



MCPB
Item No.
Date: 6/28/18

**Gomes Property (aka Peterson Property) Limited Preliminary Plan Amendment No. 11991045C
(In Response to a Forest Conservation Violation)**



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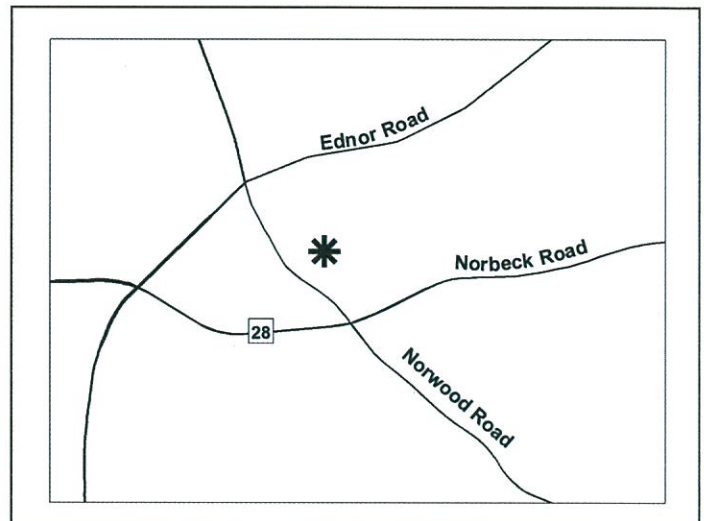
Completed: 6/15/18

Description

Limited Amendment, Preliminary Plan No. 11991045C,

(In Response to a Forest Conservation Law Violation)

- Lot 1, Block B
- 811 Norwood Road
- RE2C Zone
- Cloverly Master Plan
- Applicant: Fernando Gomes
- Accepted on February 12, 2018



Summary

Request to amend the Preliminary Plan of Subdivision for forest conservation purposes in response to a forest conservation violation:

1. Proposal to release 1.33 acres (57,935 square feet) of M-NCPPC Conservation Easement consisting of 0.27 acre (11,761 square feet) of Category I Conservation Easement and 1.06 acre (46,174 square feet) of Category II Conservation Easement.
2. Proposal to create 1.80 acres (78,408 square feet) of Category I Conservation Easement, onsite, which includes 1.51 acres (65,776 square feet) of new forestation planting and the protection of 0.29 acres of existing forest.

STAFF RECOMMENDATION AND CONDITIONS

All previous conditions of Preliminary Plan No. 119910450, as contained in the Montgomery County Planning Board's Opinion dated April 22, 1992, remain in full force and effect. Staff recommends approval of Preliminary Plan No. 11991045C for forest conservation purposes to relocate the conservation easement on Lot 1 Block B subject to the following conditions:

1. Within thirty (30) days of the mailing of the Planning Board Resolution the Applicant must submit, to Staff, a cost estimate for the planting of 1.51 acres of land with 2-inch caliper trees and two year maintenance of the trees for review and approval.
2. Within sixty (60) days of the mailing date of the Planning Board Resolution, the Applicant must submit financial security for the planting and maintenance requirements of 1.51 acres of forest planting in an amount and form approved by Staff.
3. Within sixty (60) days of the mailing date of the Planning Board Resolution, the Applicant must record a Category I Conservation Easement by deed, in a form approved by the M-NCPPC Office of the General Counsel, in the Land Records of Montgomery County, Maryland for all new easement areas on the Subject Property.
4. Within sixty (60) days of the mailing date of the Planning Board Resolution, the Applicant must submit a Maintenance and Management Agreement in a form approved by the M-NCPPC Office of General Counsel to ensure compliance with the conditions of the Forest Conservation Plan.
5. Within ninety (90) days of the mailing of the Planning Board Resolution the Applicant must obtain and record a Release of all the existing Category I Conservation and Category II Conservation Easement, in a form approved by the M-NCPPC Office of the General Counsel, in the Land Records of Montgomery County, Maryland. All existing conservation easements remain in full force and effect until the deed of release is recorded.
6. Within ninety (90) days of the mailing date of the Planning Board Resolution, the Applicant must submit a complete Record Plat application for the Subject Property that delineates and references the new Category I Conservation Easement. The record plat must reference the liber and folio of the Category I Conservation Easement.
7. By December 15, 2018 the Property Owner must complete the planting and have the planting inspected and accepted by the M-NCPPC Inspector.

SITE DESCRIPTION

The Subject Property is Lot 1, Block A within the Peterson Property Subdivision, preliminary plan 119910450. The property is located on the northeast side of Norwood Road, is 3.12 acres in size, and consists of a single-family house, 2 sheds and a barn, and contains some forest. Figure 1 below shows the outline of the subdivision and the outline of the applicant's property. The property is accessed from a shared private driveway off Norwood Road.

