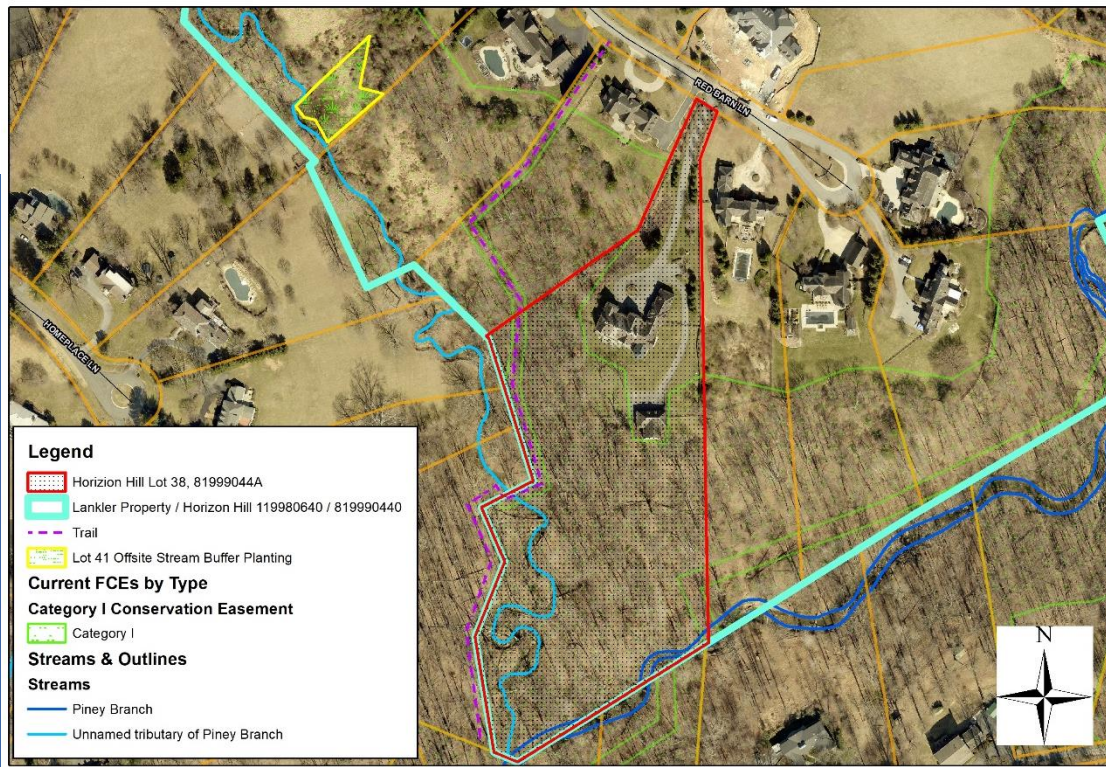


Montgomery Planning

HORIZON HILL, LOT 38

FOREST CONSERVATION PLAN AMENDMENT

NO. 81999044A



Description

In response to a violation, a request for approval of Forest Conservation Plan Amendment No. 81999044A, to remove 0.13 acres (5,663 square feet) of Category I Conservation Easement from Lot 38 in the Horizon Hill Subdivision (also known as the Lankler Property and Highgate Subdivision) and provide mitigation onsite and offsite. Located at 10813 Red Barn Lane in Potomac. 2002 Potomac Subregion Master Plan; 6.12 acres of land in the RE-2 Zone.

No. 81999044A

Completed: 8-26-2022

MCPB

Item No. 7
09-08-2022

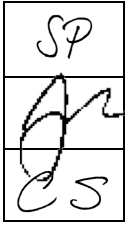
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Horizon Hill Subdivision Lot 38, 81999044A

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Summary:

Subject Property was created by Site Plan No. 819990440 which includes 6.12-acre lot and 4.73-acre forest conservation easement.

Notice of Violation was issued on December 1, 2021 for mowing and maintaining as yard approximately 7,000 square feet of Category I Conservation Easement

Staff recommends approval of Forest Conservation Plan Amendment No. 81999044A, proposing removal of 0.13 acres of Category I Conservation Easement with mitigation provided onsite and offsite. This Amendment will resolve the pending violation.

Onsite, the Amendment proposes:

- 0.5-acre forest edge mitigation consisting of non-native invasive plant treatment, supplemental planting and maintenance program
- Corrective compliance planting of mowed stream buffer areas
- Protecting a stream buffer trail by adding approximately 0.17-acres to the Category I Conservation Easement

Offsite, the Amendment proposes:

- 0.26 acres of forest planting in an existing unforested Category I Conservation Easement on Lot 41 in the same subdivision and same watershed

As of the date of the Staff Report, Staff has not received any community correspondence related to this Application.

