



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-006  
Preliminary Plan No. 11996048B  
Greentree Estates, Lot 9  
Date of Hearing: January 20, 2022

**JAN 27 2022**

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on March 11, 1996 the Planning Board, by Resolution, approved Preliminary Plan No. 119960480, creating 9 lots on 5.30 acres of land in the R-200 zone, located in the Greentree Estates subdivision, in the northwest quadrant of the intersection of Carmel Court and Greentree Road, in the Potomac Policy Area and Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on November 18, 2013, the Planning Board approved an amendment to Preliminary Plan No. 11996048A (MCPB No. 13-158) to modify a Category I conservation easement, located on Lot 3, at 9704 Carmel Court; and

WHEREAS, on October 15, 2021, Samuel Schueler and Elia Acevedo Diaz ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to remove an existing 5,523 square foot Category I conservation easement from the rear of Lot 9, located at 9701 Carmel Court in the Greentree Estates subdivision ("Subject Property"); and

WHEREAS Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11996048B, Greentree Estates Lot 9 ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 7, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 20, 2022, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

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Approved as to  
Legal Sufficiency: /s/ Matthew T. Mills  
M-NCPPC Legal Department

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 11996048B to remove the Category I conservation easement by adding the following conditions:<sup>1</sup>

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.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. 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". 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. Over the years, the practice of recording conservation easements on lots, particularly in close proximity to homes, has evolved based on resulting unauthorized encroachments into the conservation easements. Conservation easements on lots often result in minimal area for a usable backyard for the homeowner as in the case of the Subject Property. 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, there are no appropriate areas to relocate the conservation easement onsite;

2. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.*


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 27 2022 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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#### CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Rubin, with Chair Anderson and Commissioners Cichy, Patterson, Verma, and Rubin voting in favor of the motion at its regular meeting held on Thursday, January 20, 2022, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board