



Item #
MCPB 1-14-10

MEMORANDUM

DATE: December 31, 2009
TO: Montgomery County Planning Board
VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*
FROM: Josh Penn, Senior Planner, Environmental Planning *JP*
REVIEW TYPE: Work request in conservation easement
PLAN NAME: Goshen Road Improvement
PLAN NUMBER: MR2009805
PLAN TYPE: Conservation Easement
REVIEW BASIS: Liber 9033 Folio 141 Easement Language
LOCATION: Northwest Quadrant of the Intersection Goshen Road and Severn Road.
APPLICANT: Montgomery County Department of Transportation
ATTORNEY: N/A
HEARING DATE: January 14, 2009

STAFF RECOMMENDATION: Staff recommends the Planning Board approve the Department of Transportation's request to encroach into the conservation easement subject to the following conditions:

1. Survey the entire conservation easement area and locate and identify all trees (species and size) prior to any clearing and grading occurring with the easement area.
2. Submit survey of trees species and locations to Environmental Planning prior to any land disturbing activities occurring within the easement area.
3. Applicant must request a preconstruction meeting prior to any clearing and grading occurring with the easement.
4. Conservation easement to be restored to a pre-disturbance state as defined by the survey or suitable equivalent as defined by Environmental Planning staff.
5. Applicant must have inspections prior to any restoration activities within the easement area and the second after the restoration work has been completed. The restoration work required by condition #4 will not be considered complete until it has been signed off on by forest conservation inspector.

DISCUSSION:

On November 4, 2009 the Montgomery County Department of Transportation (MCDOT), requested written permission from the Montgomery County Planning Board

to conduct work within a recorded Conservation Easement. (Attachment A) The Conservation Easement was shown on Plat 17653 and recoded by deed at Liber 9033 Folio 141 on October 13, 1989. The easement runs fifty feet out from the Right-of-Way (ROW) line and contains grass and some evergreen tree species.

The easement area was overlapped with a Slope Easement also shown on Plat 17653 which runs twenty-five feet out from the ROW and appears to contain grass and evergreen tree species.

MCDOT, in their letter to the Chairman, indicates the slope easement area only contains grass and one tree. Based upon the review of the aerial photographs this does not appear to be correct. However, without the easement area being surveyed and flagged in the field it is difficult to determine what is within the area where work is to be conducted.



Figure 1: Aerial View of Easement Area

The proposed Limits of Disturbance (LOD) extends between approximately five to twenty feet into the existing conservation easement and all work is to be contained within the existing slope easement as shown on Plat 17653.

The applicant will need to conduct a survey of the conservation easement its current condition which should identify all woody materials within the conservation easement. Applicant will need to restore the conservation easement to its current condition, or an equivalent as determined by staff. Staff approved equivalent will be based on size and species, and will be a minimum of a 1:1 inch caliper replacement but not necessarily in the same caliper sizes or species. For example, the current condition model would require a 9" DBH white pine to be replaced with a 9" DBH white pine. However, the staff approved equivalent model would consider replacing a 9" DBH white pine with three 3" DBH white pines.

Any tree outside the LOD which will have more than 33% Critical Root Zone (CRZ) impact will be considered damaged and would need to be replaced as part of the this consent agreement.

Conclusion:

Environmental Planning staff believes the request to work within the conservation easement should be granted if: 1) The easement area is surveyed including all woody material (species and size) 2) The easement area is restored to at least its current condition or a suitable equivalent.

Attachments:

1. Written request from DOT to the Planning Board Chairman
2. Record plat 17653
3. Conservation easement recorded at Liber 9033 Folio 141



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

November 4, 2009

Arthur Holmes, Jr.
Director

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Goshen Road South
From South of Girard Street to Warfield Road
Construction within Conservation Easement
C.I.P. No. 509337

Dear Mr. Hansen:


The Goshen Road Improvement project will widen the existing two-lane road to a 4-lane, major divided highway from Girard Street to Warfield Road with a 5-foot sidewalk along the east side and an 8-foot hiker/biker path along the west side of the road. These improvements are consistent with the recommendations of the Master Plan, and the development of the design has been closely coordinated at staff level with MNCPPC. At a specific location near Severn Road, because the profile of the road has to be elevated, the project will place fill within an existing slope easement adjacent to the road to implement the proposed improvements. All proposed improvements at this location will be within the existing slope easement established by plat number 17653, which clearly provides us with the right to implement the Goshen Road improvements. See enclosed plat and forest conservation plan of noted area.

This slope easement area is 25 feet wide and overlaps an existing 50-foot wide conservation easement area. Currently the slope easement is covered entirely in grass. With the exception of a lone volunteer tree, there are no trees in the slope easement area. Upon completion of the proposed improvements, the area will have a higher elevation but will be restored in appearance to its current condition: it will be covered in grass.

Because of the overlap of the slope easement and conservation easement, we need to comply with the requirements noted in the deed recorded for the conservation easement. The requirements specify the consent of the Planning Board for work within the conservation easement area.

