



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

August 12, 2011

William P. Sloan, Managing Partner
BDT Homes, LLC
6842 Elm Street, Suite 302
McLean, VA 22101

Re: Interpretation for SE 2007-DR-018, William P. Sloan, 1942 Virginia Avenue, McLean, VA, Tax Map 41-1 ((9)) 1A: Conservation Easement

Dear Mr. Sloan:

This is in response to your letters of May 26, 2011, and July 21, 2011, with attached correspondence from the property owners, requesting an interpretation of the Special Exception (SE) Plat and the development conditions approved by the Board of Supervisors in conjunction with SE 2007-DR-018. As I understand it, the question is whether the retention of a grassed area located partially within a conservation easement would be in substantial conformance with SE 2007-DR-018. This determination is based on your letters; a Memorandum from Craig Herwig, Urban Forester III, Urban Forest Management (UFM), dated July 5, 2011, with attached correspondence dated October 29, 2009, and December 9, 2010; a copy of Sheet 2 of the SE Plat with the grassed area highlighted; the SE Plat; and the development conditions. Copies of your letters and relevant exhibits are attached.

Special Exception, SE 2007-DR-018, was approved by the Board of Supervisors on October 20, 2008, subject to development conditions, to permit a waiver of the minimum lot width requirement in order to construct two single-family detached dwellings with each lot each having a width of 94.24 feet, instead of the 100 foot width required for conventional interior lots in the R-2 District. The subject property consisted of one acre and was developed with one dwelling that was to be removed and, according to the staff report, except for the dwelling, garage, and driveway, the property was predominantly wooded and grassed. The approved SE Plat showed a 16,760 square foot conservation easement over approximately the rear one-third of the property that was required to include all of the areas encompassed within the Tree Preservation Plan. The development conditions required the easement to be recorded before any land disturbing activity took place on the site. The SE Plat also showed an area between the limits of clearing and grading and the conservation easement as an "area of encroachment for patio, shed, play equipment, etc."

As I understand it, following a program of herbicide application to remove invasive plants, you sodded an area of approximately 1,632 square feet located partially within the conservation area to create a lawn. You have stated that you were under the impression that sodding the area without land

Department of Planning and Zoning
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disturbing activity or tree damage was permitted. You also stated that this area had previously been a grassed area used by the original property owner as a play area for her grandchildren and for a clothes line. Photographs taken by Urban Forest Management (UFM) during construction show the area as open with lower height undergrowth, but not lawn. The sodded area extends from the southeastern corner of the conservation easement to almost the northeastern property boundary and is located primarily within Lot 1A1. With the exception of a portion of the open area on Lot 1A1 that is not included in the conservation easement, the entire sodded area is within the conservation easement and located adjacent to the encroachment area for potential patios, sheds, play equipment, etc. The July 5, 2011, Memorandum from UFM states that the installation of sod violated Development Condition 5.A.1., which prohibits filling, grading, excavation, or the performance of other land disturbing activities except as necessary for erosion and sediment control and the enhancement of existing vegetation through the planting of additional native species. UFM recommended that the sod be removed and the area mulched and planted with native species.

Following the sodding, you state that the dwelling on Lot 1A1 was sold to a family that wishes to retain the grass area for a children's play area. You have provided staff a letter from the homeowner stating that they had no knowledge at the time of purchase that there was a possibility that the grassed area would have to be removed and that, in their opinion, removal of the grass would result in the area being overtaken by invasive species. The letter also opines that removal of the grass would contribute to more runoff. The homeowner states that the family will use the space in accordance with the provisions of the conservation easement so as to not jeopardize the natural look and would not create trails, structures, walkways, etc. in the area.

Staff has coordinated with UFM and been advised that the sodding did not damage or destroy any trees. You have stated that the sodded area represents 9.7% of the total conservation easement. UFM has indicated that, with the creation of a buffer of mulch planted with native species along the perimeter of the sodded area, retention of the grassed area could be supported. Such a buffer will clearly delineate the edge of the area that can be retained as lawn and establish a natural barrier to prevent further encroachments.

As such, it is my determination that retaining the grassed area within the conservation easement would be in substantial conformance with the SE Plat and the development conditions provided that an area approximately two feet in width along the perimeter of the sodded area is mulched and planted with native shrubs to create a buffer between the remainder of the conservation easement and the lawn, as approved by UFM. It is understood that creation of this buffer will likely result in the removal of lawn at the two ends of the area where your exhibit shows the area of sod to be very narrow.

