

GREENTREE ESTATES

PRELIMINARY PLAN AMENDMENT NO. 11996048B

Description

Request to remove an existing Category I Conservation easement from Lot 9 in the Greentree Estates subdivision, and mitigate for the removal at an offsite location. Staff recommends approval of the amendment with conditions.

NO. 11996048B

COMPLETED: 01-07-2022

MCPB

Consent Item

January 20, 2022

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

mgk

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LOCATION

9701 Carmel Ct. (Lot 9), NW quadrant of the intersection of Carmel Ct. and Greentree Road, Bethesda

MASTER PLAN & ZONE

Potomac Subregion Master Plan 2002

R-200 Zone

PROPERTY SIZE

Lot 9 = 20,944 SF (0.48 acres)

Original 9 lot subdivision = 5.30 acres

APPLICANT

Samuel Schueler and Elia Acevedo Diaz

ACCEPTANCE DATE

October 15, 2021

REVIEW BASIS:

Chapter 22A



Summary

- Staff recommends approval of the Final Forest Conservation Plan Amendment No. 11996048B to remove the existing 5,523 square foot Category I Conservation Easement from the rear of Lot 9 and mitigate for the easement offsite either by purchasing credits from an M-NCPPC approved forest bank or paying fee-in-lieu. Per Planning Board policy, mitigation would be provided at a 2:1 ratio.
- Final Forest Conservation Plan No. 119960480 was approved as part of a Preliminary Plan for the creation of nine lots. The Category I Conservation Easement was designated at that time and did not provide a usable backyard area for the homeowner. The Category I Conservation Easement is less than the minimum 50 feet required to meet the definition of forest.
- As of the date of this Staff Report, Staff has not received any community correspondence related to this Application.

SECTION 1

RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of the Preliminary Plan Amendment No. 11996048B and associated Final Forest Conservation Plan, subject to the following conditions.

1. Within ninety (90) days of the mailing of the Planning Board Resolution approving 11996049B, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Lot 9 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the Certificate of Compliance is recorded or fee-in-lieu is paid.
2. Within ninety (90) days of the mailing of the Planning Board Resolution approving 11996048B, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest mitigation bank within the same watershed to satisfy the required 0.26 acres (11,046 square feet) of mitigation credit for the removal of 0.13 acres (5,523 square feet) of Category I Conservation Easement. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation credits are not available for purchase within the same watershed, or, if there are no mitigation credits available at any bank, by making a fee-in-lieu payment to the M-NCPPC Planning Department for the 0.26 acres (11,046 square feet) of mitigation credit.
3. All other conditions of Preliminary Plan and Final Forest Conservation Plan No. 119960480 and 11996048A that were not modified herein, as contained in the Planning Board's Opinions dated March 11, 1996 and November 18, 2013, respectively, remain in full force and effect.

SECTION 2

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 119960480 “Greentree Estates” on March 11, 1996, for nine (9) lots on 5.3 acres of land in the R-200 zone (Attachment A). The property was subject to the Forest Conservation Law (Chapter 22A of the County Code) and a forest conservation plan was approved as part of the Preliminary Plan. The Final Forest Conservation Plan was approved for the 9 lot subdivision on 5.3 acres of land containing 4.46 acres of existing forest. The Final Forest Conservation Plan included 3.09 acres of forest clearing, 1.39 acres of forest retention, and 0.44 acres of forest planting that was satisfied through a combination of on-site reforestation, offsite reforestation, and onsite tree canopy credit. The conservation easements recorded on many of the lots in the Greentree Estates subdivision resulted in limited usable area for homeowners.

In 1998, approximately 3,077 square feet of the Category I Conservation Easement that was located along the southern property boundary on Lot 9, parallel to Greentree Road, was abandoned by a previous property owner to allow the construction of a driveway entrance from Greentree Road.

In November 2013, the Planning Board approved Limited Preliminary Plan Amendment No. 11996048A to modify a Category I Conservation Easement on Lot 3 of the Greentree Estates subdivision to allow for the construction of a swimming pool (Attachment B). A portion of the Category I Conservation Easement on Lot 3 was removed and mitigated for at an offsite forest bank.