We are requesting consent of the Board for work to implement the proposed roadway improvements within our slope easement area. Should you have any questions or comments, please contact Michael Mitchell at 240-777-7262.

Sincerely,



Bruce E. Johnston, P.E.
Chief

MFM:gl

Division of Transportation Engineering

September 26, 1989

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461-F
LFL
09/26/89

CONSERVATION EASEMENT

THIS DEED OF EASEMENT made this 26th day of September 1989, by and between WHM LAND CORPORATION, a Maryland corporation (hereinafter called "Grantor") and the MARYLAND- NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter called the "Commission").

FILED
HOWARD H. SMITH
CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND
1989 OCT 13 AM 10:42

WITNESSETH:

WHEREAS, said Grantor is the owner in fee simple of real estate located in Montgomery County, Maryland, being situated in the Ninth Election District, more particularly described on Exhibit A attached hereto and made a part hereof, and

40.00
2.00
1.00
.50

WHEREAS, subdivision of the Property required the approval of the Montgomery County Planning Board (hereinafter the "Planning Board") of the Maryland-National Capital Park and Planning Commission; and

WHEREAS, it was determined by the Planning Board that a conservation easement interest in a portion of the property owned by the Grantor is necessary for the protection of the Commission, said easement area being more particularly described on Exhibit B attached hereto and made a part hereof; and

WHEREAS, the Grantor and the Planning Board agreed that the Property could be subdivided provided a Conservation Easement was imposed on the Property; and

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WHEREAS, the parties hereto have agreed that the fee simple ownership of the lots shown on the Preliminary Plan of Subdivision can be transferred by the Grantor subject only to the hereinafter mentioned conditions and covenants establishing this scenic easement; and

WHEREAS, the Grantor is willing to impose upon its property the hereinafter stated conditions, limitations and easements; and

WHEREAS, it is the intent of the parties that a servitude be placed upon the herein above-described land which establishes perpetual control in the Commission to maintain scenic views, natural conditions, open spaces, green areas, animal refuges and natural habitat for flora and fauna.

NOW, THEREFORE, in and for the consideration of the sum of Ten Dollars (\$10.00) cash in hand paid by the Commission to the Grantor and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Commission a scenic easement on the real properties hereinbefore described of the nature and character and to the extent hereinafter described, to be and constitute a covenant running with the title of the said lots to be a scenic, conservation and open space easement, the purpose of which shall be to preserve, protect and maintain the general topography and scenic character of the landscape. The restrictions, conditions and easements imposed upon the use of the said property, the acts which the Grantor, its successors and assigns, covenant to refrain from doing upon said property, and the acts which they

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covenant to permit the Commission to do upon said property shall be as follows:

1. That no use shall be made of nor shall any improvements be made on the property subject to this easement which would in any way interfere with the natural ground cover and drainage.

2. That, on said property, no tree larger than six (6) inches in diameter or thirty (30) feet in height and no mature and stable shrubs shall be cut down, removed or destroyed without the written consent of the Commission except that seedling shrubbery or seedling trees may be grubbed up or cut down in accordance with good farming practice and residential maintenance.

3. That said property shall not be used for any professional or commercial activity except such as are permitted by law and can be and are in fact conducted from a residential dwelling without alteration of such dwelling.

4. That no advertising signs, or billboards shall be displayed or placed upon said property.

5. That no mining or industrial activity or timber cutting shall be conducted upon said property.

6. That no dumping of ashes, trash, sawdust or other unsightly or offensive material shall be placed or permitted by the Grantor to remain upon said property. However, upon the written approval of the Commission and provided that said fill is covered by arable soil or humus, suitable heavy fill may be so placed as to control and prevent erosion.

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7. That said property shall not be used as a site for any major public utility installation, such as, but not limited to, electric generating plants, electric power transmission lines, gas generating plants, gas storage tanks, microwave relay and the like, unless specifically consented to in writing by the Commission. Nothing in this paragraph shall, however, be deemed to prevent the construction or maintenance of, over or under the property, facilities usual to a residential neighborhood such as a telephone, water mains, sewer mains, gas mains, pipe and conduits and necessary related equipment.

8. That no alterations, excavations, grading or other changes shall be made to the general character and topography of the landscape of said property without written consent thereto by the Commission.

9. That no roadway or private drive shall be constructed upon said property without the written consent of the Commission. This shall not prevent establishment of equestrian easements.

10. That representatives of the Commission may enter at reasonable hours upon said property for the purpose of making periodic inspections in order to ascertain whether there has been compliance with the restrictions, conditions and easements established herein.

11. That upon the violation of any of the restrictions, conditions, covenants and easements established herein, the Commission shall have the right to enforce such provisions by

LIBERS 033 FOLIO 45

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injunction or other appropriate relief in any court of competent jurisdiction.

TO HAVE AND TO HOLD unto the Commission, its successors and assigns forever, this grant shall be binding upon the successors and assigns of the Grantor and shall constitute a covenant running with the title upon the above-described property.

IN WITNESS THEREOF, the said WHM LAND CORPORATION has hereunto set its seal and signature on the date first hereinbefore written.