William P. Sloan
Page 3

This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator and coordinated with UFM and addresses only those items described and discussed in this letter. If you have any questions regarding this interpretation, please feel free to contact Mary Ann Godfrey at (703) 324-1290.

Sincerely,



Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

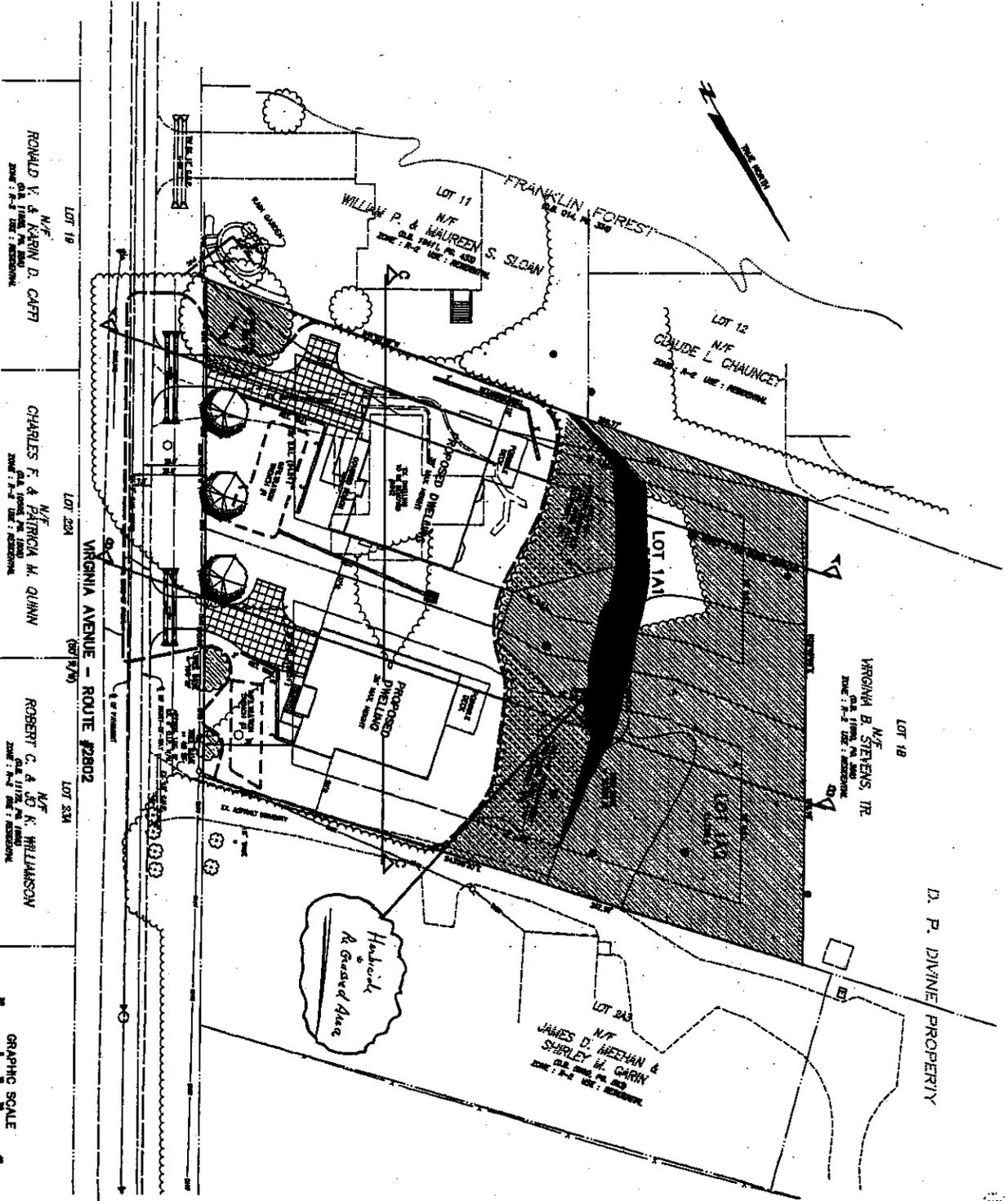
RCC/MAG/H:\SE Interpretations\William Sloan (BDT Homes) (SE 2007-DR-018) Conservation Easement final.doc

Attachments: A/S

cc: John W. Foust, Supervisor, Dranesville District
Jay P. Donahue, Planning Commissioner, Dranesville District
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Kenneth Williams, Technical Processing, Office of Land Development Services, DPWES
Jack Weyant, Director, Environmental and Facilities Inspection Division, DPWES
Craig Herwig, Urban Forester III, UFM, DPWES
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, DPZ
File: SE 2007-DR-018, SEI 1105 024, Imaging, Reading File

