



Conservation Easement Change Request
15325 Masonwood Drive Gaithersburg, MD 20878
Staff Report

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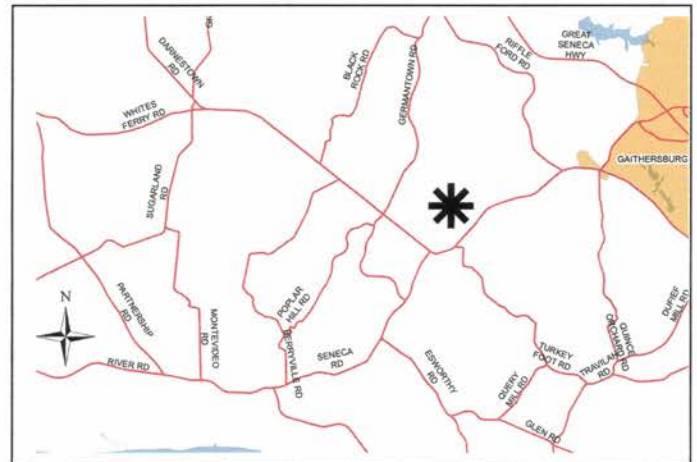
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Completed: 12/6/19

Description

**Izadpanah Property (a.k.a. Seneca Highlands Lot 27,
Block B and 15325 Masonwood Drive) (in response to
a forest conservation law violation)**

- 15325 Masonwood Drive
- Rural Cluster zone
- Potomac Subregion Master Plan
- Applicant: Hajar "Roshan" and Allen Izadpanah
- Submitted on October 28, 2019



Summary

Staff recommends approval of the Applicant's request to modify a Conservation Easement on the Subject Property. Conservation Easement was required as part of a forest conservation law violation.

1. Property Owner was required to prepare, submit and implement a Restoration Plan as a result of forest conservation law violations that occurred in Spring 2018.
2. Property Owner has implemented the Restoration Plan and recorded the required Conservation Easements.
3. Proposal to modify the Conservation Easement which will result in a net decrease of 7,507 square feet of Conservation easement.

BACKGROUND

On April 10, 2018, the M-NCPPC Inspector discovered multiple forest conservation law violations at 15325 Masonwood Drive, Gaithersburg "Subject Property", "Izadpanah Property". Adjacent to a stream located on the property, more than 1 acre of hardwood forest was cleared. After felling trees, the trees were cut up and dumped in the stream. Figure 1 shows the Izadpanah Property and outlines the area of forest stream disturbance and forest clearing. At the time of discovery, the Inspector found that fill dirt from residential construction sites in Montgomery County were being directed to the site in trucks and then being dumped on top of cut logs in the stream. A copy of Administrative Citation No. 000339 issued to the Property Owner of 15325 Masonwood Drive for these violations is attached (Attachment 1). Photos of the violation area taken on April 10, 2018 are below (Photo 1 and Photo 2).

Figure 1: Izadpanah Property Map and outline stream disturbance and forest clearing violation



Photo 1: Izadpanah Property on April 10, 2018 at 1:22 pm. Photo of forest clearing taken by M-NCPPC Inspector. Also note the maintained lawn and evergreen trees in the background.



Photo 2: Izadpanah Property on April 10, 2018 at 1:25 pm. Photo of cut forest and buried stream taken by M-NCPPC Inspector. Also note the maintained lawn and evergreen trees in the background.



The Applicant delayed in complying with the Administrative Citation. On August 29, 2018, the Montgomery County Planning Department issued a Corrective Action Order to the Property Owner directing restoration of the affected property (Attachment 2). On September 21, 2018, a Notice of Violation was issued to the Property Owner for violations of the Corrective Action Order (Attachment 3).

After thorough review, the Planning Department approved NRI/FSD 420190190 for the Property on February 12, 2019 (Attachment 4). The NRI/FSD shows that 1.9 acres of forest were impacted by the forest clearing and dumping and grading. However, a Restoration Plan was not included with the NRI/FSD.

A Notice of Hearing was sent to the Property Owner on February 26, 2019 (Attachment 5). In April 2019, the Property Owner and the Planning Department reached a Settlement Agreement on correcting the forest conservation law violations. A copy of this Settlement Agreement is attached (Attachment 6). In summary, the Settlement Agreement included, among other things, submission of a Restoration Plan, restoration of the impacted stream, and restoring the impacted forested areas.

Planning Staff reviewed the submitted Restoration Plan and noted the area submitted by the Property Owner for inclusion in the Category I Conservation Easement. The proposed Conservation Easement consisted of the area impacted by the unauthorized forest clearing, all existing forest stands plus an additional area of trees next to the impacted stream and forest stand. On April 12, 2019, the Planning Department approved a Restoration Plan providing stream and forest restoration, stream buffer protection for the impacted forest stand and conservation easements for all remaining forest stands on the 34-acre property (Attachment 7).