Attest:

WHM LAND CORPORATION

Kenneth Kasnett

Kenneth Kasnett, Secretary

By H. L. Ward (SEAL)

H. L. Ward, ~~Exec. V.~~ President

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STATE OF MARYLAND

COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY that on this 26th day of SEPT., 1989, before the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared H. L. Ward, who acknowledged himself to be the ^{EXECUTIVE VICE} President of WHM LAND CORPORATION and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Dorothy J. McAdams
Notary Public

Dorothy J. McAdams
[Print or Type Name]



Commission expires: 7-1-90

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EXHIBIT 'A'

Being all of that tract of land as described in a conveyance from Bryon T. Hayden, Jr. and Mary B. Hayden to WHM Land Corporation, a Maryland corporation, by deed dated April 27, 1988 and recorded among the Land Records of Montgomery County, Maryland in Liber 8243 at Folio 281.

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EXHIBIT 'B'

Being part of that tract of land as described in a conveyance from Byron T. Hayden, Jr. and Mary B. Hayden to WHM Land Corporation, a Maryland corporation, by deed dated April 27, 1988 and recorded among the Land Records of Montgomery County, Maryland in Liber 8243 at Folio 281 and being more particularly described as follows.

PART I: BEGINNING FOR THE SAME at the beginning of the first line of said Liber 8243 at Folio 281; thence running with and along all of the first and part of the second lines the following two (2) courses in the datum of W.S.S.C. as established from Plat Book 99 as Plat No.'s 11099 and 11101

1. South 22° 46' 39" West, 402.11 feet to a point; thence
2. South 53° 48' 47" East, 188.00 feet to a point; thence leaving said second line so as to cross and divide said Liber 8243 at Folio 281 the following three (3) courses
3. North 66° 25' 18" East, 46.30 feet to a point; thence
4. North 53° 48' 47" West, 190.01 feet to a point; thence
5. North 22° 46' 39" East, 393.65 feet to a point on the seventh line of Liber 8243 at Folio 281, being 39.38 feet from the end thereof; thence running with and along part of said seventh line the following course
6. South 72° 24' 19" West, 39.38 feet to the point of beginning containing 19497 square feet or 0.44758 of an acre of land, more or less.

PART II: BEGINNING FOR THE SAME at a point being North 09° 35' 10" West, 199.85 feet from the beginning of the fourth line of said Liber 8243 at Folio 281 thereof; thence running so as to cross and divide said Liber 8243 at Folio 281 the following five (5) courses

1. North 84° 43' 41" West, 50.00 feet to a point; thence
2. North 05° 16' 19" East, 105.00 feet to a point; thence
3. South 84° 43' 41" East, 25.00 feet to a point; thence

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4. South 39° 43' 41" East, 35.36 feet to a point being North 50° 45' 54" West, 48.92 feet from the beginning of the fifth line of said Liber 8243 at Folio 281; thence
5. South 05° 16' 19" West, 80.00 feet to the point of beginning containing 4938 square feet or 0.11335 of an acre of land, more or less.

PART III: BEGINNING FOR THE SAME at a point on the seventh line of said Liber 8243 at Folio 281, being 43.39 feet from the beginning thereof; thence running so as to cross and divide said Liber 8243 at Folio 281 the following four (4) courses

1. South 05° 16' 19" West, 457.27 feet to a point being South 48° 37' 59" West, 55.03 feet from the end of the fifth line of said Liber 8243 at Folio 281; thence
2. South 50° 16' 19" West, 35.36 feet to a point; thence
3. North 84° 43' 41" West, 25.00 feet to a point; thence
4. North 05° 16' 19" East, 461.19 feet to a point on the seventh line of said Liber 8243 at Folio 281, being 97.65 feet from the beginning thereof; thence running reversely with and along part of said seventh line the following course
5. North 72° 24' 19" East, 54.26 feet to the point of beginning containing 23274 square feet or 0.53430 of an acre of land, more or less.

This description was prepared by Rodgers and Associates, Inc., September 27, 1989, Job No. 461-F; is in the datum of the Washington Suburban Sanitary Commission as established from plats of subdivision entitled "CORRECTION PLAT - PLAT FIFTEEN - QUAIL VALLEY" and "CORRECTION PLAT - PLAT SIXTEEN - QUAIL VALLEY" as recorded among the said Land Records in Plat Book 99 as Plat No. 11099 and Plat Book 99 as Plat No. 11101 respectively; and is based on a survey by Frey, Sheehan and Stoker entitled "PLAT OF SURVEY - BYRON & MARY HAYDEN TRACT" dated November, 1987, Job No. 87-2701.

Prepared without the benefit of a current title report.

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PARCEL I.D. NO.	09-001-771205
RECORD LEGAL DESCRIPTION	LIBER 8243 FOLIO 281
GRANTOR	WHM LAND CORPORATION 12116 DARNESTOWN ROAD - SUITE 6 GAITHERSBURG, MARYLAND 20878
GRANTEE	MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION 8787 GEORGIA AVENUE WHEATON, MARYLAND 20910
TITLE INSURER	N/A

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