



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

Item #
MCPB 5-20-10

MEMORANDUM

DATE: April 13, 2010

TO: Montgomery County Planning Board

VIA: Catherine Conlon, Supervisor, Development Review Division *CC*
Mark Pfefferle, Acting Chief, Environmental Planning *MP*

FROM: Richard A. Weaver, Planner Coordinator, Development Review Division *RAW*
Josh Penn, Senior Planner, Environmental Planning *JP*

PLAN NAME: Piney Glen Farms (Lot 20)
PLAN NUMBER: 11992012A
REVIEW TYPE: Limited Amendment to the Preliminary Plan
APPLYING FOR: Amendment to a Final Forest Conservation Plan (FCP) approved as a condition of the Preliminary Plan
PLAN TYPE: Preliminary Plan and Final Forest Conservation Plan
REVIEW BASIS: Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-01AM (COMCOR) 18-01AM
ZONE: RE-2
LOCATION: Located on Albermyrtle Road 500 feet west of Piney Meetinghouse Road in Potomac.
APPLICANT: Abbott Huang
ATTORNEY: Michele Rosenfeld
HEARING DATE: May 20, 2010

STAFF RECOMMENDATION: Staff recommends approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan with the following conditions.

1. Applicant must record a new record plat within nine (9) months of the mailing of the Planning Board Resolution that reflects the new Category I conservation easement boundary and references the standard easement description as recorded at Liber13178 Folio 412 in the Montgomery County Land Records.
2. Applicant must receive staff approval of the certificate of compliance for an offsite forest conservation mitigation bank prior to Planning Board approval of the record plat.
3. All other conditions of Preliminary Plan and Forest Conservation Plan No. 119920120 that were not modified herein, as contained in the Planning Board's Resolution dated January 11, 1994, remain in full force and effect.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan #119920120 "Piney Glen Farms", on January 17, 1992. The original approval created 6 lots on 14.34 acres of land in the RE-2 zone. The Montgomery County Forest Conservation Law (Chapter 22A of the County Code) applied to this plan; thus, a forest conservation plan (FCP) was required. The original FCP was approved on October 20, 1995 and showed 11.4 acres of existing forest onsite, of which 4.7 acres was retained, and 6.7 acres was cleared. The original FCP did not generate a planting requirement. The resulting record plat for the subdivision (Plat #19924 recorded on 11/21/95) included a combination of Category I and/or II forest conservation easements on each of the six lots. In 1999, the FCP for five of the six lots was amended and a new record plat was approved which delineated new Category I conservation easement boundaries on the affected lots, and eliminated all the Category II easements (Plat #21137 recorded 7/16/99).

The subject limited amendment to the Preliminary Plan and associated Final Forest Conservation Plan involves the sixth lot that was not a part of the previous change, Lot 20 (94,089 square feet or 2.16 acres), or 11208 Albermyrtle Road in Potomac. All easements on lot 20 are the same as when the plat was originally recorded in 1995. The conservation easements for this lot are Category I easements as referenced as in the description recorded in the land records at Liber 13178 Folio 412.

The current application has been filed to rectify an existing violation of the Category I conservation easement. The subject lot currently contains 1.53 acres of forest in a 1.74 acre Category I conservation easement that was entirely forested. The existing easement was for the retention of existing forest to help meet the forest conservation requirements for the overall subdivision. The 0.21 acres of forest loss occurred at some point after the easement was created, however; there is no indication whether it was cleared by the builder or the homeowner who is the current applicant. Aerial photographs from 1998 show that the house existed at that time and the clearing had been done. The sediment control permit associated with the lot development was issued prior to the applicant taking ownership of the property in 1997, but the permit was finalized after the applicant, Abbott Huang became the owner.

In mid-2005, staff became aware of the forest clearing because the applicant made a request to construct a pool within the cleared area. Staff denied the request but provided an opportunity for the property owner to submit an amendment to the approved plan. Because the individual actually responsible for the forest clearing could not be identified, no violation was issued for the clearing, but Mr. Huang was found to be in violation because he was maintaining/mowing the turf grass within the cleared easement. Rather than issue a citation, staff offered the applicant an opportunity to apply for an amendment to the FCP to obtain permission to remove the cleared easement area after the fact.

