


Montgomery Planning

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item No.
Date 4/15/2021

Ottinger Property, Preliminary Plan Amendment No. 11987244A

 Marco Fuster, Coordinator, DownCounty Planning marco.fuster@montgomeryplanning.org 301.495.4521

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Staff Report Date: April 5, 2021

Description

Request to remove a conservation easement and replace it with a smaller, more stringent Category I Easement to allow construction of a new porch and deck.

Location: 8006 Spring Road, 180 Feet West of 80th Street

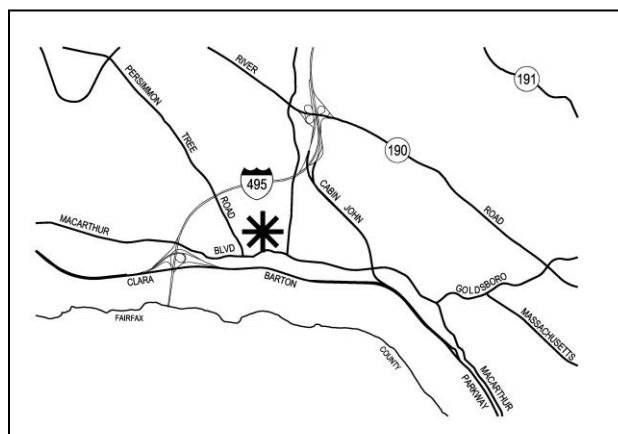
Zone: R-90

Master Plan: 1990 *Bethesda-Chevy Chase*

Property Size: 0.46 acres

Applicant: Joseph Ottinger

Date Accepted: May 26, 2020



Summary

- Staff recommends approval of the Preliminary Plan Amendment, with conditions superseded/added.
- The Preliminary Plan Amendment proposes to supersede Condition 5, by removing the existing recorded conservation easement and replacing it with a smaller, more stringent Category I Easement that is variable in width.
- This amendment will allow the Applicant to construct a new porch (which generally occupies the area of the existing deck) and to build a new deck. The location of the new structure is within a level area near the home and would not be within the steep slopes or highly erodible soils.
- The proposed Amendment will include numerous environmental enhancements and protections including the removal of invasive species, planting of supplemental native species, removal of an existing 6' chain-link fence, installation of split-rail fence/signage to delineate and protect the new easement area and a modified Building Restriction Line (BRL) to further protect the new easement area from potential future encroachment.
- The Application is being reviewed under the R-90 Zone development standards in effect on October 29, 2014, as permitted under Section 59.7.7.1.B.3 of the Zoning Ordinance.
- Staff has not received correspondence regarding the Amendment.

SECTION 1: RECOMMENDATION

Preliminary Plan Amendment No. 11987244A

Staff recommends approval of Preliminary Plan No. 11987244A to supersede Condition 5, by removing the recorded conservation easement and replacing it with a smaller, more stringent Category I Easement (in addition to providing other environmental enhancements/protections). All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.¹ Conditions 7 through 18 are added and the previous Condition 5 is superseded by the new conditions, while all other previously approved conditions remain in full force and effect:

Previous Condition #5:

Record conservation easement 80' from western property line.

Added Conditions:

7. Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must record a new Category I Conservation Easement reflecting the entire easement area as approved. The new easement agreement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed prior to recordation of the deed of abandonment for the existing conservation easement. The entirety of the existing easement remains in full force and effect until the abandonment document and the revised easement have been approved by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records by deed.
8. Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must abandon the entirety of the original Conservation Easement recorded among the County Land Records in Liber 9545, Folio 668 and identified on Plat 19558 on Lot 127 in a form approved by M-NCPPC Office of the General Counsel. The abandonment document must be recorded in the Montgomery County Land Records by deed.
9. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the amendment to the Preliminary Plan, the Applicant must submit a complete record plat application that delineates the 65' modified BRL, revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement.
10. The revised Record Plat must be recorded in the Montgomery County Land Records prior to demolition, clearing, grading, or construction but no later than 365 days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan.
11. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the forest planting/enhancement work and the associated 5-year maintenance period.

¹ For the purposes of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor (s) in interest to the terms of this approval.

12. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement fencing/posts/signage along the perimeter of the conservation easements as shown on the Tree Save Plan or as determined by the Forest Conservation Inspection Staff.
13. Except for forest management practices coordinated with Planning Department Staff, the homeowner(s) of lot 127, and/or their successors, agents & assigns shall not perform any clearing, mowing, tree removal or other disturbance within the WSSC easement and Public Utility Easement within the subject property. However, the Grantees rights relative to the utility easements are not diminished in any way and associated utility personnel are not restricted from performing any required work within their respective utility easement.
14. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting/enhancement work. The time period for the MMA will adhere to the requirements in place when the MMA is approved.
15. The Applicant must provide invasive species management control measures within the proposed Category I Conservation Easements at the direction of the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the stream and the sensitive nature of this watershed. The use of herbicides should be avoided where possible. The cost to control non-native invasive species must be incorporated into the forest enhancement financial surety.
16. The initial invasive control, fence work and all plantings required under this amendment shall occur as seasonally appropriate and be accepted by the Forest Conservation Inspector prior to start of construction work.
17. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plan. Tree save measures not specified on the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
18. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.

SECTION 2: SITE DESCRIPTION

Site Vicinity

The subject site (Subject Property, Property or Site) is located at the cul-de-sac of Spring Road, 180 feet west of 80th Street in Glen Echo. The Property is surrounded (towards the north, east and south) by other single-family residences in the R-90 Zone, while a stream valley conservation park (Carderock Springs NCA) borders the Property along the west. The area is within the Palisades Subsection of the 1990 *Bethesda-Chevy Chase* Master Plan area.



Figure 1-Vicinity Map

North ↑

Site Analysis

The Site contains environmentally sensitive areas including forest, mature trees, steep slopes and highly erodible soils. An offsite stream is located in the adjacent conservation park toward the west. However, due to the presence of steep slopes, the associated stream valley buffer (SVB) extends outside of the park and encompasses nearly the entire Subject Property. The Subject Property also includes a conservation easement which extends 80 feet from the western boundary and approximately coincides with west side of the existing home. Parts of the existing conservation easement also overlap with other recorded easements including a WSSC sewer line easement (which runs along the slope) and a Public Utility Easement (paralleling the roadway edge). The existing home and deck are generally situated on a level area and do not overlap with the steep slopes or highly erodible soils. There are no known rare, threatened, or endangered species or any historic properties on or near the Site.



Figure 2: Site Photo (south facing view from Spring Road)

Previous Approvals

The Planning Board approved Preliminary Plan No. 119872440 by Opinion dated February 9, 1989 (Attachment 1). The conditions of approval required that a conservation easement be recorded 80' from western property line of the subdivision. Subsequently the current plat associated with Subject Property was recorded (Plat Number 19558).

As part of the current application, a Forest Conservation Exemption was confirmed on August 18, 2020 (Attachment 3). The memo notes that no forest clearing or tree removal will occur as part of the work, and that all of the mitigation requirements associated with this application must be implemented and inspected prior to the starting of construction.

SECTION 3: PROJECT DESCRIPTION

Proposal

The purpose of this amendment is to allow the Applicant to remove a conservation easement and replace it with a smaller but more stringent Category I Easement for the construction of a new porch and deck (which generally occupies the area of the existing deck). The location of the new structures is within a level area near the home and would not be within the steep slopes or highly erodible soils.

The existing conservation easement predates the Forest Conservation Law and generally protects trees which are 6 inches in diameter and greater. Smaller shrubs, herbaceous plants and understory trees (which are critical components of forest definition) are not specifically protected by the existing easement.

