

**Kentsdale Estates Lot 38, Block D: Limited Preliminary Plan Amendment No. 11997056B
(In Response to a Forest Conservation Law Violation)**



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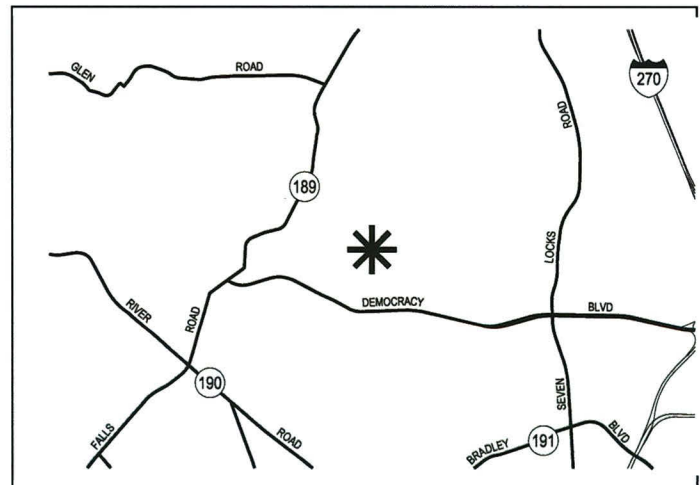
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Description

Completed: 9/2/2016

**Limited Amendment, Preliminary Plan No. 11997056B,
Kentsdale Estates Lot 38, Block D
(in response to a forest conservation law violation)**

- 10501 Willowbrook Drive
- RE2 Zone
- Within Potomac Subregion Master Plan
- Property Owner: Diana Epstein
- Submitted on May 12, 2016



Summary

Request to amend the Preliminary Plan of Subdivision for forest conservation purposes.

1. Proposal to release of 56,304 square feet of Category I Conservation Easement from Lot 38, Block D and provide:
 - a. Offsite mitigation with the acquisition of 95,659 square feet of forest mitigation bank credit at an M-NCPPC approved forest mitigation bank and
 - b. Onsite mitigation with the establishment of a 16,949 square feet Category II Conservation Easement.

STAFF RECOMMENDATION AND CONDITIONS

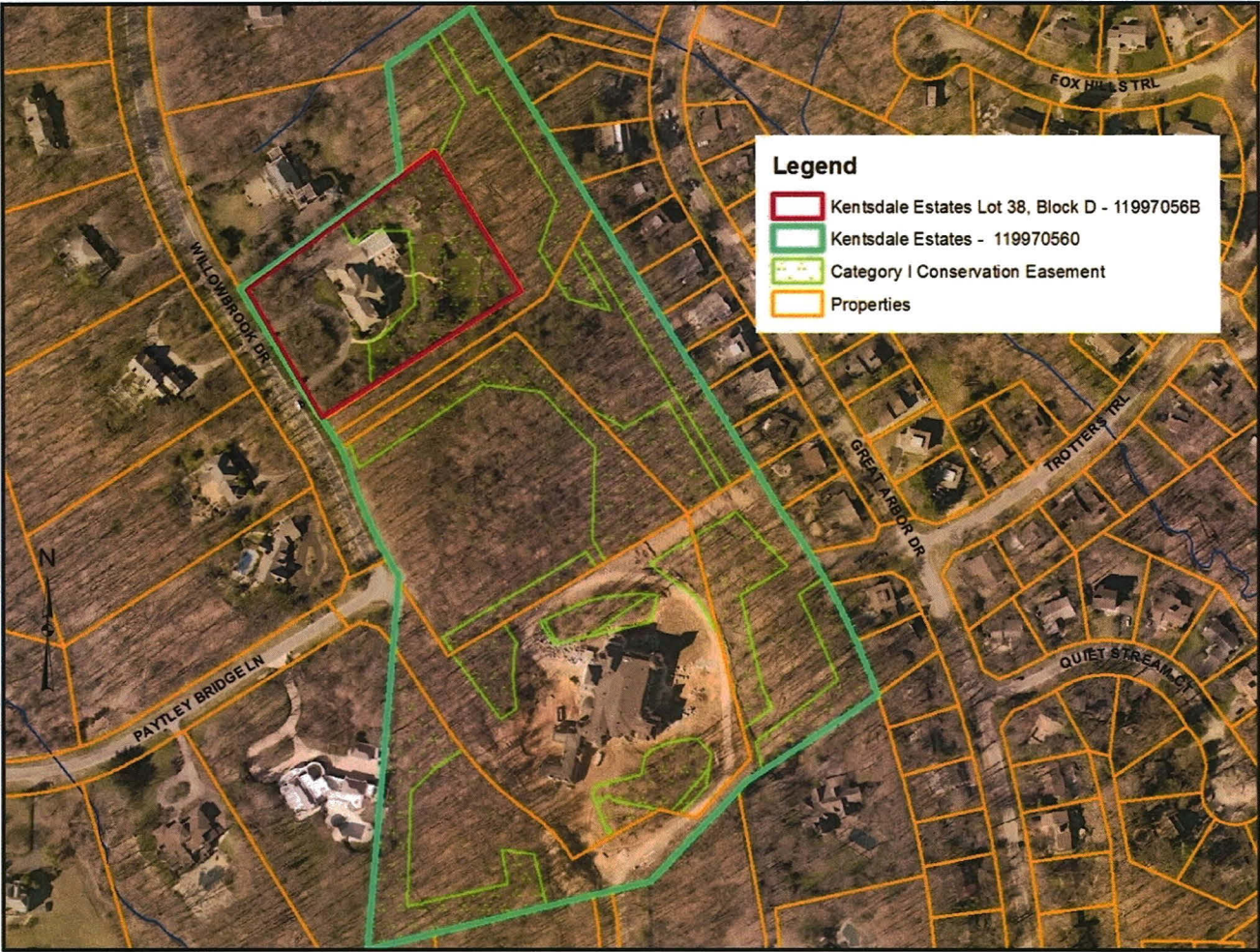
Staff recommends approval of the limited amendment to the Preliminary Plan for forest conservation purposes with the conditions listed below. All other conditions of Preliminary Plan No. 119970560, as contained in the Montgomery County Planning Board's Opinion dated May 28, 1997, remain in full force and effect.