LEGEND	
	EXISTING UTILITY
	PROPOSED UTILITY
	EXISTING STORM DRAIN
	PROPOSED STORM DRAIN
	EXISTING SIDEWALK
	PROPOSED SIDEWALK
	EXISTING FENCE
	PROPOSED FENCE
	EXISTING TREE
	PROPOSED TREE
	EXISTING STRUCTURE
	PROPOSED STRUCTURE

TREE COVER CALCULATIONS	
COOPER ENDORSED	4,300 S.F.
OF EXISTING TREES TO BE PRESERVED	20,000 S.F.A.
OF TREES TO BE PLANTED	5,000 S.F.A.
(AREA OF SITE AREA)	24,700 S.F.A.



LOT 11 N/F WILLIAM P. & MAUREEN S. SLOAN
 LOT 12 N/F CLAUDE L. CHANCEY
 LOT 13A N/F CHARLES F. & PATRICIA M. QUINN
 LOT 13B N/F ROBERT C. & JOY K. WILLIAMSON
 LOT 13C N/F RONALD V. & KAREN D. CAFFY
 LOT 13D N/F VIRGINIA B. STEVENS, TR.
 LOT 13E N/F JAMES D. MEEHAN & SHERLEY H. CHRYN
 LOT 13F N/F
 LOT 13G N/F
 LOT 13H N/F
 LOT 13I N/F
 LOT 13J N/F
 LOT 13K N/F
 LOT 13L N/F
 LOT 13M N/F
 LOT 13N N/F
 LOT 13O N/F
 LOT 13P N/F
 LOT 13Q N/F
 LOT 13R N/F
 LOT 13S N/F
 LOT 13T N/F
 LOT 13U N/F
 LOT 13V N/F
 LOT 13W N/F
 LOT 13X N/F
 LOT 13Y N/F
 LOT 13Z N/F

Approved - See 8/12/11 letter of interpretation
 FRANKLIN PARK
 BLOCK FOUR



SPECIAL EXCEPTION PLAT
D. P. DIVINE PROPERTY
 LOT 1A



2

BDT HOMES, LLC.
6842 Elm Street, Suite 302
McLean, Virginia 22101

Telephone Number
(703) 556-9273

Facsimile Number
(703) 556-9279

May 26, 2011

RECEIVED
Department of Planning & Zoning
MAY 27 2011
Zoning Evaluation Division

Barbara C. Berlin
Director of the Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway
Suite 801
Fairfax County, Virginia 22035

Re: SE2007-DR-0018
Original Tax Map Number: 41-1-((9)) 1A

Dear Ms. Berlin:

The Background

In April 2005, the developer, BDT Homes LLC (the Developer) contracted with Mr & Mrs Gibson the owners of 1942 Virginia Avenue Tax Map Number 41-1((9))-1A for the purchase of their property (the "Property"). The Gibsons had a small single-family house on the south east side of the Property. The back western portion of their Property (the area of the conservation easement discussed more fully below) was mostly wooded (the "Wooded Area") except for a small flat area that was grassed (the "Grassed Area"). Ms. Gibson used this Grassed Area as a play area for her grand children and hung her clothesline in this area. The Developer purchased the Property from the Gibsons in June 2006 and the Gibsons moved out of their house.

On October 20, 2008, the Fairfax County Board of Supervisors approved a Special Exception for a variance of a minimum lot width (Section 9-610 Fairfax County Zoning Ordinance) in the R-2 zoning district. The Special Exception was designated SE 2007-DR-18 (the "SE Plan"). As part of the Special Exception, the Developer agreed to grant the Board of Supervisors a conservation easement (the "Conservation Easement") of approximately 16,762 square feet of the total 43,560 square feet of the Property. About 38.5% of the Property is currently subject to the Conservation Easement. The Developer granted the Conservation Easement for both the Wooded Area and Grassed Area of the Property.