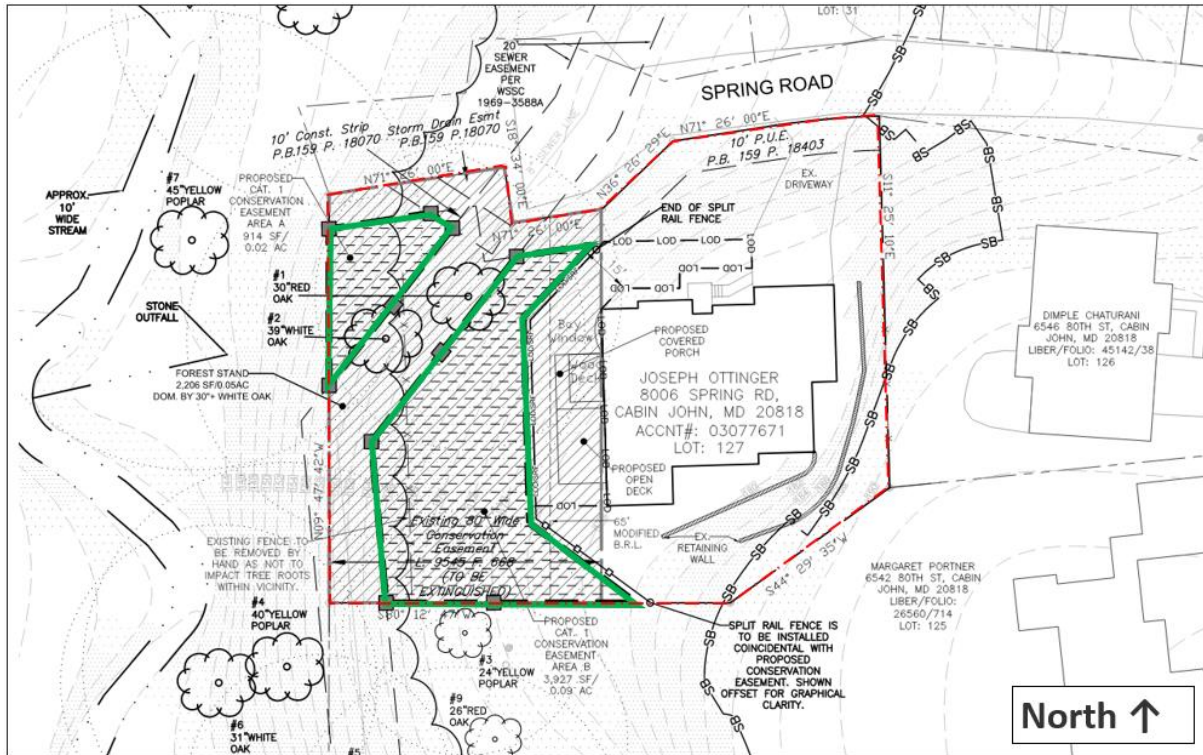


Figure 3: Proposed Plan
(Existing easement within hatched areas-proposed easements are in green outline)

Parts of the existing conservation easement also overlap with other recorded easements including a WSSC sewer line easement (which runs along the slope) and a Public Utility Easement (paralleling the roadway edge). At the time of recordation, conservation easements were allowed to overlap other types of easements.

The existing easement measures 0.22 acres while the proposed easement is 0.11 acres in size. Although the standard Planning Board policy for replacement of conservation easement is either 1:1 onsite or 2:1 offsite, Staff does not recommend any offsite mitigation for the reduction of the easement footprint because under the unusual circumstances of this particular application, the onsite environmentally sensitive setting will be enhanced and better protected overall due to the more stringent Category I Easement to be recorded. Furthermore, all reasonable efforts to maximize the easement extents and provide onsite mitigation/protection/enhancements features have been utilized as outlined below.

- The new easement (although smaller in size) will be recorded as a standard Category I Conservation Easement which is more stringent than the currently record easement.
- Removal of invasive species will occur throughout the Subject Property (particularly within the forest setting), and any resulting gaps in the forest will receive supplemental native plantings.

- Any areas within the new easement footprint which currently have lawn will be afforested with sizable plantings of native species.
- An existing 6' chain-link fence located along the midpoint of the slope will be carefully removed.
- A new split-rail fence with signage will be installed along the easement boundary (closest to the house/lawn) to physically delineate and protect the new easement area. 6"x 6" posts with signs will be used to delineate the other boundaries of the easement areas (which are downslope from the home/lawn).
- As conditioned, under condition #13, the homeowner or successor cannot perform clearing, mowing, tree removal or other disturbance within the WSSC easement and Public Utility Easement areas.
- A modified 65' Building Restriction Line (BRL) will be platted to further protect the new easement area from potential future encroachment. The new BRL will be located approximately eight feet from easement boundary.

Beyond the items listed above, there is no forest clearing or tree removal of any kind associated with this project. Additionally, the plan notes and details provide for specialized construction techniques to further protect the adjacent trees and slopes in addition to other restrictions.