LOCATION / PROPERTY

10813 Red Barn Lane

Horizon Hill, Lot 38

MASTER PLAN

2002 Potomac Subregion Master Plan

ZONE

RE-2

PROPERTY SIZE

6.12 acres

APPLICATION

Forest Conservation Plan Amendment

REVIEW ACCEPTANCE DATE

April 12, 2022

REVIEW BASIS

Chapter 22A

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

FOREST CONSERVATION PLAN AMENDMENT NO. 81999044A

Staff recommends approval of Forest Conservation Plan Amendment No. 81999044A (“FCP Amendment”, “Amendment”, or “FCP”) subject to the following conditions:

1. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 81999044A, the Applicant must record a new Category I Conservation Easement Agreement reflecting the entire easement area excluding the area that is authorized to be removed, as specified on the approved Final Forest Conservation Plan. The new Category I Conservation Easement must be in a form approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed prior to recordation of the Deed of Release of Conservation Easement for the existing conservation easement. The existing Category I Conservation Easement remains in full force and effect until the new Conservation Easement Agreement is recorded.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 81999044A, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Horizon Hill Lot 38 as recorded on Record Plat No. 21538 pursuant to Category I Conservation Easement Agreement Book 13178 Page 412 and filed among the County Land Records on August 8, 2000. The Deed of Release must be in a form approved by the M-NCPPC Office of General Counsel and 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 new easement is recorded and the forest planting mitigation is satisfied.
3. Within ninety (90) days of the mailing of the Planning Board resolution for Forest Conservation Plan Amendment No. 81999044A, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the new onsite forest conservation and supplemental planting, planting maintenance, including invasive species management controls, and conservation easement markers and a separate financial surety for the 0.26 acres of forest planting and maintenance requirements within portions of the existing M-NCPPC unforested Category I Conservation Easement on Horizon Hill Lot 41. A cost estimate must be approved by Staff prior to submitting the financial securities.
4. The Applicant must provide invasive species management control measures within the Conservation Easement at the direction of M-NCPPC Forest Conservation Inspection staff. The cost to control invasive species must be incorporated into the forest conservation financial sureties.

5. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat of Correction that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat of Correction must be recorded in the Montgomery County Land Records within 180 days of the mailing date of the Planning Board Resolution approving the Amendment.
6. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Forest Conservation Plan Amendment No. 81999044A, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all treatment and plantings areas specified on the FCP Amendment. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
7. The Applicant must schedule the required site inspections by the M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
8. The Applicant must install the plantings as shown on the approved Forest Conservation Plan within six (6) months of the mailing of the Planning Board Resolution approved Forest Conservation Plan Amendment No. 81999044A, or as directed by M-NCPPC Forest Conservation Inspection Staff.

SECTION 2: SITE DESCRIPTION

VICINITY

The Property is known as Horizon Hill Lot 38 and is located at 10813 Red Barn Lane in Potomac, Maryland (Figure 1) (“Property” or “Subject Property”). Shown in cross hatching on Figure 1, the Property is within the RE-2 Zone and the *Potomac Subregion Master Plan*. Figure 1 outlines, in single line, the tract area of the Horizon Hill (also known as the Lankler Property or Highgate) Subdivision. The Property is within the Watts Branch Watershed, the Piney Branch subwatershed and the Piney Branch Special Protection Area. The Piney Branch Special Protection Area is outlined in a triple line on Figure 1.