The submission requirements were provided to the applicant on January 25, 2006, but it was not until fall of 2007 that the applicant began to address them and work on an amended plan. As of the summer of 2008, after working through several plan submissions with the applicant, an agreement was reached between the applicant and the Chief of Countywide Planning at the time to allow the applicant to proceed to build a swimming pool prior to the actual removal of the easement. The agreement, which was never actually ratified by the parties, indicated that the property owner would go through the process to remove the cleared area of the easement and mitigate that amount off-site at a 2:1 ratio and that final revised plans would be submitted in the

fall of 2008. Based on the agreement, the Countywide Planning Chief also verbally informed the Montgomery County Department of Permitting Services that they could release the building permit for the pool. The pool was subsequently constructed, but the applicant did not meet the requirement to submit the plan amendment to remove the easement.

In the summer of 2009 the Planning Department staff visited the property to inspect the actual condition of the conservation easement and noted that the pool had been constructed and the property owner was continuing to mow the grassed portion of the easement. On May 12, 2009 the applicant was issued a Notice of Violation for maintaining and mowing turf grass in the conservation easement and failure to comply with the previously agreed upon but un-ratified agreement to remove a portion of the easement and to construct a swimming pool. The applicant then subsequently worked with staff to submit the current limited preliminary plan amendment to remove the disturbed portion of the conservation easement.

SITE DESCRIPTION

The subject property is located on the south side of Albermyrtle Road, approximately 500 feet west of Piney Meetinghouse Road in Potomac. The subject property is developed with a single family residence and a swimming pool. The site contains 75,794 square feet (1.74 acres) of forested Category I conservation easement.