Community Outreach

The Applicant has met all signage, noticing, and submission meeting requirements. A pre-application community meeting was not required, however a notice about the Amendment was sent on May 27, 2020. As of the date of this staff report, Staff has not received correspondence on the proposed Amendment.

SECTION 4: ANALYSIS AND FINDINGS

The project is reviewed under the Zoning Ordinance in effect on October 29, 2014, as allowed by Section 59.7.7.1.B.3 of the current Zoning Ordinance. The existing subdivision associated with the Subject Property was approved prior to certain regulatory tools such as the Forest Conservation Law and 1990 *Bethesda-Chevy Chase* Master Plan. The Conservation easement recorded at the time was also less restrictive than the Category I Conservation Easement language which was subsequently standardized. However, the previous Preliminary Plans addressed the finding/requirements at the time of original approval and will continue to meet the previous and new requirements as applicable.

The proposed Amendment does not alter the original intent and all findings of Preliminary Plan No. 119872440 remain in full force and effect, except as modified by the findings below.

The Bethesda-Chevy Chase Master Plan has extensive recommendations and major goals on the protection of the Palisades' delicate, irreplaceable environmental features such as steeply sloped areas of 25 percent and greater, highly erodible soils, mature trees and streams. These Master Plan goals are being addressed by the numerous environmental enhancements and protections such as the removal of invasive species, planting of supplemental native species, removal of an existing 6' chain-link fence, installation of split-rail fence/signage to delineate and protect the new Category I Easement area (which has more stringent terms than the existing easement) and a modified Building Restriction Line (BRL) to further protect the new easement area from potential future encroachment. Approval of the proposed Preliminary Plan Amendment would not require any changes to the

findings made by the Planning Board in the approval of Preliminary Plan No. 119872440 and will result in an enhancement to the currently existing environmentally sensitive resources which would not be required otherwise.

All Forest Conservation Law, Chapter 22A requirements are satisfied

Environmental Guidelines

The Site contains environmentally sensitive areas including forest, mature trees, steep slopes and highly erodible soils. An offsite stream (Potomac Direct watershed, use class 1-P) is located in the adjacent conservation park toward the west and the associated SVB extends to nearly the entire subject property. There are no known rare, threatened, or endangered species or any historic properties on or near the Site. The setting and extent of the onsite environmentally sensitive resources will be enhanced and better protected over the current conditions.

Forest Conservation

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(a) of the Forest Conservation Law because the proposed activity is conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner. Additionally the activity: (1) does not require a special exception; (2) does not result in the cutting, clearing, or grading of: (A) more than a total of 20,000 square feet of forest; (B) any forest in a stream buffer, (C) any forest on property located in a special protection area which must submit a water quality plan, (D) any specimen or champion tree, or (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and (3) is subject to a declaration of intent filed with the Planning Director stating that the Property will conform with the conditions of the Plans for 5 years from the date of the Plans approval. The exemption was confirmed on August 18, 2020 (Attachment 3). The memo notes that no forest clearing or tree removal will occur as part of the work and that the all the mitigation work associated with application must be implemented and inspected prior to the starting of construction. This requirement is reinforced the recommended conditions of approval.

All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied

The application has a minimal area of disturbance and is not subject to sediment control or stormwater management review.

STAFF RECOMMENDATION

Preliminary Plan Amendment No. 119872440A will not alter the overall character or impact of the development with respect to the original findings of approval. Further, the Amendment will enhance (rather than adversely affect) the compatibility of the development with respect to the surrounding neighborhood. Staff recommends approval of Preliminary Plan Amendment No. 119872440A.