Approximately 2.14 acres of the Property is within M-NCPPC conservation easement including 1.08 acres of Category I Conservation Easement and 1.06 acres of Category II Conservation Easement. The Property lies within the Northwest Branch watershed.

Figure 1: Gomes Property, Lot 1, Block A – Existing Conditions



BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 119910450 by Opinion mailed on April 22, 1992 and approved establishment of three (3) lots and two (2) outlots on 11.70 acres including the Subject Property (Attachment 1). Attachment 2 includes the final forest conservation plan that was approved with the subdivision. Category I Conservation Easement was granted to M-NCPPC for the forest retention and planting areas and recorded in the Land Records at liber 10728 folio 501 (Attachment 3). A Category II Conservation Easement was granted and recorded in Land Records at liber 10728 folio 510 (Attachment 4). Both easements were recorded in October 1992. Record Plat No. 19328, recorded on April 23, 1994, delineates the Category I and Category II Conservation Easements on the Subject Property (Attachment 5). Figure 2 below shows the location of the existing Category I and Category II conservation easements on the property.

The Planning Board previously approved amendments "A" and "B" to the preliminary plan of subdivision. Neither of those approvals impacted Lot 1.

Figure 2: Location of Existing Conservation Easements



Forest Conservation Violation

On March 8, 2017 the forest conservation inspector observed the owner Lot 1 constructing a foundation for a new garage within the existing Category 1 easement. The house on the lot was previously completed in 2002. No forest was present in the easement area impacted by the construction. The Inspector noted an existing outbuilding and expanded driveway within the Category II easement. It is unknown when these activities occurred. It also appears that mowing of conservation easement was an ongoing activity, another prohibited activity in a category I conservation easement. A Notice of Violation was issued to the owner on March 24, 2017 which required compliance with the conservation easements or to file for an amendment to the preliminary and forest conservation plans (Attachment 6).