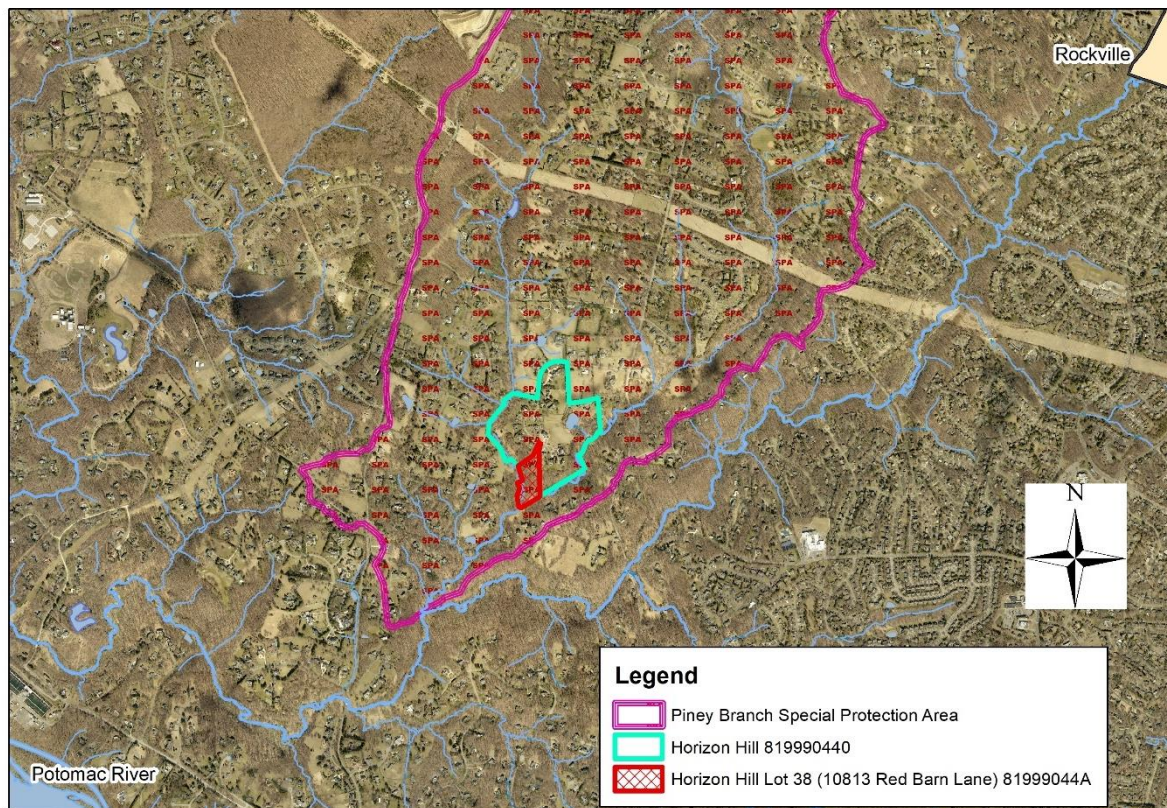


Figure 1 – Vicinity Map- Subject Property is situated in the Piney Branch Special Protection Area northeast of the Potomac River and southwest of Rockville, Maryland

PROPERTY DESCRIPTION

The 6.12-acre Subject Property was created on August 8, 2000 with the filing of Record Plat No. 21538 among the Land Records of Montgomery County, Maryland (Attachment 1). The Subject Property, as delineated by a stippled polygon in Figure 2, has a long driveway from Red Barn Lane to the house. Below the house and detached garage is a steep-sloped stream buffer of two streams: the main stem of Piney Branch Stream and an unnamed tributary of Piney Branch.

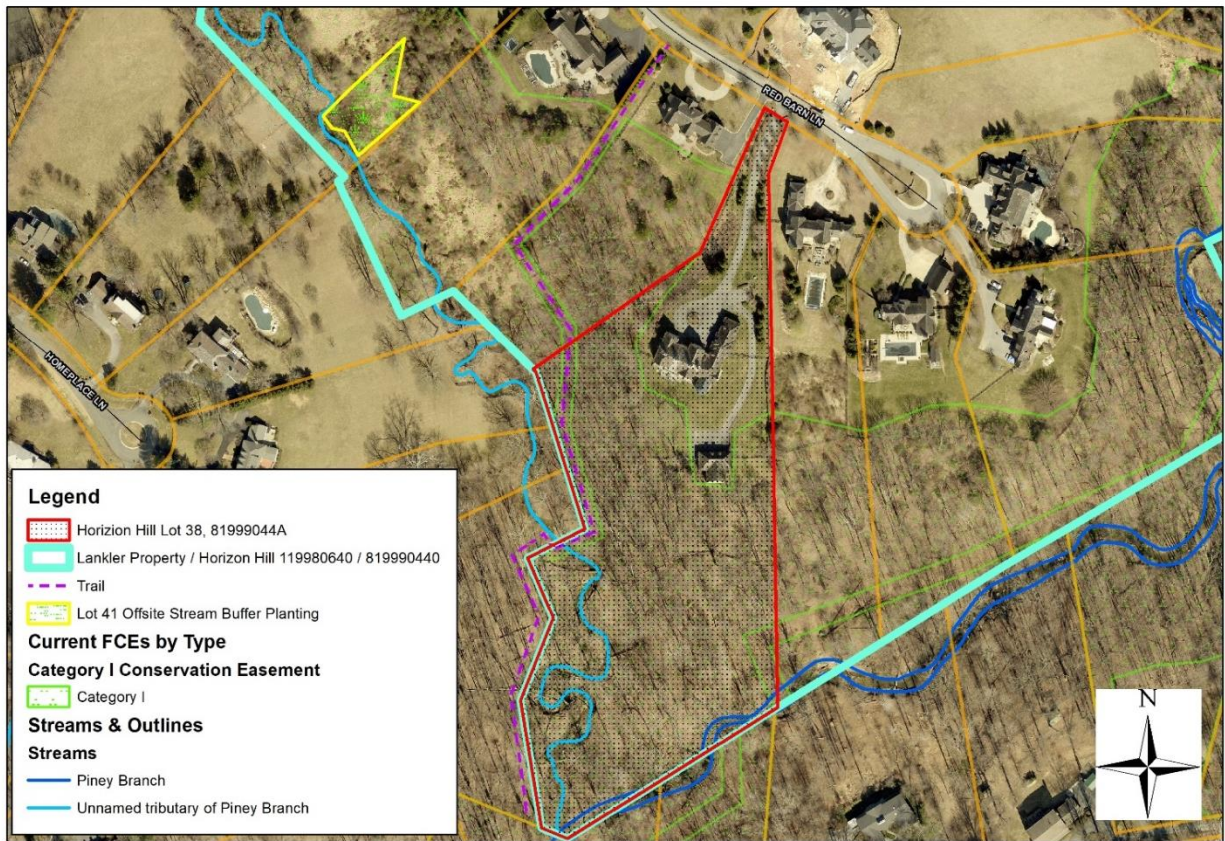


Figure 2 – Subject Property – Horizon Hill Lot 38

Record Plat No. 21538 also established and delineated the trail easement and Category I Conservation Easement area of the Property. Approximately 4.73 acres of the Property is protected within a Category I Conservation Easement. The terms of the Category I Conservation Easement Agreement are recorded among land records at Book 13178, Page 412 (Attachment 2).