1. Within sixty (60) days of the mailing date of this Resolution, the Applicant must record in the Land Records of Montgomery County, Maryland a Certificate of Compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite forest mitigation bank. The Certificate of Compliance must provide 95,659 square feet of mitigation credit equivalent to either 95,659 square feet of forest planting or 191,318 square feet of existing forest retention for the removal of the Category I Conservation Easement from the Subject Property.
2. Within sixty (60) days of the mailing date of this Resolution, the Applicant must record a Category II Conservation Easement Agreement by deed in the Land Records of Montgomery County, Maryland for the 16,949 square feet Category II Conservation Easement shown on approved plan number 11997056B. The new Category II Conservation Easement Agreement must be approved by the M-NCPPC Office of General Counsel before recordation.
3. After providing all required mitigation, the Property Owner must record a M-NCPPC Deed of Conservation Easement Release in the Land Records of Montgomery County, Maryland. The existing Category I Conservation Easement remains in full force and effect until the M-NCPPC Deed of Release is recorded in Land Records of Montgomery County, Maryland.
4. Within one hundred and twenty (120) days of the mailing date of the Planning Board Resolution, the Property Owner must submit a complete Record Plat application that delineates the new Category II Conservation Easement and documents the release of the Category I Conservation Easement.

SITE DESCRIPTION

The Subject Property, Kentsdale Estates Lot 38, Block D, is situated on the east side of Willowbrook Drive approximately 340 feet north of the intersection of Willowbrook Drive and Paytley Bridge Lane. Figure 1 shows the Kentsdale Estates Subdivision, the Subject Property, the existing Category I Conservation Easements and the existing improvements. There is 56,304 square feet of Category I Conservation Easement on the Subject Property. While there are no streams, wetlands, floodplains or associated environmental buffers on the Subject Property, there are retaining walls, turf grasses, benches, a sidewalk and children's playground equipment within the conservation easement.

Figure 1: Kentsdale Estates Lot 38, Block D Conservation Easement Map with 2015 Aerial Photo



Background

The Montgomery County Planning Board approved Preliminary Plan No. 119970560, “Kentsdale Estates” by Opinion mailed May 28, 1997 to create seven (7) lots on 20.07 acres of land in the RE 2 Zone (Attachment 1). At the time of the subdivision approval, construction of the home on the Subject Property, Kentsdale Estates Lot 38, Block D was complete.

The Applicant participated in the “Kentsdale Estates” Preliminary Plan No. 119970560 in order to formalize a 1993 land swap with an adjacent land owner. The effect of the land swap was to transform a triangular shaped property into a rectangular-shaped property with a larger rear yard.

After this land swap, but prior to the submission of Preliminary Plan No. 119970560, the Property Owner began home construction. The Property Owner occupied the home in 1995. Within portions of the backyard, the Property Owner cleared areas for turf grasses and constructed retaining walls, sidewalks

and a play area. This construction and clearing occurred between 1995 and 1998 and was done without prior approval of a forest conservation plan or M-NCPPC forest conservation law inspections.

A Tree Retention Area at the Rear of the Subject Property

In 1996, prior to the submission of Preliminary Plan No. 119970560, Planning Staff reviewed and approved a Natural Resource Inventory / Forest Stand Delineation (NRI/FSD) showing an outline of a house and tree canopy on the Subject Property (Attachment 2). The Preliminary Forest Conservation Plans submitted and approved for the Subdivision show tree save and tree retention behind the existing house (Attachment 3). The plans noted selective removal of trees near the existing house. However, the forest conservation plans did not show the turf, and grass and gaps in the canopy that already existed on the property.