After a lengthy subdivision process of the one lot Property into two lots, the Developer began building two houses in the year 2010 and adhered to all development conditions of the SE Plan. The Developer also adhered to all conditions and requirements of the approved subdivision plan (5607-SD-001, the "Subdivision Plan") and the respective lot grading plans. According to the approved SE plan, the Subdivision Plan and approved grading plans, the Developer was not to enter into the Conservation Easement without the permission of the County. Because the Grassed Area of the Conservation Easement was becoming overgrown with invasive species, including, but not limited to, mimosa, forsythia, English ivy, poison ivy, wisteria and other invasive species, the Developer submitted an invasive plant suppression and management plan (the "Invasive Plan") to the County in February 2010. The Developer was aiming to suppress the invasive species and restore the Grassed Area to its original condition. Under the terms of the Invasive Plan, the Developer was allowed to enter the Conservation Easement and remove by hand invasive species and herbicide. The Developer implemented the Invasive Plan to the Grassed Area only. The Developer did not fill, grade, excavate, or perform any other land disturbing activities in the Conservation Easement. After the Developer implemented the Invasive Plan to the Grassed Area, this area was largely denuded. The Developer then proceeded to seed and sod the Grassed Area back to its original condition. At no time did the Developer remove any trees, indigenous shrubs or plants from the Conservation Easement except for two small dogwoods (3" to 4" caliber) that were severely cracked and bent as the result of storm damage.

In November 2010, the Fairfax County Department of Code Compliance issued a Zoning Violation (Case #201006948), based upon the Forest Conservation Section of the UFMD. The Zoning Compliance group contention was that the Developer improperly entered the Conservation Easement and seeded and sodded a portion of the Conservation easement in violation of the SE Plan conditions. The Developer does not refute the herbicide, reseeded and sodding of the Grassed Area of the Conservation Easement. At the end of December in a meeting with the Department of Code Compliance and the Developer, the zoning violation was dropped and the case was closed. The Zoning Department allowed for the seeded and sodded Grassed Area within the Conservation Easement on the basis that it previously existed in the easement.

Upon reliance of the closed zoning violation case and the Developer's belief that sodded and seeded Grassed Area was properly restored to its original state, the Developer informed the eventual purchasers of 1942 Virginia Avenue that the Grassed Area was allowed in this area of the Conservation Easement. Subsequent to this information being imparted to the purchasers, they contracted to purchase the house at 1942 Virginia Avenue (the "Homeowners")

Interpretation Question

The Zoning Enforcement Division and the Forest Conservation Section of the UFMD have given different answers to the Developer with respect to whether an existing grassed area in a conservation easement is allowed to be restored to its previously existing state through the implementation of a County approved Invasive Plant Suppression Plan.

The Forest Conservation Section believes that the Developer has violated Section 5.A1 of the development conditions of the SE Plan. There it states:

A "No person or entity either during construction or afterward (in perpetuity) shall perform any of the following activities in the Conservation Area

1. Fill, grade, excavate, or perform any other land disturbing activities in the Conservation Area, except as necessary for (a) erosion and sediment control pursuant to a plan approved by the DPWES and then only in strict accordance with the terms of the approved plans....

Developer Position

Developer believes that the development conditions do not preclude the seeding, sodding or maintaining of a previously grassed area in the Conservation Area, if such actions are taken within the confines of a County approved invasive plant suppression plan. In addition, Developer believes that the reinstatement of grass prevented the potential erosion and sediment runoff from the Property. The Developer further believes it is in substantial compliance with the development conditions of the SE Plan. In fact Appendix 1, page 2 of the Staff Report dated February 13, 2008 to SE Plan refers to maintaining the Conservation Area and even uses the word "mowing" which obviously infers that grass may be present in the Conservation Area. The Grassed Area does not change the tree coverage ratios, which greatly exceed County requirements. Also the Grassed Area does not affect the BMP calculations and the phosphorus removal rates that exceed the minimum 40% removal requirements. Accordingly, the Developer believes that Grassed Area should remain and no additional plantings, mulching or work should be required in the Grassed Area. Further, the Developer would like to implement the wishes of the Homeowners that purchased 1942 Virginia Avenue. The Homeowners have two young children who enjoy playing on the level Grassed Area. The Grassed Area represents a small portion of the entire Conservation Area. The remaining portion of the Homeowners' lot is hilly and wooded and not conducive to play. The Developer believes that because of the conflicting opinions of two separate departments within the County of Fairfax that the Homeowners should not be jeopardized at this point in time.