Samuel Schueler and Elia Acevedo Diaz (“Applicant”) purchased the Property in June 2021. The Category I Conservation Easement was already in violation as a portion of it was being mowed by the previous owner. The conservation easement recorded on Lot 9 is only a few feet away from the rear of the existing house, providing essentially no backyard outside of the conservation easement for the Applicant’s use. The Application to amend the Preliminary Plan and associated Final Forest Conservation Plan to remove the remainder of the conservation easement on Lot 9 was designated Preliminary Plan No. 11996048B (“Application”).

SECTION 3

SITE LOCATION AND DESCRIPTION

The Property is identified as Lot 9, Greentree Estates, located at 9701 Carmel Court in Bethesda (“Property” or “Subject Property”) (Figure 1). The Property is 0.48 acres in size and is developed with a single family residence. Lot 9 does not contain any streams, wetlands, or floodplains, and it is located within the Cabin John Creek watershed, which is classified by the Maryland Department of the Environment as Use I-P waters. Record Plat No. 20105 (Attachment C) shows a 5,523 square foot Category I Conservation Easement along the eastern boundary of Lot 9. The Conservation Easement extends onto the adjacent lot to the north.



Figure 1 – Lot 9 outlined in yellow and existing Category I Conservation Easement in green hatch pattern

SECTION 4

PROPOSAL

The Application proposes to remove the 5,523 square foot Category I Conservation Easement from the Property to allow for a usable backyard area. The Applicant proposes to mitigate for the easement removal offsite either by purchasing credits from an M-NCPPC approved forest mitigation bank or by fee-in-lieu payment to M-NCPPC. The mitigation will be provided at a 2:1 ratio, resulting in 11,046 square feet (0.26 acres) of mitigation.