The Category I Conservation Easement protects a mixed hardwood forest, erodible steep slopes, stream buffer, and some wetland and floodplain. There are two separate forest stands on the Property. Along the stream banks there are sycamore, tulip poplar and elm trees mixing with oak trees and on the steep slopes there are chestnut oak and pignut hickory trees mix with oak trees.

The original Site Plan approval also required a 20-foot equestrian and pedestrian trail, which is located on the Property but currently not protected by the forest conservation easement.

Portions of the Category I Conservation Easement behind the house and detached garage are being mown in violation of the Category I Conservation Easement Agreement. Figure 3 shows a close-up overview of the area of Conservation Easement being mowed and maintained.

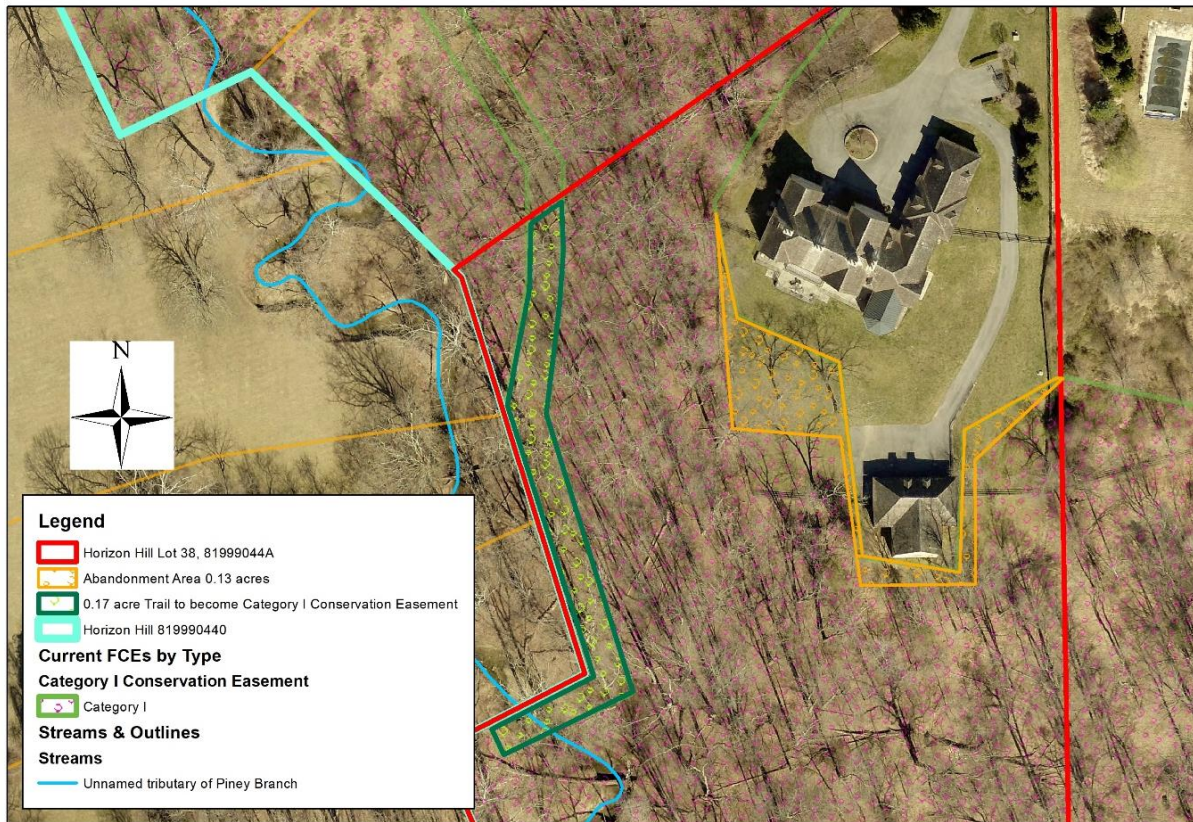


Figure 3: Close up overview Horizon Hill Lot 38, House, Garage, Conservation Easement and Features

SECTION 3: BACKGROUND

PREVIOUS APPROVALS/BACKGROUND

The Subject Property is part of the Lankler Property Subdivision, a 60- acre tract of land that was built out in phases. On March 12, 1993, the Montgomery County Planning Board approved the first phase of the development of the Lankler Property, approving Preliminary Plan No. 119910040, for 6 lots within the larger tract area. The Final Forest Conservation Plan approved with Preliminary Plan No. 119910040 shows forest conservation easements over existing forest cover.

