



**Cashell Estates; Preliminary Forest Conservation Plan No. CU2016-11**

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*KRR*

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**Completed: 09/23/2016**

**Description**

**A. Preliminary Forest Conservation Plan CU2016-11**

Request for approval of a Preliminary Forest Conservation Plan as part of a Conditional Use application to construct 19 townhomes; located at 7009 Garrett Road, Derwood, MD; 2.00 acres; identified as Part of Lot 5, Block B on Tax Map GT 341, at the intersection of Garrett Road and Redland Road, approximately 2,300 feet south of its intersection with Muncaster Mill Road; RE-1 Zone; Upper Rock Creek Master Plan; Upper Rock Creek – Mill Creek Watershed.

**Applicant:** Garrett Gateway Partners, LLC  
**Filing Date:** February 4, 2016  
**Review Basis:** Chapter 22A, Forest Conservation Law



**Summary**

- **Staff Recommendation: Approval with Conditions**
- The Planning Board must take action on the Forest Conservation Plan for Conditional Use Application CU2016-11. The development proposed under this application fully complies with Chapter 22A, the Forest Conservation Law.

**STAFF RECOMMENDATION:** Approval of Preliminary Forest Conservation Plan (“PFCP”) No. CU2016-11, subject to the following conditions:

1. This PFCP is conditionally approved and final approval is contingent upon approval by the Montgomery County Hearing Examiner of Conditional Use No. CU2016-11.
2. Applicant must submit a Final Forest Conservation Plan (“FFCP”) to M-NCPPC Staff for review with the Preliminary Plan submittal.
3. The FFCP must be consistent with the final approved PFCP.
4. Applicant must obtain approval of the Final Forest Conservation Plan prior to recordation of the plat.
5. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank for the total afforestation/reforestation requirement prior to any clearing, grading or demolition on the project site.
6. The Applicant must provide mitigation for the loss of trees per the approved variance in the form of eleven (11) native canopy trees with a minimum size of three (3) caliper inches for the loss of trees per the approved variance. The trees must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
7. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
8. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.

#### **SITE DESCRIPTION**

The subject property is identified as Part of Lot 5, Block B, Cashell Estates on Tax Map GT 341, plat number 2038 and is located at 7009 Garrett Road, at the intersection with Redland Road approximately 2,300 feet south of the intersection of Redland Road and Muncaster Mill Road in the Upper Rock Creek Master Plan area (“Subject Property” “Property”). The Property is zoned RE-1 and is 2.00 acres in size. The Property currently has a single family detached home located adjacent to the northern Property line with an entry drive off of Garrett Road at the southern Property line. The Property is kept in grass with some large individual trees present. There is a gentle 6.7 percent slope from the northern Property line to the southern Property line. There are no steep slopes, highly erodible soils, or 100-year floodplains on the Property. The Property contains three (3) specimen trees ( $\geq 30$  inches Diameter at Breast Height (“DBH”)) that will require a Planning Board approved tree variance to impact or remove.



**Figure 1. Project Vicinity**

Neighboring properties to the north and west are zoned R-200 and the properties to the east and south are zoned RE-1. The neighboring land uses to the north and east are Maryland State owned property, M-NCPPC Park property to the west across Redland Road and single family residential to the south across Garrett Road (Figure 2).

**PROJECT DESCRIPTION**

The PFCP (Attachment A) was prepared as part of Conditional Use Application No. CU2016-11 (“Application”). This Application proposes to construct nineteen (19) townhomes in order to implement Montgomery County’s Design for Life criteria on new residential construction. While the Planning Board is technically advisory on Hearing Examiner applications per 59.7.3.1 of the Zoning Ordinance, the Planning Board must make a finding that the pending Application complies with Chapter 22A and approve the Forest Conservation Plan.