However, in order to resolve this issue in a timely manner and preclude further appeals, the Developer requests the following consideration. First, 2,288 square feet of the Conservation Area would be vacated (the "Vacated Area") by modifying the existing

Conservation line as depicted on the attached plat. Second, the Developer would mulch all remaining portions of the Grassed Area inside the Conservation Area. In addition, the Developer would be willing to plant additional indigenous shrubs (3 to 5 gallon container) or a number of indigenous trees in this newly mulched area under the supervision of the Forest Conservation Section of the County. The mulching and plantings of this area would potentially increase the tree coverage ratios for the property. By making this adjustment to the Conservation Area line, no grass would be inside the newly revised Conservation Area and additional plantings would be added to it. Further, and very importantly, there are no existing trees in the Vacated Area so the vacation does not affect tree save. The same number of trees protected under the original Conservation Area remains the same after the vacation. The Developer believes this adjustment is a minor modification to the Special Exception Plan and is in substantial compliance with all development conditions. In conclusion, the Conservation Area would be adjusted from 16,762 square feet to 14,474 square feet and all trees protected under the original Conservation Area remain protected.

If you need any further information concerning the above matters, please do not hesitate to contact me.

Sincerely,



William P. Sloan
Managing Partner
BDT Homes LLC

July 21, 2011

To: Ms. Mary Ann Godfrey, Staff Coordinator
Zoning Evaluation Division, DPZ

From: William Sloan
BDT Homes, LLC. (the "Developer")

Subject: D.P. Divine Property, Lots 1A1 & 1A2, SE 2007-DR-018

RECEIVED
Department of Planning & Zoning

JUL 22 2011

Zoning Evaluation Division

RE: Response To Comments of Forest Conservation Branch Memorandum dated July 5, 2011

As a preface, please note that in Paragraph 1 of the Forest Conservation Branch memorandum of July 5, 2011 (the "FCB Memorandum") the Urban Forester based his opinions on a review of the Special Exception Plan, The Subdivision Plan and the individual lot grading plans. By the Urban Forester's own admission he failed to review one of the most important documents bearing on this issue, that being the Invasive Plant Suppression and Management Program ("IPSMP"). Herein lies a significant problem. The Developer believes that the Urban Forester arbitrarily and capriciously approved the IPSMP without adequate reflection.

FCB Response to Developer Comment 1

The FCB's response to Comment 1 is inaccurate. In accordance with Paragraph 7 of the SE Development Conditions, the Developer employed both the services of a certified arborist and a landscape architect to monitor the project. The certified arborist was Sam Doan (the Project Arborist) of Geoforestry Inc. Hank Fox of Charles P Johnson & Associates ("CPJ") was the landscape architect for the project. The Developer had the limits of clearing and grading marked by CPJ with a continuous line of flagging prior to the walk through meeting with the FCB. The Project Arborist was present during the walk through procedure with FCB. At the walk through meeting no adjustments were made to the limits of clearing and grading nor were any trees identified as dead or dying so as to be removed. All terms and conditions of Paragraph 7 of the SE Conditions were in fact met.

In accordance with Paragraph 8 of the SE conditions the Developer adhered strictly to the limits of clearing and grading. There were no utilities or trails that were outside the limits of clearing and grading, and the Developer did not extend its work beyond these limits. Accordingly, the Developer met every term and condition of Paragraph 8.

In accordance with Paragraph 9 of the SE conditions, tree preservation fencing protected all trees shown to be preserved on the tree preservation plan. All the tree protection

fencing was installed after the tree preservation walk-through meeting and prior to any clearing and grading activities, including the demolition of the existing structure. Tysons Service Corporation installed the tree preservation fencing. They also installed the limits of clearing and grading fencing. After such fencing was properly established, the existing structure was demolished. In strict accordance with the provision of Paragraph 9 of the SE Conditions the Project Arborist supervised the installation of the fencing to ensure that no harm was done to existing vegetation. Days prior to the clearing and grading the Project Arborist informed the FCB that activities were beginning.

In accordance with Paragraph 10 of the SE Plan, the Developer performed all necessary root pruning and mulching as needed to comply with the tree preservation plan. Tysons Service Corporation performed these services under the guidance of the Project Arborist.

Finally, pursuant to Paragraph 11 of the SE Plan the site was continuously monitored by the Project Arborist who oversaw all tree protection fencing work, all limits of clearing fencing, all mulching activities, all root pruning activities to ensure strict conformance with the tree preservation plan. In fact, the Developer exceeded the requirements for tree mulching by creating even larger beds of mulch than were required under the tree preservation plan. These large mulch beds still exist today and can be verified as of now.

Based on the foregoing, the FCB's response that the SE Development Conditions 7,8,9,10, and 11 were violated is inaccurate. Further the statement that the Project Arborist for the Developer was not on site to monitor the demolition of the existing structure, root pruning, or installation of the tree fencing is also inaccurate. The Developer has paid invoices to support this position that the monitoring work was done.