In October 1995, the Montgomery County Council designated the Piney Branch Special Protection Area (SPA) which resulted in a water quality plan being submitted, reviewed, approved and implemented for the Lankler Property Subdivision.

In preparation for later phases of the development, a Natural Resource Inventory/ Forest Stand Delineation (NRI/FSD) was approved for the Lankler Property on November 7, 1997 (Attachment 3). The approved NRI/FSD shows the natural features of the Subject Property including where forested steep slopes meet an open grassy hilltop. The NRI/FSD shows that highly erodible and moderately erodible silt loam soil exist on steep slopes above the Piney Branch streams.

On March 5, 1998, the Montgomery County Planning Board approved Preliminary Plan No. 119980640 for 20 lots over the 60-acre tract, including all phases, and required compliance with Preliminary Forest Conservation Plan approval (Attachment 4). The Subject Property is one of the 20 lots and is included on the Preliminary Forest Conservation Plan.

On October 12, 1999, the Montgomery County Planning Board approved a Site Plan for the subdivision known as Highgate Site Plan No. 819990440 and required a Final Forest Conservation Plan to be submitted and approved showing all forest conservation easement boundaries. This Final Forest Conservation Plan, known as Final Forest Conservation Plan No. 819990440, was approved by Montgomery County Planning Staff on June 6, 2000 (Attachment 5). Page 8 of the Approved Forest Conservation Plan shows the Subject Property.

The Applicant purchased the Property in 2001 and built the house and garage on the Property in 2005 and 2006. The forest conservation inspector held a preconstruction meeting for house construction on the Subject Property February 1, 2005. The house was built closer to the Category I Conservation Easement than shown on the approved Final Forest Conservation Plan. Also, inspections were completed during construction of the horse and pedestrian trail. Portions of this trail are on the Subject Property.

NOTICE OF VIOLATION

In the summer of 2021, the forest conservation inspector was contacted by the Applicant's contractor about building a pool on the Property. The forest conservation inspector determined the designed pool plan showed pool construction within portions of an existing conservation easement. The Applicant and the Inspector discussed how a pool and patio construction are not permitted within the existing conservation easement. The Inspector noted a much smaller pool and patio could be built between the house and the existing Category I Conservation Easement. At a property inspection, the forest conservation inspector determined portions of the conservation easement behind the house and detached garage were being mowed and maintained as yard. A Notice of Violation was issued to the Property Owner on December 1, 2021 for mowing within the forest conservation easement (Attachment 6). After issuing the Notice of Violation and at the forest conservation inspector's

direction, the Applicant replanted a portion of the mowed conservation easement and secured M-NCPPC approval for a fence in the conservation easement.

SECTION 4: PROPOSAL

PROPOSAL

The Applicant wishes to address the mowing violation and proposed pool and patio construction project with the submitted Forest Conservation Plan Amendment. The Amendment proposes releasing 0.13 acres of Category I Conservation Easement to allow for a pool and patio construction project and maintained space near an existing detached garage (Attachment 7). The Applicant's July 13, 2022 submittal letter is attached to this Staff Report as Attachment 8. The Applicant anticipates needing a sediment control permit for the pool and patio project.

The 0.13-acre forest conservation easement release area is shown as cross hatch on Figure 3. No areas of protected stream buffer are to be removed from Category I Conservation Easement. Approximately 0.17 acres of unprotected stream buffer designated as a natural surface equestrian trail easement is to be added to the Category I Conservation Easement.

Three trees are to be removed consisting of a black cherry tree, a walnut tree, and a specimen black oak tree (Tree No. 238).

The specimen black oak tree (Tree No. 238) is in poor condition with large dead limbs over the existing yard. This tree will be impacted by the proposed pool and patio construction. Please see attached Tree Variance Report listing the specimen tree to be impacted (Attachment 9). Staff recommends approval of the Tree Variance with mitigation planting, as discussed in further detail below.



Figure 3: 81999044A – Proposed 0.13-acre Category I Conservation Easement release and planting

MITIGATION

The Applicant proposes both onsite and offsite mitigation. Onsite mitigation consists of forest edge management and supplemental planting. The Amendment includes a 0.50-acre forest enhancement program, shown as a stipple pattern in Figure 3. Where the retained forest save edge is within 50 feet of the maintained yard, careful non-native invasive plant management on non-native invasive plants including oriental bittersweet and porcelainberry vines will be completed over 5 years. This treatment area is shown on the Forest Conservation Plan Amendment and will be included within a required Maintenance and Management Agreement. After at least two years of careful non-native invasive plant management, fifteen (15) supplemental forest trees will be planted.

To correct the forest conservation Notice of Violation, the Amendment proposes planting mowed areas of conservation easement. A 0.11-acre area of mowed stream buffer within the existing

Category I Conservation Easement will be restored with forest planting. Split rail fencing with wire mesh is proposed at the Category I Conservation Easement boundary closest to the backyard and this planting.