Attachments:

Attachment 1 – Preliminary Plan No. 119872440 Opinion (Resolution)

Attachment 2 – Redline Exhibit of Plat 19558

Attachment 3 – Forest Conservation Exemption Memo

Attachment 1- Preliminary Plan No. 119872440 Opinion (Resolution)



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

FILE COPY

Action: Approved Staff Recommendation with Modifications, (Motion of Comm. Henry, seconded by Comm. Christeller with a vote of 4-0; Commissioners Henry, Christeller, Hewitt and Keeney voting in favor, with Comm. Floreen being absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87244
NAME OF PLAN: CABIN JOHN PARK

On 11-24-87, THEODORE P. & E.B. HAHN, submitted an application for the approval of a preliminary plan of subdivision of property in the R90 zone. The application proposed to create 7 lots on 2.84 ACRES of land. The application was designated Preliminary Plan 1-87244. On 02-06-89, Preliminary Plan 1-87244 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 1-87244 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87244, subject to the following conditions:

APPROVAL of 6 Lots only, subject to:

1. Dedication along 80th Street (42-1/2' from opposite side) and along Spring Road as necessary to provide 20' paving
2. Conditions of DEP stormwater management waiver
3. Delete Lot 114 and reconfigure for staff approval
4. Necessary easements
5. Record conservation easement 80' from western property line
6. All lots to be a minimum of 10,000 square feet

Date of Mailing: February 9, 1989

NORTON LAND DESIGN SHEET
NUMBER AS PART OF OVERALL
SUBMISSION SET: RPLAT001

Attachment 3 – Forest Conservation Exemption Memo



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

August 18, 2020

Joseph Ottinger
8006 Spring Road
Cabin John, MD 20818

Re: Forest Conservation Exemption Request and Simplified NRI/FSD
42021009E
Property Name: 8006 Spring Road, Cabin John Park, Section 2, Lot 127
Action Taken: **Confirmed and Approved on 8/18/2020**

Dear Joseph Ottinger:

On August 18, 2020, Montgomery County Planning Department Staff received a Simplified Natural Resource Inventory / Forest Stand Delineation "Simplified NRI/FSD" for a deck construction project at 8006 Spring Road. The Simplified NRI/FSD is part of a Chapter 22A-5(a) forest conservation exemption request and Preliminary Plan Amendment No. 11987244A. The Forest Conservation Exemption number for the project is 42021009E.

The forest conservation exemption review is complete. No forest, specimen trees or champion trees will be cut or cleared. There is stream buffer and Conservation Easement on the property. Approximately 0.05 acres of forest and two specimen oak trees exists in the Conservation Easement. Most of the Conservation Easement is mowed lawn. No existing forest stream buffer will be impacted by the construction project. The roots of a specimen red oak tree could be impacted by construction of the proposed porch. The property is not within a Special Protection Area.

The proposed porch and deck are within an existing Conservation Easement recorded among the Land Records of Montgomery County, Maryland at Book 9545 Page 668. The proposed improvements shown on the Simplified NRI/FSD can only be constructed if the Montgomery County Planning Board approves of a Preliminary Plan Amendment allowing for release of the Conservation Easement and ALL mitigation conditions and inspection requirements of any approved Preliminary Plan Amendment are implemented and completed prior to starting construction.

The project is exempt from Article II of the Montgomery County Code, Chapter 22A (Forest Conservation Law), Section 22A-5(a) because the activity is being conducted on an existing lot, Lot 127, Section 2 of Cabin John Park. The proposed



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

activity is intended for the use of the Owner. Additionally, the proposed construction activity: (1) does not require a special exception; (2) does not result in the cutting, clearing or grading of: (A) more than 20,000 square feet of forest, (B) any forest in a stream buffer, (C) any forest on property located in a special protection area which must submit a water quality plan, (D) any specimen or champion tree, or (E) any forest that is subject to a previously approved forest conservation plan; and (3) is subject to a Declaration of Intent filed with the Planning Director stating that the Property will conform with the conditions of the Plan for 5 years from the date of the Plan approval.

Forest Conservation Exemption Request No. 42021009E for 8006 Spring Road is confirmed with the Tree Save Plan Provision. The Simplified NRI/FSD submitted for the project is approved with the Tree Save Plan Provision.

The Tree Save Plan provision is the condition that a Tree Save Plan be submitted for approval with the Preliminary Plan Amendment. As the roots of a specimen tree are likely to be impacted by the proposed construction, the Tree Save Plan must include tree save measures for existing specimen trees.

Any changes from the approved Simplified NRI/FSD may constitute grounds to rescind or amend any approval actions taken.

Sincerely,

Stephen Peck

Senior Planner and Inspector

Development Applications and Regulatory Coordination

M-NCPPC- Montgomery County Planning Department

CC: Michael Norton, Norton Land Design LLC