In May 2019, the Property Owner recorded a Category I Conservation Easement Agreement for the conservation easement areas shown on the approved Restoration Plan. This Agreement is recorded among land records in Book 57557 at Page 181 (Attachment 8).

The Property Owner paid the Administrative Citation and has complied with the Settlement Agreement including removal of the dumped wood and dirt from the stream, restoring the stream and replanting native trees in the impacted forest stream buffer.

SITE DESCRIPTION

The Subject Property (Izadpanah Property) is also known as Seneca Highlands Lot 27, Block B and is located at northwest corner of the Elizabeth Moore Property Subdivision. The property is located at 15325 Masonwood Drive. The 34-acre property consists of a single-family house surrounded by a pool house, a tennis court, a private golf course, forest stands and stream buffers along the perimeter of the property (Figure 1). A Colonial Gas easement, an Ingress/ Egress easement and access road for an adjacent property (Miller Property) bisects the rear of the property separating a 5-acre forest stand from the front of the property. The subdivision that created Lot 27 Block B was created prior to the implementation of the County's Forest Conservation law.

The conservation easement was placed on the property as part of the Settlement Agreement. Approximately 7.30 acres of the Property is within a M-NCPPC Category I Conservation easement including 4.4 acres of the forest stand in the northwest corner of the property, a sliver of forest between

the west property boundary and the Miller Property access road and a 2-acre area of forest and stream restoration area.

The area of cut and cleared forest was in and within the stream buffer of a tributary of Seneca Creek. The Property lies within the Seneca Creek Watershed (a Use I-P stream).

Impetus for Amendment

In Summer 2019, the Property Owner discovered that approximately 9,000 square feet of trees and lawn were placed within the Category I Conservation Easement (See Photo 3). This area was never cut or cleared and was never in violation of the forest conservation law. See background in Photo 1 and Photo 2 and the foreground area of Photo 3. The Property Owner wishes to continue mowing this area of lawn which is contrary to the terms of the Category I Conservation Easement.

Photo 3: Depiction of area of proposed conservation easement abandonment, an area of trees and lawn, downhill of the violation area and never in violation of the forest conservation law.



In the fall 2019, Planning Staff discovered that not all of the restoration planting was planted within the boundaries of the recorded Category I Conservation Easement. Approximately 5 trees were planted in the lawn above the forest stand and outside the recorded conservation easement.

Planning Staff accepted an amended Restoration Plan for review on November 15, 2019, to correct the issues discovered during the implementation forest and stream recovery project (Attachment 9).

APPLICANTS PROPOSAL

On November 15, 2019, the Property Owner submitted a Restoration Plan Amendment for Montgomery County Planning Board approval to correct the issues that arose during implementation of the approved Restoration Plan, plan number 420190190.

The Amendment proposes:

1. Release of a strip of conservation easement, an 8,994 square feet area, consisting of trees and lawn between the side yard and the access road; and
2. Add 1,487 square feet of unprotected stream buffer where restoration trees are planted into the conservation easement; and
3. Install fencing at the conservation easement boundary between the forest restoration area and the golf course area. The fencing would replace the proposed easement markers in this location.

The Applicant's position is that they made a mistake in giving M-NCPPC the 8,994 square feet of stream buffer that consists of trees as it was not in the forest clearing area. Staff reviewed the offered tree area during review of the Restoration Plan and accepted it on behalf of M-NCPPC. Now, the Property Owner would like this 8,994 square feet area released without any additional mitigation. Figure 3 shows the area of conservation easement release as a tree symbolled area and the area of conservation easement addition as a stippled sliver adjacent at the between the existing conservation easement and a green on the golf course.

Figure 3. Proposed Conservation Easement Changes – Restoration Plan Amendment



STAFF RECOMMENDATION AND CONDITIONS

All conditions of the April 1, 2019 Settlement Agreement remain in full force and effect. The only outstanding conditions that remain are the planting maintenance to be done to achieve the required 2-year post planting survival rate and the bi-annual reporting on these planting maintenance activities.

Also, this Amendment does not affect any conditions of the Elizabeth Moore Property Preliminary Plan of Subdivision, Plan Number 119860590, approved by the Montgomery County Planning Board on July 7, 1988.

Staff recommends approval of the Restoration Plan Amendment and changes to the Category I Conservation Easement with the conditions specified below.