The Amendment proposes adding 0.17 acres (7,405 square feet) of unprotected forest stream buffer on the property to forest conservation easement. This trail easement contained a natural surface horse and pedestrian trail constructed in 2005 and 2006. The approved Site Plan resolution required that this trail be natural surface and consist of a 4-foot path with two 4-foot shoulders. However, this trail easement was excluded from the existing Category I Conservation Easement at the time of Record Plat and connects from Piney Branch stream to Red Barn Lane on Lot 38 and Lot 39. The trail is on private property. The natural surface trail, as conditioned as part of the approved Site Plan, is permitted to be within a Category I Conservation Easement if shown on the approved Forest Conservation Plan. Currently, the trail is overgrown. Figure 4 is an August 2022 photo of the overgrown trail on the property. This Amendment includes adding the entire 20-foot trail easement where it occurs on Lot 38 to Category 1 Conservation Easement. The new Category I Conservation Easement Agreement will include notes on how the trail as conditioned by approved Site Plan No. 819990440 is permitted with the Conservation Easement.



Figure 4 – Photo of Current Trail Easement on the Property – to be added to Category I Conservation Easement

Mitigation is to be met offsite at the two to one forest planting ratio (2:1) totaling 0.26 acres of forest planting. The offsite planting will occur within the Piney Branch watershed in a nearby unforested stream buffer Category I Conservation Easement on Horizon Hill Lot 41, 10807 Red Barn Lane. This property is also part of the Horizon Hill Site Plan No. 819990440. The stream buffer area to be planted was placed in Category I Conservation Easement but not required to be planted. The proposed planting area remains unforested. A Planting Plan for Lot 41 is included with the Amendment (Figure 5). The Property Owner of Lot 41 has signed a document permitting the Applicant to reforest portions of the Conservation Easement area of their property pursuant to the Forest Conservation Plan Amendment (Attachment 10).