**Figure 2. 2015 Aerial Photograph of Project Site**

## **ANALYSIS AND FINDINGS**

### **Forest Conservation**

The Application meets the requirements of Chapter 22A of the Montgomery County code. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on June 23, 2015. There are no forest or environmentally sensitive features on the Property. A Preliminary Forest Conservation Plan has been submitted for review as part of this Application (Attachment A). This project is not being built under the Optional Method for Development. As a result, Section 22A-12(f), the Montgomery County code requiring that afforestation be met onsite, does not apply. However, development of this site generates a 0.36-acre afforestation planting requirement which will be met by purchasing credits in an off-site forest mitigation bank.

### **Forest Conservation Variance**

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or

plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to high priority vegetation, including disturbance to the 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. Development of the Property requires impact to trees identified as high priority for retention and protection, therefore, the Applicant has submitted a variance request for these impacts.

Variance Request - The Applicant submitted a variance request in a letter dated January 29, 2016 (Attachment B). The Applicant proposes to remove three (3) specimen trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County code (Table 1).

Tree Number	Species	DBH Inches	Status
1	Silver Maple ( <i>Acer saccharinum</i> )	44"	To be removed. Tree is in fair to poor condition with dieback in the canopy and hollowness in the main trunk.
3	Silver Maple ( <i>Acer saccharinum</i> )	38"	To be removed. Tree is in fair to poor condition with evidence of lightning damage and hollowness in the main trunk.
4	American Beech ( <i>Fagus grandifolia</i> )	49"	To be removed. Tree is in good condition.

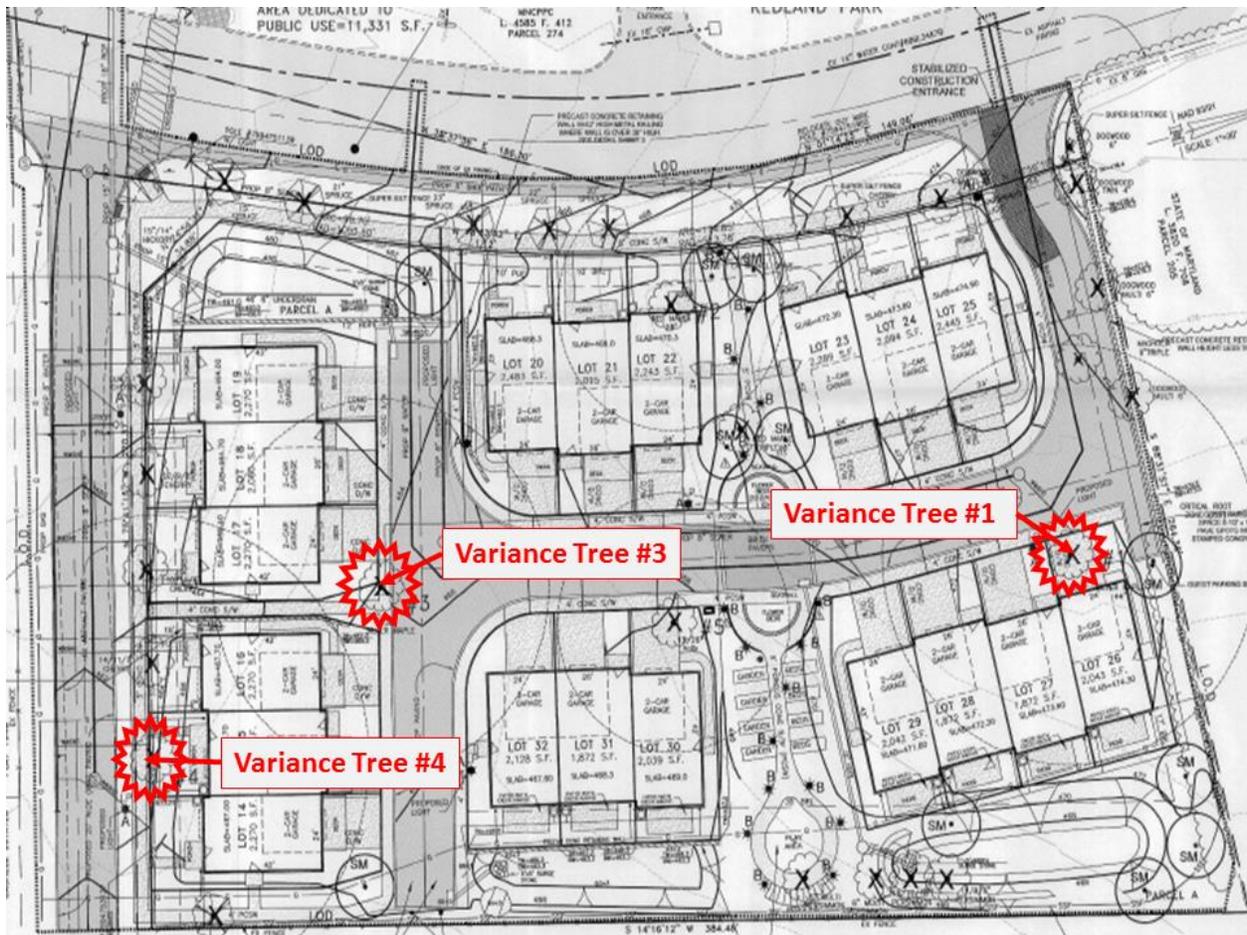
**Table 1: Variance Trees to be impacted or removed**