As a final comment please be aware as part of the SE Plan review process the Developer volunteered to very restrictive limits of clearing and grading in order to protect all trees and vegetation in the conservation easement. (the "Conservation Easement"). In fact the Developer unilaterally and without County or citizen input left approximately a 30 foot buffer area (known as the "Area of Encroachment") to protect Conservation Easement trees and vegetation.

FCB Response to Developer Comment 2

The FCB misunderstands and is misguided with respect to the IPSMP. The IPSMP was not required during the plan review phase of the SE Plan. In fact there is no mention of such a requirement in the SE Plan. The Developer volunteered to provide the program two years after the SE plan conditions were approved. The IPSMP was submitted to the County in February 2010 and approved by the Land Development Services Division of the Environmental and Site Review Division on February 25 2010. It is the Developer's contention that the FCB either failed to review the IPSMP or failed to properly comment on this plan. The IPSMP was approved with its present conditions that now appear inconsistent with the desires of the FCB. Specifically, the IPSMP specifies that the management and treatment area is only necessary in areas that may pose human health

problems or are likely to disrupt or suppress native plants. The Grassed Area (as referred to in FCB Memorandum) was the only area, which by its close proximity to the homeowner's backyard posed such problems. Paragraph 13 of the IPSMP specifically states that mulch may be spread to a depth of 2-4 inches in the **perimeter areas** where invasive vines are targeted and additional light exposure may increase their growth. This paragraph is very important to understand. If there were a requirement to mulch all areas covered by the IPSMP there would be no meaning to the comment of placing mulch only in the perimeter areas where invasive plants were located. Also of importance, the IPSMP specifically does not preclude the re grassing of previously grassed areas in the Conservation Area. In fact the clearer indication from the IPSMP is that there is no requirement to enhance the area beyond what it was originally. If the FCB had wanted only mulching and native plantings in this previously grassed area one wonders why such a revision was not made during IPSMP plan review process. Now on hindsight the FCB would like mulch and native plantings instead of grass (in the previously grassed areas). I suppose at the time of the IPSMP approval it didn't seem that important to FCB to make such a comment. Possibly an oversight by FCB, that unfortunately now causes both the Developer and the two homeowners to suffer.

FCB Response to Developer Comment 3

FCB's response to comment 3 is also inaccurate and shows FCB's and the site inspector's unawareness of the terms and conditions of the IPSMP. Site Inspector Rudy approached me on site the day we began the implementation of the IPSMP work. He stated that we were not allowed within the Conservation Area and was going to notify the FCB. At that time I explained to Mr. Rudy that we had specific authority to enter the Conservation Area to implement the IPSMP. Mr. Rudy was totally unaware of the IPSMP at this time. The FCB Memorandum fails to mention a most important part of this issue in its comment. In November 2010, a zoning compliance violation was issued attaching an FCB memo. The FCB memo expressed its desires to restore the originally grassed area to mulch and native plantings thereby enhancing the area beyond what it originally was. The Developer (and its Project Arborist) met with the Zoning Compliance Division in December and the Zoning Compliance Division overruled the FCB and closed the case. The Zoning Compliance Division specifically allowed for the area that was previously grassed to be re grassed. In reality, the Developer seeded and sodded and followed the IPSMP by mulching the perimeter areas of the grassed area to prevent the infiltration of potentially invasive species.

FCB Response to Developer Comment 4

The Developer believes that the FCB is taking Development Condition 5A1 and interpreting it out of context and without reference to the later approved IPSMP. First of all, the Development Condition 5A1 applies to conditions where the Developer fills, grades or performs land-disturbing activities in the Conservation Area. The Developer did not fill, grade or perform land-disturbing activities other than applying herbicide to invasive plants. Applying targeted herbicide would hardly be considered land-disturbing activities. According to the Virginia Erosion and Sediment Control Regulations, and Certification Regulations for fiscal year 2009, land-disturbing activities does not specify the use of targeted herbicide treatments. After the herbicide treatments were performed, what remained were largely spotted patches of grass and dirt. The Developer could have left the area in this condition and there would have been no issue with the FCB. Instead, the Developer, in order to restore the area to its previously grassed state, seeded, sodded and mulched the area. The Developer did this treatment to prevent adverse storm water runoff to the street. The FCB fails to acknowledge the existence of the IPSMP and treats its terms and conditions, as if they don't exist.