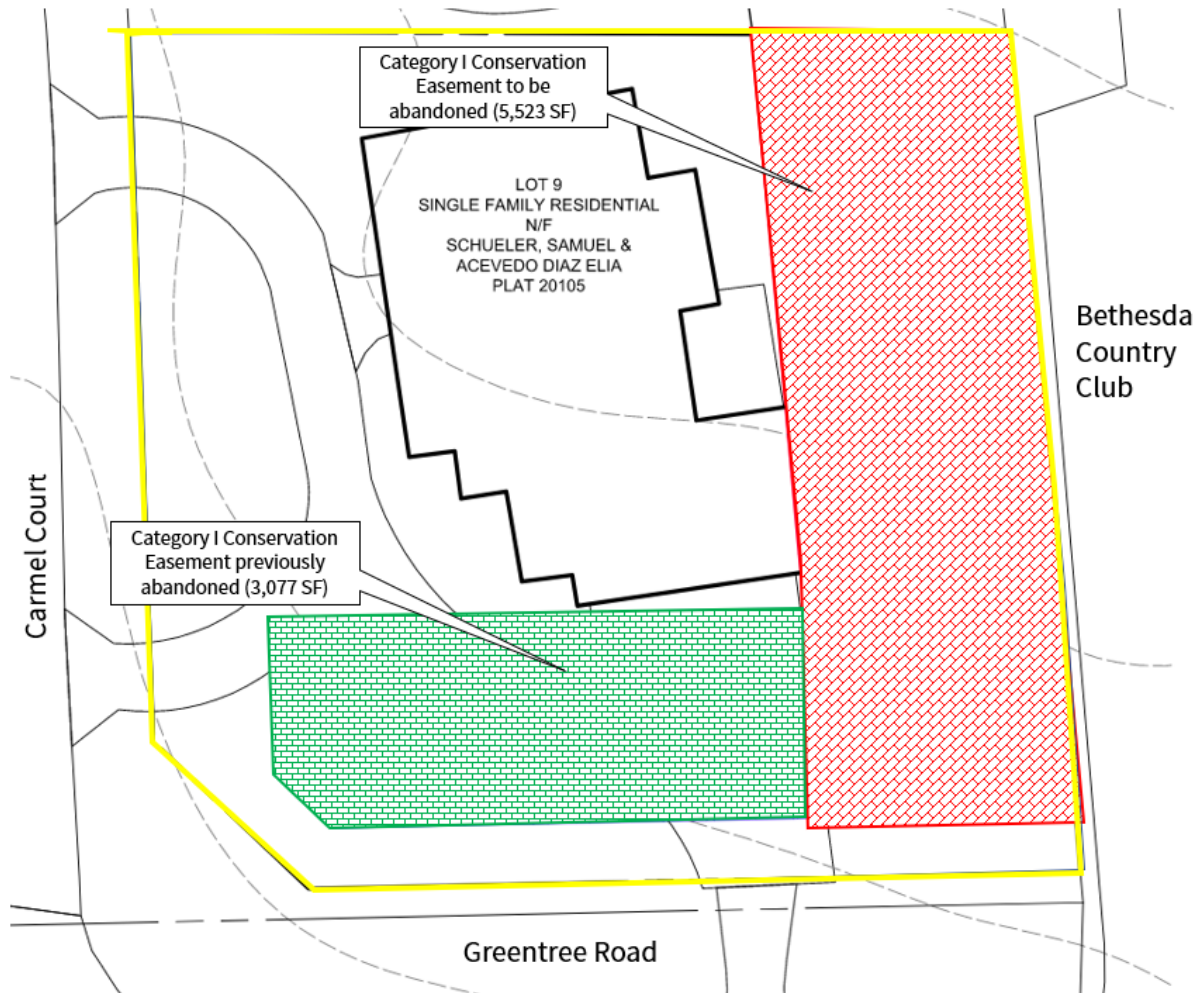


Figure 2 – FCP 11996049B - Lot 9 outlined in yellow and previously abandoned conservation easement in green and proposed conservation easement to be abandoned in red

SECTION 5

ANALYSIS AND FINDINGS

Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations states that “removal of any conservation easement must be reviewed by the Planning Board”. Onsite mitigation of easement removal is generally preferable to offsite mitigation because it provides in-kind replacement for the removal. If the easement can be relocated onsite, the Planning Board has found this to be acceptable at a 1:1 ratio. However, if opportunities to mitigate onsite are not available or preferred, the Planning Board may allow mitigation offsite at a 2:1 ratio. This mitigation policy was established by the Planning Board in November 2008.

The Final Forest Conservation Plan was originally approved in 1996. Staff’s practice of requiring conservation easements on lots has evolved since then. Over the years, Staff and the Planning Board have learned that conservation easements on lots, particularly in close proximity to the homes, often result in violations to the easements, as has occurred on this Property by the mowing that was initiated on a portion of this easement by the previous owner. Staff’s current practice is to limit conservation easements on lots where possible. When conservation easements are allowed on lots, the preference is that the lot be at least two acres in size, but no less than one acre if there is adequate space outside of the easement for a usable yard for the homeowner.

In addition, the small size of this conservation easement is not conducive to the creation of a sustainable forest. The configuration of the conservation easement does not meet the width or area criteria outlined in the definition of forest. The environmental benefits of this easement are limited.

Based on the size and configuration of the lot, and the existing development, Staff advises that there are no appropriate areas to relocate the conservation easement onsite. For these reasons, Staff recommends approval of the Applicant’s request to abandon the existing Category I Conservation Easement on Lot 9 and mitigate for its removal at a 2:1 ratio offsite, either at a M-NCPPC approved forest mitigation bank or through payment of fee-in-lieu.

SECTION 6

NOTIFICATION AND OUTREACH

The Applicant has met all proper signage and noticing requirements for the submitted Application. As of the date of this Staff Report, Staff has not received any correspondence related to this Application.

SECTION 7

CONCLUSION

As conditioned the Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. Therefore, Staff recommends approval of the limited Preliminary Plan Amendment No. 11996048B to revise the associated Final Forest Conservation Plan, with the conditions cited in this Staff Report.

ATTACHMENTS

Attachment A: MCPB Opinion for 119960480, March 11, 1996

Attachment B: MCPB Resolution No. 13-158 for 11996048A, November 18, 2013

Attachment C: Plat No. 20105