Unwarranted Hardship Basis

Per Section 22A-21(a), an applicant may request a variance from Chapter 22A if the applicant can demonstrate that enforcement of Chapter 22A would result in an unwarranted hardship.

In this particular case, the Applicant is faced with having to remove three (3) variance trees. All of the trees are within the project boundary. Trees #1 and #3 are located more internally to the site while Tree #4 is located along the southern property line partially within the right-of-way of Garrett Road (Figure 3).

The arboriculture industry standard for construction impacts to trees is to limit those impacts to no more than approximately 30 percent of the Critical Root Zone (CRZ). More than 30 percent impact to the CRZ and the overall healthy viability of the tree comes into question. Trees #1 and #3 are proposed to have 100 percent of their respective CRZs impacted while Tree #4 will have approximately 60 percent of its CRZ impacted.



**Figure 3. PFCP showing location of 3 variance trees**

Trees #1 and #3 are internal to the project site and located in such a fashion that protection of these trees becomes almost impossible. As this site is part of the Design for Life initiative, access to and throughout the site must meet ADA requirements. This results in having to minimize the use of retaining walls and steps to take up grade and to substantially regrade the site in order to keep slope requirements within ADA Guidelines. By not allowing the variance request it would create an unwarranted hardship to develop this site and not impact less than 30 percent of the CRZ's of Trees #1 and #3.

Tree #4 is located partially within the right-of-way of Garrett Road and the impacts or removal of the tree are necessary to make roadway improvements, install the sidewalk and install the utilities. Tree #4 will be impacted no matter what type of development occurs on this site since any applicant would be required to provide necessary improvements to Garrett Road. As a result, not being able to request a variance to remove this tree constitutes an unwarranted hardship on this Applicant to develop this site.

Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. M-NCPPC

staff ("Staff") has made the following determinations in the review of the variance request and the proposed forest conservation plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal of the three trees is due to the location of the trees and necessary site design requirement. The Applicant proposes removal of the three trees with mitigation. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this conditional use application.

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

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *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. The specimen trees being removed are not located within a stream buffer. The Application proposes mitigation for the removal of these three trees by planting eleven larger caliper trees on-site. The eleven mitigation trees will eventually provide more shade and more groundwater uptake than the existing three trees currently provide. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There are three (3) trees proposed for removal in this variance request which when added together results in a total of 131 inches of DBH being removed. For removal of specimen trees associated with a variance request, Staff recommends mitigation for the tree loss by replacing the total number of DBH removed with  $\frac{1}{4}$  of the amount of inches replanted. This results in a total mitigation of 32.75 inches of replanted trees. In this case, the Applicant proposes to plant eleven (11) 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of the rights-of-way for Redland and Garrett Roads, outside of any utility easements and these trees are not to be counted as an element of the site screening requirements.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on

February 19, 2016. Under Section 22A-19(c), the County Arborist has 30 days to provide a recommendation back to the Planning Board, otherwise the recommendation must be presumed to be favorable. Staff has not received a response from the County Arborist within the 30 day deadline, therefore, the recommendation is favorable.

