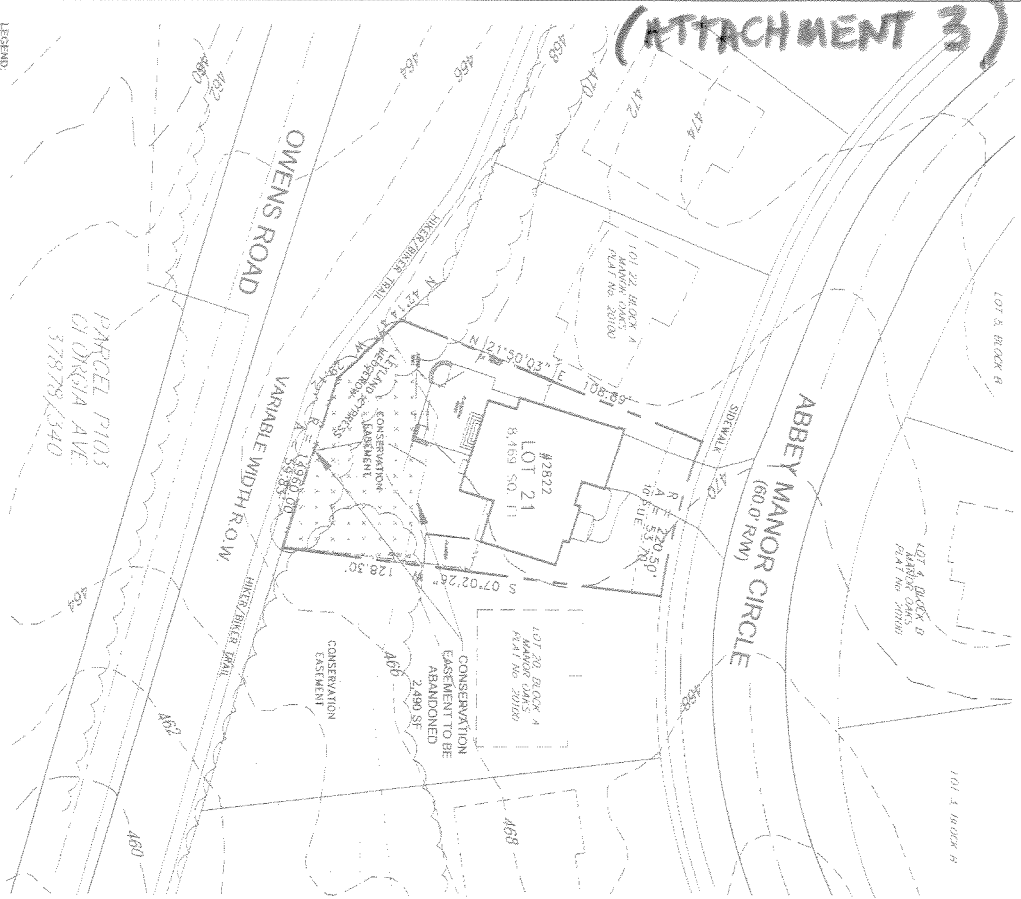
Failure to comply with this NOV by 12/14/12 ^{2/1/13 * Extended} may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at 301-495-4658 when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:

- Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
- Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
- Submit required application for compliance with Chapter 22A of the County Code. Contact DARC Division at 301-495-4550.
- Cease all cutting, clearing, or grading and/or land disturbing activity. Approval from Forest Conservation Inspector is required to resume work.
- Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
- Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
- X** Other: Stop mowing. Plant (2) native shade (tall) tree @ 1"-1.5" caliper, where the mowing occurred, remove stone patio within the easement.

MNCPPC Inspector	<u>Josh Kaye</u>		<u>10/23/12</u>
	<small>Printed Name</small>	<small>Signature</small>	<small>Date</small>

RECEIVED BY:	<u>[Signature]</u>	<u>10/23/2012</u>
	<small>Printed Name</small>	<small>Date</small>

(ATTACHMENT 3)



LEGEND:

- PROPERTY LINE
- FE. CORNER
- DAVEY'S CONSERVATION EASEMENT
- CONSERVATION EASEMENT TO BE AMENDED
- CADASTRAL LINE
- CENTRAL LINE OF ROAD

Scale 1" = 30'

Scale 1" = 200'

Seal of the State of Maryland

Professional Engineer

Signature: A. P. Smith

Date: 1/14/2013

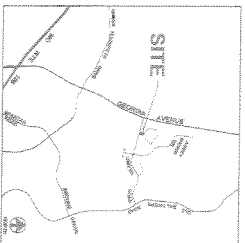
NOTES:

1. AREA OF PROPERTY - 8,489 SF (0.19 AC)
2. EXISTING ZONING - RE-2/TOR
3. SITE IS SERVED BY PUBLIC SEWER AND WATER
4. EXISTING SEWER & WATER SERVICE CATEGORIES: S-1, W-1
5. LOCATED IN THE HAWKINGS RIVER WATERSHED
6. PROPERTY LOCATED ON TAX MAP HUST-1; WSSC SHEET 224W003
7. UTILITIES (as available): Washington Gas, Verizon, PEPCO
8. EXISTING TOPOGRAPHY OBTAINED FROM M.C. MAPS
9. SITE DETAILS FOR LOT 21 OBTAINED FROM A FIELD SURVEY PREPARED BY POTOMAC VALLEY SURVEYORS, 2013.
10. ZONING STANDARDS FOR THE PROPERTY SUBJECT TO THE APPROVED SITE PLAN #819980040

PRELIMINARY PLAN NOTES:

1. THE PURPOSE OF THIS PLAN IS TO AMEND THE APPROVED PRELIMINARY PLAN #819980040 FOR LOT 21 ONLY.
2. THIS PLAN PROPOSES REMOVAL OF THE CATEGORY I CONSERVATION EASEMENT ON LOT 21, BLOCK A.

OWNER:
Malik Imam &
Nazish Salahuddin
 2822 Abbey Manor Circle
 Brookfield, MD 20833



PRELIMINARY PLAN - LIMITED PLAN AMENDMENT
Manor Oaks - LOT 21, BLOCK A
 2822 ABBEY MANOR CIRCLE
 MONTGOMERY COUNTY, MARYLAND



Benning & Associates, Inc.
 Lead Planning Consultants
 1501 Shady Grove Court
 Gaithersburg, MD 20877
 (301) 946-0240

date: 1/14/2013
scale: 1" = 30'



Sheet 1 of 1
Revisions