Exhibit 1: Vicinity Map

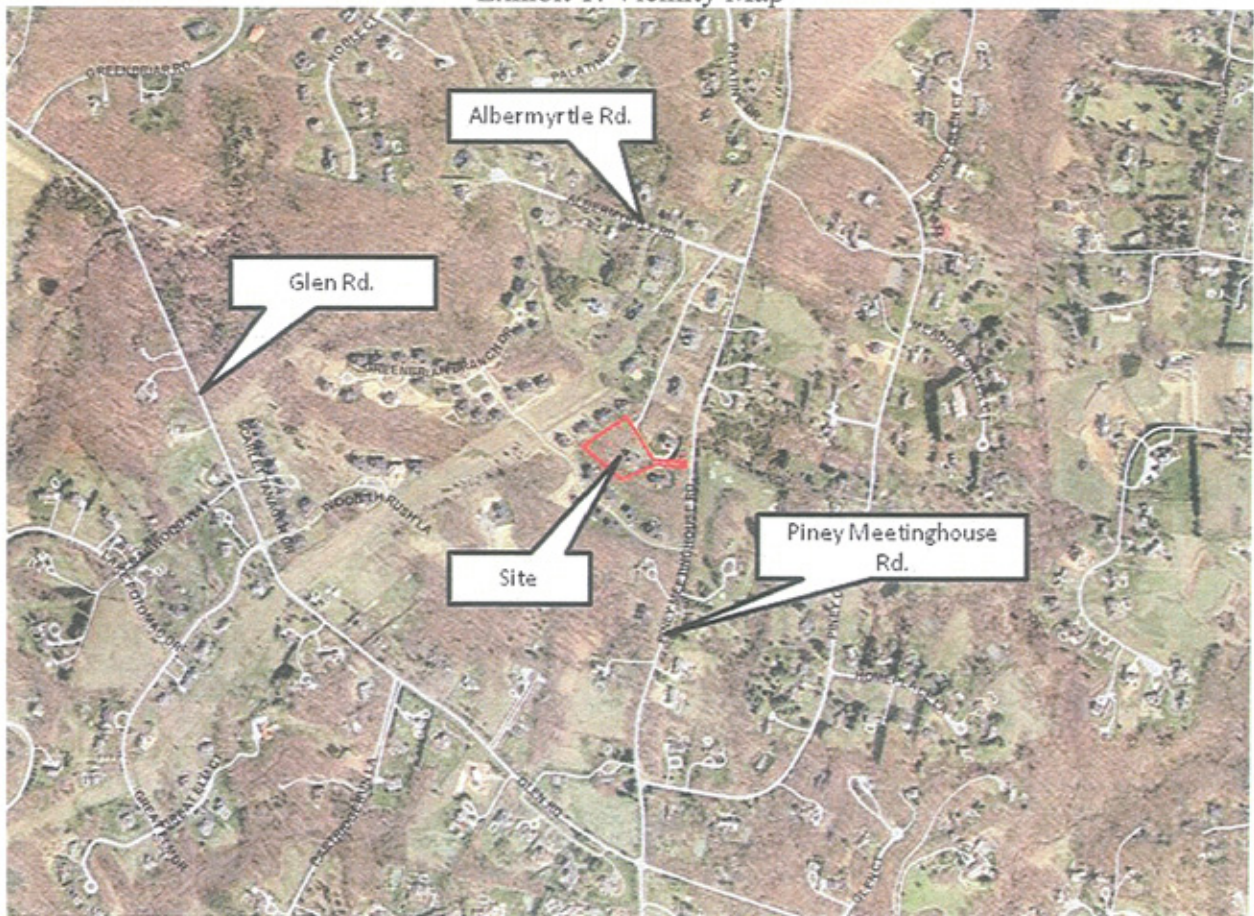


Exhibit 2: Overall Subdivision



Blue Line = Original Subdivision Boundary

Exhibit 3: Aerial Photograph of Lot 20



Red Line = Property Line Green Line = Cat I easement

PROPOSED AMENDMENT

On August 24, 2009 the applicant submitted an application proposing to amend the Preliminary Plan and Forest Conservation Plan #119920120 by removing a portion of the Category I conservation easement from Lot 20. The proposed amendment includes the removal of 0.21 acres or 9,148 square feet of Category I conservation easement. The area proposed for removal from the conservation easement is based on the applicant's currently disturbed area. The amendment proposes 2:1 mitigation for the area removed from the Category I easement. At a 2:1 mitigation ratio for the area removed, the mitigation for this amendment is 18,296 square feet (0.42 acres) of newly planted forest. The full mitigation is proposed to be met off-site using credits at an existing forest conservation bank. The applicant believes this amendment should be granted because it meets the terms of the agreement that was previously negotiated.

PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. Section 113.A.(2) of the Forest Conservation Regulation states:

Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).

The total modification is greater than the 5000 square foot threshold at 0.21 acres or 9,148 square feet. Additionally, staff believes that the removal of, or significant change to, the conservation easement warrants consideration in a public forum with a final decision from the Planning Board.

Findings for Adequacy of Public Facilities

All previous Planning Board findings for adequacy of roads, sidewalks, public utilities, access for emergency vehicles, schools, health clinics and stormwater management remain valid.

Notification and Outreach

The subject property was signed with notification of the upcoming preliminary plan amendment prior to the August 24, 2009 submission. All adjoining and confronting property owners will be notified of the proposed amendment. Any comments received will be forwarded to the Board. As of the date of this report, staff had received no inquiries.

ANALYSIS AND DISCUSSION

Staff supports the basic objectives set forth in the testimony summarized above. Since the advent of the forest conservation program in 1992, staff has sought first to preserve the conservation easement and forest, but also, where appropriate, create forest that can be sustained in perpetuity. The removal of the 0.21 acres of unforested Category I conservation easement will allow for some additional livable area on the applicant's property and will not adversely affect the remaining portion of the conservation easement. Additionally, a portion of this 0.21 acres of easement now contains a swimming pool. Based on this, along with the previous agreement by

the former Chief of Countywide Planning, staff believes off-site mitigation for the loss of this area is reasonable and is acceptable.

A 2:1 ratio has been established as the minimum standard for easement removal based on Planning Board policy. The only violation on-site currently is the maintenance of lawn within a Category I conservation easement. Since the loss of forest within the easement cannot be tied to a particular individual or action and the swimming pool was built with consent from a former Chief of M-NCPPC Countywide Planning staff believes it should not be considered in determining the mitigation ratio for this amendment. Factoring in all of the circumstances of this case Environmental Planning staff recommends the minimum 2:1 mitigation ratio.

CONCLUSION

Staff recommends that the Planning Board approve this limited preliminary plan of subdivision to revise the forest conservation plan with the conditions specified above.