Variance Recommendation - Staff recommends approval of the variance request.

## **CONCLUSION**

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve Applicant's request for a variance from Chapter 22A and the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

## **Attachments**

Attachment A – Preliminary Forest Conservation Plan

Attachment B – Tree Variance Request Letter

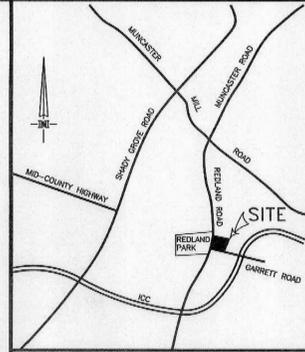
SOIL DATA			
SYMBOL	DESCRIPTION	PRIME FARMLAND	HIGHLY ERODIBLE
2B	GLENELG SILT LOAM 3-8% SLOPES	YES	NO

NOTE: ALL SOIL ON SITE IS 2B, GLENELG SILT LOAM.

FOREST STAND SUMMARY TABLE	
TOTAL SITE AREA	2.00 ACRES
TOTAL ROAD DEDICATION	0.26 ACRES
NET PROPERTY AREA	1.74 ACRES
DISTURBED AREA IN R.O.W./OFFSITE	0.66 ACRES
TOTAL TRACK AREA	2.40 ACRES
TOTAL FLOODPLAIN ON SITE	0.00 ACRES
FORESTED FLOODPLAIN ON SITE	0.00 ACRES
EXISTING FOREST ON SITE	0.00 ACRES
STREAM BUFFERS	0.00 ACRES
FORESTED STREAM BUFFER	0.00 ACRES
ANTICIPATED FOREST CLEARING	0.00 ACRES