Record Plat No. 21618 established Kentsdale Estates Lot 38, Block D in October 2000, formalized the land swap and established a Category I Conservation Easement on the subject property (Attachment 4). The Property Owner signed the Record Plat granting the Category I Conservation Easement to M-NCPPC pursuant to the Agreement recorded in Liber 13178 Folio 412 among the Land Records of Montgomery County, Maryland (Attachment 5).

On July 30, 2001, the Planning Department approved a Final Forest Conservation Plan for the subdivision (Attachment 6). The approved Final Forest Conservation Plan notes that all tree save areas are to be within Category I Conservation Easement. This approved Final Forest Conservation Plan does not show the turf, play area and improvements that existed within the Category I Conservation Easement.

Violation

In January 2016, the Inspector conducted a conservation easement inspection and observed turf areas, concrete walls, concrete stairs, concrete sidewalks, wooden play sets, stockpiled bricks, dumped mulch and landscape lighting within the Category I Conservation Easement. On January 14, 2016, the Inspector issued a Notice of Violation for violations of the Category I Conservation Easement Agreement (Attachment 7). The Notice of Violation listed structural improvements and activities that are inconsistent with the terms of the conservation easement. The initial remedial action was to meet with Planning Department Staff to discuss the required corrective actions.

Figure 2: January 2016 Photo of Turf Grass area within Category I Conservation Easement



Figure 3: January 2016 Photo of Concrete Wall, Stairs, Sidewalk and Wooden Benches within Category I Conservation Easement



Figure 4: January 2016 Photo of Wooden Play Sets within Category I Conservation Easement



On February 11, 2016, Staff met with the Property Owner and on February 18, 2016, a Corrective Action Order was issued to the Property Owner directing them to submit a Limited Preliminary Plan Amendment for forest conservation purposes.

Amendment

On May 12, 2016, Staff accepted a limited Preliminary Plan Amendment for release of the Category I Conservation Easement area in the rear of Kentsdale Estates Lot 38, Block D.

The Final Forest Conservation Plan Amendment submitted for Planning Board approval is attached (Attachment 8).

The Amendment proposes removing the entire Category I Conservation Easement area and providing mitigation equal to twice the area of conservation easement. The Amendment proposes offsite mitigation in the amount of 95,659 square feet of forest conservation credit at an approved forest conservation bank. The Amendment also proposes protection of existing tree canopy at the rear of the property with the creation of a 16,649 square foot Category II Conservation Easement. Figure 5, below shows the proposed the area of Category I Conservation Easement area to be released and where the new 16,949 square foot Category II Conservation Easement will be created.

Figure 5: Kentsdale Estates Lot 38, Conservation Easement to be Released and Created



PLANNING BOARD REVIEW AUTHORITY

The Planning Board approved Preliminary Plan 119970560 “Kentsdale Estates” 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 approve 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

This Preliminary Plan Amendment is in response to violations of the Category I Conservation Easement on Kentsdale Estates Lot 38, Block D.

Comparing aerial photos of the property with the NRI/FSD and forest conservation plans, it appears that clearing and construction of the backyard occurred after submittal of the NRI/FSD and before approval of the forest conservation plan. The improvements within the Category I Conservation Easement on the property has been a violation of the Agreement ever since the Conservation Easement was established with the signing of Record Plat No. 21618 in 2000 as the improvements are not shown on the approved forest conservation plan and maintenance of the improvements is a violation of the Conservation Easement agreement.

The Amendment is a path toward resolving the conservation easement violations by releasing the 56,304 square feet Category I Conservation Easement and mitigating the easement removal both offsite and onsite. Approximately 85% of the mitigation is to be provided offsite by acquiring 95,659 square feet of forest mitigation bank credit. Approximately 15% of the mitigation is to be met onsite with establishment of a Category II Conservation Easement over tree canopy at the rear of the property. The 95,659 square feet of forest bank credit and the 16,949 square feet Category II Conservation Easement equal 112,608 square feet of total mitigation. The total mitigation is equal to double the amount of conservation easement to be released. This 2:1 rate for mitigation is consistent with Planning Board policy of 2 square feet of offsite forest planting (or equivalent) for every 1 square foot of conservation easement release. The Amendment does not alter any other findings of approved Preliminary Plan No. 119970560.

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 has not received correspondence from community groups or citizens as of the date of the staff report.

RECOMMENDATION

Staff recommends that the Planning Board approve this Amendment with the conditions specified above.

ATTACHMENTS

1. Montgomery County Planning Board Opinion - Preliminary Plan No. 119970560; Kentsdale Estates
2. Natural Resource Inventory / Forest Stand Delineation No. 419970950 – Kentsdale Estates
3. Approved Preliminary Plan No. 119970560 – Kentsdale Estates
4. Record Plat No. 21618 – Kentsdale Estates Lot 38, Block D
5. Category I Conservation Easement Agreement, Liber 13178 Folio 412
6. Kentsdale Estates Final Forest Conservation Plan – 119970560
7. Notice of Violation
8. Kentsdale Estates Lot 38, Block D; Forest Conservation Plan Amendment – 11997056B