In conclusion, the Developer relied upon the decision of Zoning Compliance to allow for grass in the previously grassed area. Also the Developer relied upon the IPSMP to implement the program it undertook. The FCB had the opportunity to comment on the IPSMP if it was so inclined to do so but failed to make any clarifications as to its desires. If the Developer knew or had any reason to believe that grass was not permitted in this area the Developer would have taken a different approach. The amount of sod involved is approximately two to three pallets. The issue is important to the Developer because the Developer told the homeowners of 1942 Virginia Avenue that sod was allowed in the grassed area based upon the Zoning Compliance Division's closure of the case in December 2010. Finally, please note that of the entire one-acre site (43,560 square feet), the Developer proffered 16,763 square feet of Conservation Easement. This proffer represents 38.5% of the entire site. Further, the re grassed area is approximately 1,632 square feet representing approximately 9.7% of the Conservation Easement. The Developer strongly believes that this re grassing of a previously grassed area is in substantial compliance with the development conditions of the SE Plan.

July 26, 2011

To the members of the
Conservation Committee:

We bought the new house
at 1940 Virginia Avenue with
the understanding that 38.5% of the
property is in the conservancy.
We were happy with that because
we love looking out on the woods,
however, the extremely large
mulched area in front of the
woods is more of an eyesore
than a pleasure. We feel that
grass under the huge, well-established
trees would keep the value of
our home. The mulched area is full
of poison ivy (I have already had
it on my face). Less than 10% of
the yard is grass; the rest is mulch.
We would be returning part of the lawn
to its original, pre-subdivided state -
GRASS! Grass is better at retaining

rain water than mulch.

We hope you will
look favorably on our petition.

Thank you.

Dr. and Mrs. F. Mural

July 26, 2011

Nicholas and Mihaela Hallam
1942 Virginia Ave
McLean, VA 22101

Dear Ms. Mary Ann Godfrey:

Copied: Mr. John Foust – Dranesville Supervisor

Thank you very much for the opportunity to express our thoughts regarding decisions affecting our personal residence.

Of key importance to us as home owners is the explicit understanding of the facts at the time of purchasing our home. When the home and specifically the yard were presented to us, it was clearly explained and clearly understood that what we saw was in fact what we were purchasing; i.e. there were no pending decisions and all decisions made related to the conservation were approved and final. We purchased our home on April 20, 2011 and were 100% confident in our understanding that a portion of the conservation area was grass and would remain grass. Subsequent to purchasing our home, we were notified by the builder that this portion of grass (referred to as the "re-grassed portion") would potentially be removed. This news was obviously very disheartening. Prior to purchasing our home we did not have transparency into the sequence of events/decisions, their current implications nor or any potential impacts post move in.

Recognizing that a large portion of our lot is deemed a conservation area with limited usage and rights, we are very concerned that now a grass portion of the yard will potentially be removed. To be clear: we were/are aware, understand and appreciate that 38.5% of our lot is a conservation area. This area of our lot carries many benefits both aesthetically and functionally. Furthermore, we are sensitive to the overall concept and principle of the conservation area and want to preserve and enhance the natural look and feel of the land/neighborhood. However, to further reduce the current space (i.e. the re-grassed portion) with mulch or other plantings would diminish the current usable space.

With two small children (two and five), having the re-grassed area remain grass is an utmost desire as it maximizes our family's ability to use the space in a more enjoyable and realistic manner. With this said, our family will use this space in accordance with the provisions of the conservation easement so not to jeopardize the natural look – we would not create trails, structures, walkways etc in this area. Furthermore, removing the re-grassed area would invite a greater presence of invasive species (*specifically poison ivy*) which already exists in the current mulched areas. Lastly, we have witnessed mulch run-offs during heavy rains, keeping the re-grassed portion in its current state would prevent such run-offs.

We love the neighborhood, our new home and the mix of yard and conservation area. However, given the circumstances outlined above, removing the re-grassed portion of the conservation area – which is less than 10% of our total lot – is not an attractive option as the current owner and definitely is not what we understood when we purchased our home.

At your convenience, I welcome the opportunity to provide additional insights, answer questions and invite you to see/understand firsthand the rationale of our thoughts. Again, we greatly appreciate the ability to inject our voice as a concerned stakeholder in this decision making process and feel free to contact me directly anytime.

