

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-094

Forest Conservation Plan No. 81999044A

Horizon Hill Lot 38

Date of Hearing: September 8, 2022

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on April 12, 2022, Gary Farha ("Applicant", "Property Owner") filed an application for approval to amend a Forest Conservation Plan that would remove 0.13 acres of Category I Conservation Easement and mitigate onsite and offsite on the property located at 10813 Red Barn Lane ("Subject Property") in in the 2002 *Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. 81999044A, Horizon Hill Lot 38 ("Forest Conservation Plan" or "Application" or "Amendment") 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 August 26, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 8, 2022, the Planning Board held a public hearing on the Application and voted to approve the Forest Conservation Plan on motion of Commissioner Rubin; seconded by Vice Chair Verma; with a vote of 5-0, Chair Anderson, Commissioners Cichy, Patterson, Rubin and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. 81999044A on the Subject Property, subject to the following conditions:<sup>1</sup>

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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 in interest to the terms of this approval.

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

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 must remain 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 new Conservation Easement and references the Book and 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 date 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.
9. The Applicant may start approved clearing, grading and construction within the limits of disturbance approved on the Forest Conservation Plan after the new Forest Conservation Easement Deed is recorded, the Deed of Release of the existing Conservation Easement is submitted to Staff, Staff approves of all of the required financial securities, Staff and the Applicant conduct the preplanting meeting for new planting and non-native invasive plant management, the Applicant stakes the new Category I Conservation Easement boundary, the Applicant installs permanent conservation easement boundary fencing, and after the Applicant successfully holds a preconstruction meeting including the Department of Permitting Services Sediment Control Inspector and the M-NCPPC Forest Conservation Inspector at the Property. Approved grading may begin at the Property only after the Department of Permitting Services Sediment Control Inspector approves of perimeter sediment control measures and the M-NCPPC Forest Conservation Inspector approves of perimeter forest save measures.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff

Report, which the Board hereby adopts and incorporates by reference, 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, and ensures the protection of environmentally sensitive features.*

#### A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Amendment to remove 0.13 acres of Category I Conservation Easement provides 0.50 acres of onsite forest non-native invasive plant management, onsite stream buffer planting, forest protection for an approved trail and provides 0.26 acres of stream buffer forest planting nearby on Horizon Hill Lot 41.

The reforestation of mowed stream buffer and supplemental planting in existing forest will help reduce stormwater runoff and provide more habitat for wildlife on the steep slopes and erodible soils of the Property. The proposal results in a net increase of 0.04 acres of forest protection and a total of 4.77 acres of Category I Conservation Easement protection on the Property.

The offsite forest planting on Lot 41 is within the Horizon Hill Subdivision and in the Piney Branch Watershed and Piney Branch Special Protection Area. The 0.26-acre area to be planted is within unforested stream buffer and Category I Conservation Easement. The forest planting and five-year maintenance and management program will establish forest in an environmentally sensitive area where deer browse and non-native invasive vines have prevented natural forest regeneration.

#### B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of 1 Protected Tree as identified in the Staff Report. The specimen black oak is in poor condition with large dead limbs and only a few live leaves. There is high risk of failure of parts of the tree falling onto the rear yard or the house. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.



Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approves replacement of Tree No. 238 with a mitigation planting of four (4) three-inch caliper black gum trees, to be planted in the stream buffer area of the property.

The Board makes the following findings necessary to grant the Variance:

- 1. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The approved Forest Conservation Plan for development of the Property and subsequent construction resulted in the house being constructed close to the stream buffer and forest retention areas. The existing topographic features of the Property and setback 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 within striking distance of the house. Due to large dead limbs in the tree and the consequences of failure, denial of a variance would result in an unwarranted hardship. Because the Variance request is based on the location of the structure, topographic features of the Property, and failing health of the tree, granting the Variance would not confer a special privilege on the Applicant that would be denied to other applicants.

- 2. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The need for the Variance is based on the existing condition of the Property and the poor health of the tree, neither of which were the result of the Applicant's actions. The Applicant's actions did not result in the declining health of the tree, as this black oak tree 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.

- 3. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The condition of the tree and proposed impact from construction of a pool and patio on the Property is not related to land or building use on a neighboring property. The tree is located in the rear side yard of the Subject 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.

- 4. Granting the Variance 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) three-inch caliper black gum trees, to be planted in the stream buffer area of the Property, are likely to increase the forest stream buffer's ability to filter and slow stormwater runoff.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is SEP 21 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 Rubin, seconded by Vice Chair Verma, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, September 15, 2022, in Wheaton, Maryland and via video conference.



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Casey Anderson, Chair  
Montgomery County Planning Board

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Horizon Hill Lot 38

81999044A  
September 8 2022