1. Within sixty (60) days of the mailing date of the Planning Board Resolution, the Applicant must record a Category I Conservation Easement by deed, in a form approved by the M-NCPPC Office of the General Counsel, in the Land Records of Montgomery County, Maryland for the new Category I Conservation Easement area on the Subject Property.
2. Within ninety (90) days after the mailing date of the Planning Board Resolution, the Property Owners must submit a Deed of Release of the existing Part 2 section of Category I Conservation Easement, in a form approved by the M-NCPPC Office of the General Counsel, in the Land Records of

Montgomery County, Maryland. (The Part 2 Section of Category I Conservation Easement Agreement is noted as Area 3 on the approved Restoration Plan.) The Part 1 and Part 3 areas of the conservation easement as described in Book 57557 Page 181 remain in full force and effect. Until recordation of the Partial Deed of Release, the Part 2 conservation easement area of Book 57557 Page 181 remains in full force and effect.

3. April 15, 2020, the Property Owner must install the fencing noted on the Amendment and have this fencing accepted by the M-NCPPC Inspector.

PLANNING BOARD REVIEW AUTHORITY

The Category I Conservation Easement Agreement (Book 57557 Page 206) granted the conservation easements on the property to the Montgomery County Planning Board. The Planning Board has authority under the Forest Conservation Law (Chapter 22A of the Montgomery County Code) to hear 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

The Amendment proposes correcting issues that arose during implementation of the April 2019-approved Restoration Plan.

During a late Spring 2019 meeting at the Property, the Property Owner expressed dismay that an area of lawn and trees was now part of a Category I Conservation Easement. During review of the Category I Conservation Easement, Planning Staff realized this rectangular area of the proposed Conservation Easement is not forested but is stream buffer of the impacted and restored stream. Staff accepted the additional stream buffer protection. The Property Owner wishes to provide no additional mitigation for release of the 8,994 square feet of Category I Conservation Easement as this area of lawn and trees was not part of the forest conservation violation. Comparison of photos taken on April 10, 2018 (Photo 1 and Photo 2) and the photo taken on October 23, 2019 (Photo 3) show the area of trees and lawn were not impacted by the forest clearing and stream violations. Staff recognizes that this area was erroneously placed in the conservation easement. As such, no mitigation is provided for this release of Conservation Easement.

During a subsequent Fall 2019 meeting, the M-NCPPC Inspector determined that some of the accepted restoration planting was not planted within the boundary of the recorded Category I Conservation Easement (Book 57557 Page 181) The proposed amendment adds 1,487 square feet of Category I Conservation Easement to protect stream restoration plantings planting as part of approved Restoration Plan No. 420190190.

The Category I Conservation Easement is recorded in the three parts. In total, there is 7.30 acres of conservation easement. The request to modify the conservation easement only reflects Part 2 of the three-part easement. These proposed changes are to be accomplished as follows. First, the new 1.95-acre Category I Conservation Easement will be established to include all the reforestation area and

exclude the area of trees and lawn not affected by the forest clearing. Then, the Release of the existing 2.12-acre (92,347 square feet) Category I Conservation Easement noted as Part 2 in the Category I Conservation Easement Agreement and Area 3 on the Restoration Plan will be reviewed, approved and recorded.

The Amendment also proposes fencing at the new conservation easement edge with the golf course. This fencing is to help prevent a future golf course expansion into the forest restoration area and eliminates the requirement to install conservation easement markers at this location.

Restoration of the damaged stream is complete. Truckloads of cut wood and fill dirt were removed from the property. Mulch has been spread. A Maryland Department of Environment-approved stream restoration project has been implemented by the Property Owner. The stream has been restored to a stable condition with log drops, pools and vegetated and stable stream banks. Replanting of 200 trees within the forest clearing has been done. Also, sycamore, maple and oak seedlings are germinating in the restored forest. The remaining Restoration activities required by the Settlement Agreement include maintaining the forest planting until at least May 2021, when a final inspection will be held with the M-NCPPC Inspector at the property.

NOTIFICATION and OUTREACH

The Subject Property was not posted with notification of the upcoming Amendment. The forest conservation law, Chapter 22A of the Montgomery County Code does not require an Applicant to notice and post for forest conservation plan amendments that propose changes to Conservation Easements. As such, 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 in this report.

ATTACHMENTS

1. Administrative Citation No. EPD 000339
2. August 29, 2018 Corrective Action Order
3. September 20, 2018 Notice of Violation
4. Approved NRI/FSD No. 420190190 and Approval Memo
5. February 26, 2019 Notice of Hearing
6. April 1, 2019 Settlement Agreement
7. Approved Restoration Plan No. 420190190 and Approval Memo
8. Approved Category I Conservation Easement Agreement Book 57557 Page 181
9. Restoration Plan Amendment