Respectfully,



Nicholas Hallam
(703) 963-6236
nicholashallam@hotmail.com



County of Fairfax, Virginia

MEMORANDUM

July 5, 2011

TO: Ms. Mary Ann Godfrey, Staff Coordinator
Zoning Evaluation Division, DPZ

FROM: Craig Herwig, Urban Forester III
Forest Conservation Branch, DPWES

SUBJECT: D.P Divine Property, Lots 1A1 & 1A2, SE 2007-DR-018

RE: Request for assistance dated June 22, 2011

The following comments are based on a review of the Request for Interpretation by BDT Homes, LLC., dated May 26, 2011, the Special Exception, SE 2007-DR-18, the Subdivision Plan 5607-SD-001-2, and individual lot grading plans.

General Comments:

- Comment:** In the Request for Interpretation, the applicant states "The Developer also adhered to all conditions and requirements of the approved subdivision plan (5607-SD-001, the "Subdivision Plan") and the respective lot grading plans."
Development Condition 7, Tree Preservation Walk-Through states, "The Applicant shall retain the services of a certified arborist or landscape architect, and shall walk the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation... In addition, Development Condition 9, Tree Protection Fencing states, " All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of the tree protection fencing shall be installed under the supervision of a certified arborist..."

Response: Several Development Conditions and requirements of the approved subdivision plan were not adhered to from the beginning of demolition and construction phase of the project. At the request of the EFID Site Inspector, staff from UFMD attended the Pre-Construction meeting to accomplish the Tree Preservation Walk-Through as required by Development Condition 7. At this meeting, UFMD and EFID noted the existing structure had already been demolished

Department of Public Works and Environmental Services
Land Development Services, Urban Forest Management Division
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www.fairfaxcounty.gov/dpwes



and all perimeter controls, including root pruning and tree protection fencing had already been installed contrary to Development Conditions 7, 8, 9, 10 and 11. The project arborist for the developer was not on site to monitor the demolition of the existing structure, root pruning, or installation of the tree protection fence. As a result, UFMD and the project arborist did not have the opportunity to walk the limits of clearing and grading to make adjustments to the limits of clearing and grading to possibly increase the tree preservation areas. (See attached Pre-construction memo dated October 29, 2009)

- 2. Comment:** The Applicant states "Because the Grassed Area of the Conservation Easement was becoming overgrown with invasive species, including, but not limited to, mimosa, forsythia, English ivy, poison ivy, wisteria and other invasive species, the Developer submitted an invasive plant suppression and management plan (the "Invasive Plan") to the County in February 2010. The Developer was aiming to suppress the invasive species and restore the Grassed Area to its original condition. The Developer implemented the Invasive Plan to the Grassed Area only."

Response: Neither the Development Conditions, Subdivision plan or lot grading plans differentiate the area described in the Applicants narrative as the "Grass Area" or "Wooded Area" within the Conservation Easement. The "Invasive Plant Suppression and Management Program" was required by UFMD during the plan review phase and was not a voluntary program provided by the Developer to address the restoration of the Grassed Area. The Invasive Plant Management plan requirement was intended to address invasive plant species within the entire Conservation Easement. The Developers monthly project arborist reports and attached illustration provided by the Developers project arborist indicate the entire Conservation Easement was being treated for invasive plant species, not just the "Grassed Area". The "Invasive Plant Suppression and Management Program" does not indicate the intention to restore the Grassed Area to its original condition.

- 3. Comment:** In October 2010, the EFID Site Inspector contacted UFMD to inform staff that that a portion of the Conservation Easement had been violated by the Developer. The Developer had installed turf grass in the form of sod within the Conservation Easement on lots 1A1 and 1A2.

Response: UFMD staff recommended the EFID Site Inspector contact the Department of Code Compliance because the violation occurred in an existing Conservation Easement, recorded in the Land Records of Fairfax County, Virginia. UFMD provided the Zoning Inspector with a memo detailing the requirements to restore the Conservation Easement. (See attached Memo)

- 4. Comment:** The Applicant indicates that UFMD staff believes a violation of Development Condition 5, A1 has occurred and has sited a portion of the pertinent Development Condition.



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Response: It is the opinion of UFMD staff that a violation of the existing Conservation Easement on lots 1A1 and 1A2 has occurred based on noncompliance with Development Condition 5, A1. The existing turf grass located within the Conservation Easement prior to development was eliminated as part of the Invasive Plant Suppression and Management Program. The applicant failed to include a portion of text from Development Condition 5, A1 which states ... "and b) the enhancement of existing vegetation through the planting of additional native species on the subject property as approved by UFMD." Turf grass is a non-native species and UFMD did not approve the planting of turf grass within the Conservation Easement.

Please feel free to contact me at 70324-1770 if you have any further questions or concerns.

CSH/

UFMID #: 161960

Attachments:

cc: RA File
DPZ File