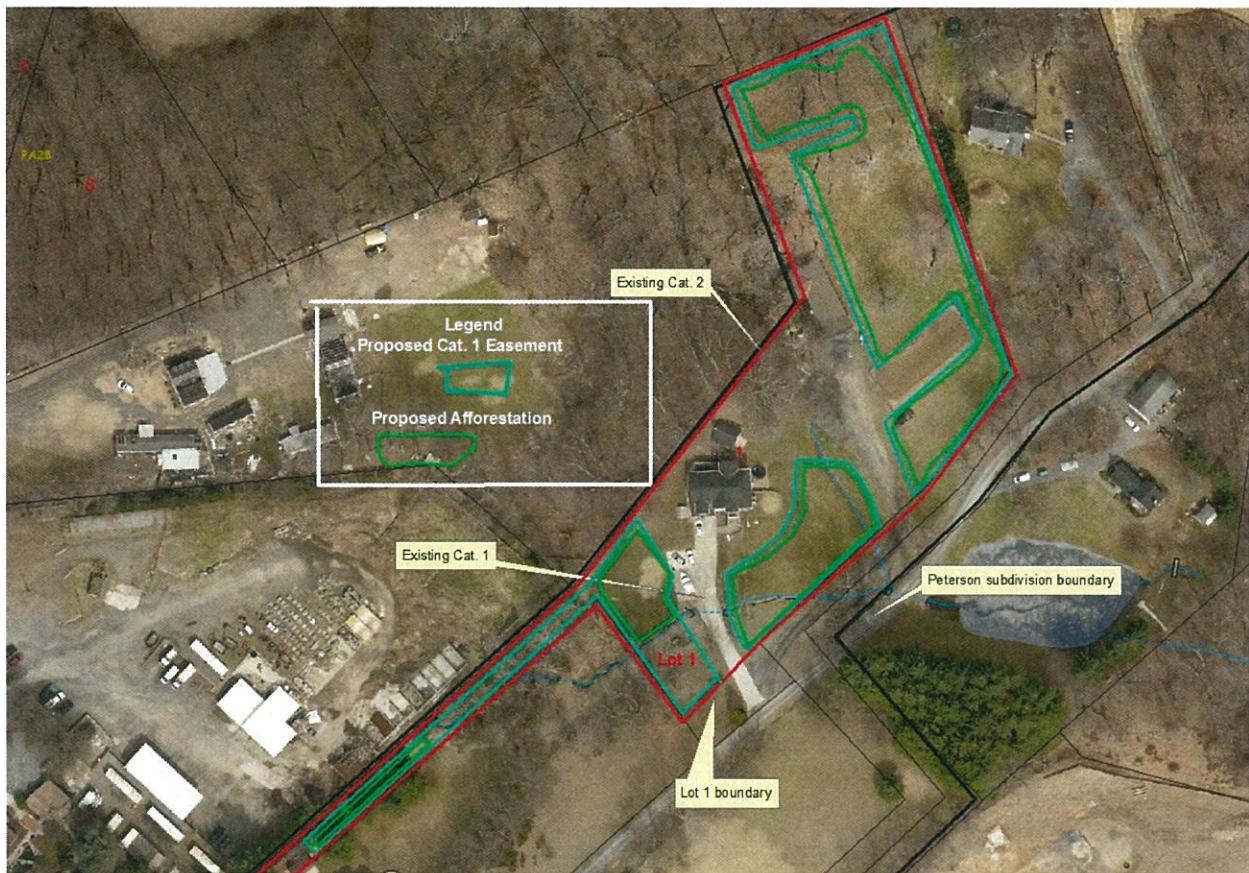
Proposed Amendment

On December 20, 2017, the applicant submitted Preliminary Plan Amendment 11991045C to resolve the conservation easement violations and to accommodate the garage that was already under construction. The easements are proposed to be realigned which will result in the existing easements being extinguished and new easements recorded as follows:

1. Release of 1.33 acres (57,935 square feet) of M-NCPPC Conservation Easement consisting of 0.27 acre (11,761 square feet) of Category I Conservation Easement and 1.06 acre (46,174 square feet) of Category II Conservation Easement.
2. Provide 1.80 acres (78,408 square feet) of Category I Conservation Easement, and which includes 1.51 acres (65,776 square feet) of new reforestation planting of 2" caliper native trees.

The proposal results in a loss of 0.34 acres of total easement area, but increases the Category I easement from 0.99 acres to 1.51 acres and requires replanting of all areas not currently forested. Attachment 7 includes the amended forest conservation plan. Figure 3 below shows the location of the proposed conservation easements and where the planting will occur.

Figure 3: Proposed Conservation Easement Areas and Areas of Planting



The applicant has proposed to plant 151 two-inch caliper trees in four areas in the conservation easement. The plantings will be targeted to upland and lowland species of native trees.

Planning Board Review Authority

The Planning Board approved Preliminary Plan No. 119910450 "Peterson Property" and required the establishment of conservation easements in the subdivision. The Planning Board has authority under

Subdivision Regulations (Chapter 50 of the Montgomery County Code) to hear an amendment that proposes changes to the conservation easements.

In addition, the Planning Board has directed Staff to bring all requests for modifications to conservation easements before them to be considered in a public forum.

Staff Review and Recommendations

In response to a Notice of Violation and meeting with Staff, the Applicant submitted this Amendment proposing the release of 1.33 acres of conservation easement of which 0.27 acres is Category I and 1.06 acres is Category II. The Applicant proposes the creation of 0.99 acres of Category I easement adding it to the 0.81 acres of existing Category I easement, for a total of 1.80 acres of Category I easement. The Applicant proposed to plant 1.51 acres of forest on the property of which will benefit the stream buffer. The new reforestation will help to reduce runoff and soil erosion. The existing 1.06 acres of Category II easement is primarily lawn with a few trees. The proposal extinguishes the Category II easement which currently allows forest understory removal, and then creates new forest planting within a Category I easement which is more restrictive and prohibits removal of any forest without permission.

The Amendment addresses the forest conservation law violations on the property, and recognizes the applicants desire to construct a garage and maintain the existing outbuildings.

Prior to continuing any construction, the Property Owner will need to secure M-NCPPC Executive Director approval to release the existing conservation easements, record new conservation easements and eventually create 1.51 acres of new forest in areas that currently do not include forest or tree canopy.

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 correspondence from one citizen as of the date of the staff report requesting to be notified of the hearing dates and decisions affecting the proposal (Attachment 8). 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.

Recommendation

Staff recommends that the Planning Board approve this Amendment with the conditions specified at the beginning of this report.

ATTACHMENTS

1. Montgomery County Planning Board Opinion, Preliminary Plan No. 119910450 "Peterson Property"
2. Approved Final Forest Conservation Plan No. 119910450
3. Category I Conservation Easement Agreement L. 10728 F. 501

4. Category II Conservation Easement Agreement L. 10728 F. 510
5. Record Plat No. 19328
6. Notice of Violation dated March 24, 2017
7. Proposed Final Forest Conservation plan 11991045C "Peterson Property" submitted for Montgomery County Planning Board approval of June 28, 2018