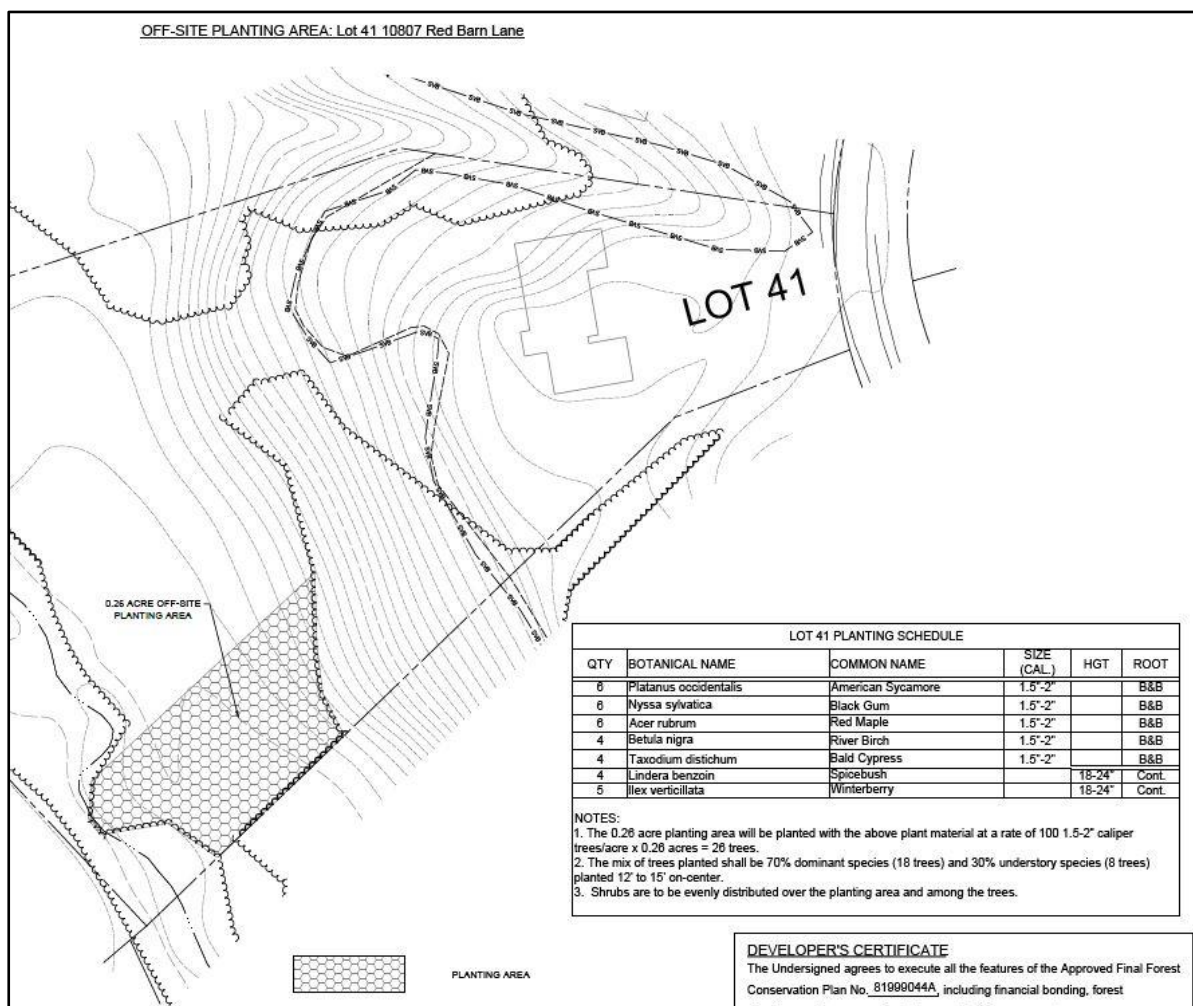


Figure 5 – Horizon Hill Lot 41, 0.26-acre offsite mitigation planting

SECTION 5: ANALYSIS AND FINDINGS

STAFF REVIEW

This Amendment proposes release of 0.13 acres of Category I Conservation Easement from the rear yard of Horizon Hill Lot 38 to allow for pool and patio construction and maintenance of existing backyard improvements.

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.

The 0.50-acre forest edge maintenance and planting are the onsite mitigation portion of the Amendment. The 0.11-acre restoration planting and 0.17-acre forest retention of the trail area onsite are required to comply with the existing approved Forest Conservation Plan approved as part of the subdivision plan. The proposed split rail mesh fence will act as forest conservation easement boundary markers. See Figure 6 for proposed onsite conservation easement changes.

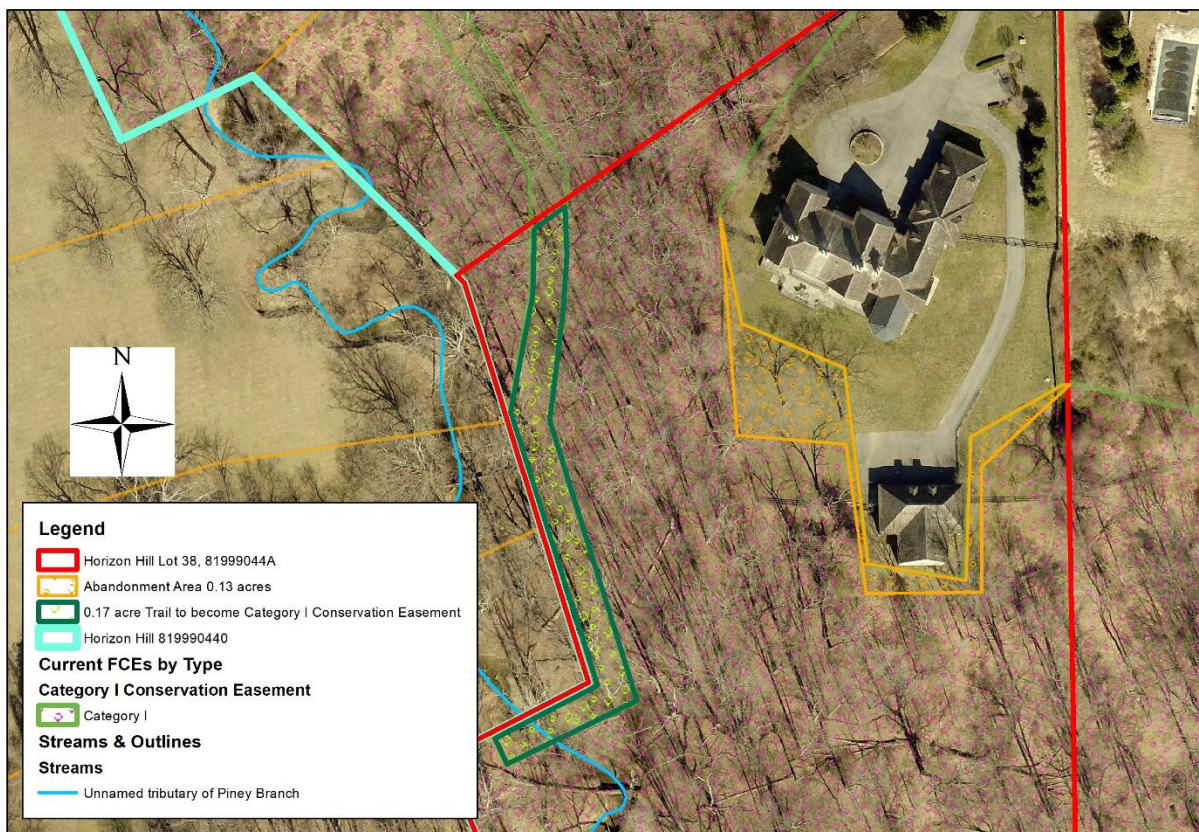


Figure 6: Map showing proposed onsite conservation easement changes

There are three trees proposed to be removed. All the proposed removals would be affected by the pool and patio construction. One specimen tree to be removed is in poor condition and its removal is not related to any proposed pool construction but its current poor condition and location next to maintained yard. Four black gum trees are proposed to be planted as mitigation for removal of the specimen black oak.

A total of thirty (30) trees and eleven (11) shrubs will be planted on the Property as part of this Amendment. The Amendment results in a net increase of 0.04 acres of Category I Conservation Easement on the Property.

The offsite mitigation of 0.26 acres of forest planting is on a nearby property, Horizon Hill Lot 41. Horizon Hill Lot 41 is in the Piney Branch Watershed and the same subdivision as the Subject Property. The offsite planting area on Horizon Hill Lot 41 is within Category I Conservation Easement that was not required to be planted as part of Site Plan No. 819990440. Due to the overpopulation of deer in the area and the heavy non-native invasive plant pressure, forest regeneration within protected forest stream buffer areas has not occurred at this location. This 0.26-acre planting, consisting of 26 trees and 9 shrubs, will improve the forest condition by providing growing trees with their roots, wood, leaves and flowers to support wildlife, habitat, and soil retention, air, and water quality.

FOREST CONSERVATION VARIANCE

Section 22A-12(b) (3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a Variance. An Applicant for a Variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater in DBH; are part of an historic site or designated with an historic structure; are designated as national, State or County champion trees of the species; or trees, shrubs or plants that designated as Federal or State, rare, threatened, or endangered species.

The Applicant submitted a variance request for impact to a specimen tree in a letter dated April 8, 2022 (Attachment 9). The Applicant proposes to remove one (1) specimen black oak tree. The potential impact is from cutting and filling existing ground in the root zone of the tree during pool and patio construction. The tree is hazardous in its current condition with severe dieback and only a few live branches in the canopy. Amendment proposes planting four (4) three- inch caliper black gum trees as mitigation for this tree's removal.

The Applicant's Variance Report Letter (Attachment 9) demonstrates that without a Variance, the Applicant would be denied residential use of his backyard as the failure of large dead limbs from the specimen oak tree that are within striking distance of the house would prevent typical backyard activities from being safely done.

Section 22A-21 of the Forest Conservation Law sets forth the findings that must be made for a Variance to be granted. Staff has made the following determinations in the review of the Variance request and the proposed Forest Conservation Plan.

In accordance with Section 22A-21(a), the Applicant requested a Variance, and Staff agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship as the poor condition of the tree and its location next to maintained rear yard necessitates the tree's removal for safe use of the residential property. The Forest Conservation Plan Amendment provides mitigation plantings for the tree's removal. Staff has reviewed this Application and based on the existing conditions on the Subject Property, finds that there is an unwarranted hardship.

Tree Variance Findings

Will not confer on the Applicant a special privilege that would be denied to other Applicants.

The approved Site Plan and Forest Conservation Plan for development of the property and subsequent house construction resulted in the property's house being constructed close to stream buffer and forest retention areas. The existing topographic features of the property and restrictions of the pan handle lot resulted in a buildable area close to retained forest. Tree No. 238 is close to the forest edge and is within striking distance of the existing house. Due to large dead limbs in the tree and the consequences of failure denial of a variance would result in an unwarranted hardship.

Is not based on conditions or circumstances which are the result of the actions of the Applicant.

The Applicant's action did not result in the declining health of the tree. This black oak trees survived at the forest edge and survived house construction in 2005 and 2006. The tree's location at the edge of the forest conservation easement and near the existing backyard and house are not the results of the Applicant. The tree is in a conservation easement that was established prior to the Applicant purchasing the property in 2001.

Is not based on a condition relating to land or building use, either permitted or non-conforming on a neighboring property.

The condition of the tree and proposed impact from a pool and patio project is not related to land or building use on a neighboring property. The tree is located in the rear side yard of the subject residential property and is surrounded by either the rear grass yard of the subject

property or forest conservation easement. The Variance request is not the result of any action or event resulting from a neighboring property.

Will not violate State water quality standards or cause measurable degradation in water quality.

The Variance will not violate State water quality standards or cause measurable degradation in water quality. To minimize soil or ground impact, the tree's cut stump is to remain intact. Also root protection measures and sediment control measures will be implemented as part of a sediment control permit for the proposed pool and patio construction. Four (4) black gum trees will be planted on the property as mitigation in the stream buffer area of the property.

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 Forest Conservation Plan Amendment No. 81999044A to amend the Forest Conservation Plan with conditions cited in the Staff Report, to release 0.13 acres of Category I Conservation Easement, establish a Category I Conservation Easement over the trail easement and provide forest protection and planting onsite and offsite forest planting mitigation of 0.26 acres.

ATTACHMENTS

Attachment 1: Record Plat No. 21538

Attachment 2: Category I Conservation Easement Agreement – Book 13178 Page 412

Attachment 3: Approved Natural Resource Inventory / Forest Stand Delineation No. 419980490

Attachment 4: 119980640 Planning Board Resolution

Attachment 5: 819990440 Approved Site Plan Resolution and Approved Final Forest Conservation Plan

Attachment 6: Notice of Violation

Attachment 7: Forest Conservation Plan Amendment 81999044A

Attachment 8: July 13, 2022 Applicant Letter

Attachment 9: Variance Report

Attachment 10: Horizon Hill Lot 41 Owner Access Letter