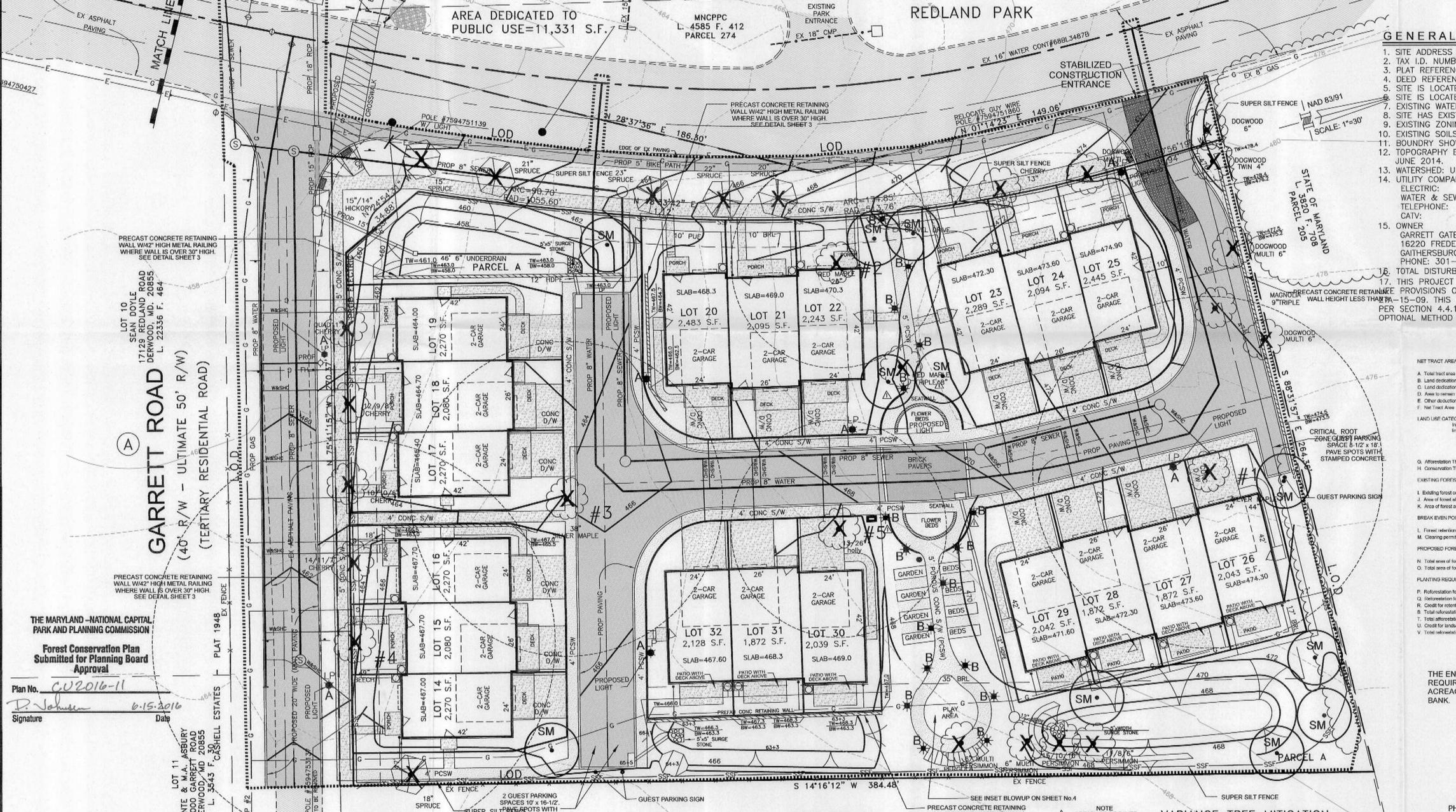
DATA TABLE	
ACREAGE OF TRACT	2.40 ACRES
ACREAGE OF TRACT REMAINING IN AGRICULTURAL USE	0.00 ACRES
ACREAGE OF ROAD AND UTILITY ROW'S WHICH WILL NOT BE IMPROVED AS PART OF THE DEVELOPMENT APPLICATION	0.00 ACRES
ACREAGE OF TOTAL EXISTING FOREST	0.00 ACRES
ACREAGE OF FOREST RETENTION	0.00 ACRES
ACREAGE OF TOTAL FOREST CLEARED	0.00 ACRES
LAND USE CATEGORY AND CONSERVATION / AFFORESTATION THRESHOLDS FROM SECTION 22A-12(1) OF THE FOREST CONSERVATION LAW	HOR
ACREAGE OF FOREST RETAINED, CLEARED AND PLANTED WITHIN NETLANDS	0.00 ACRES
ACREAGE OF FOREST RETAINED, CLEARED AND PLANTED WITHIN 100 YEAR FLOODPLAIN	0.00 ACRES
ACREAGE OF FOREST RETAINED, CLEARED AND PLANTED WITHIN STREAM BUFFERS	0.00 ACRES
ACREAGE OF FOREST RETAINED, CLEARED AND PLANTED WITHIN PRIORITY AREAS	0.00 ACRES
LINEAR FEET AND AVERAGE WIDTH OF STREAM BUFFER PROVIDED ON EACH SIDE OF STREAMS	NONE

LEGEND	
---	PROPERTY LINE
---	EXISTING CONTOUR
---	PROPOSED CONTOUR
---	L.O.D.
---	LIMIT OF DISTURBANCE
---	TREE LINE
---	EXISTING OVERHEAD LINES
---	EXISTING WATER LINES
---	EXISTING SEWER LINES
---	EXISTING STORM DRAIN
---	EXISTING UNDERGROUND GAS LINES
---	EXISTING UNDERGROUND ELECTRICAL LINES
---	EXISTING UNDERGROUND TELEPHONE / CABLE LINES
---	EXISTING WOOD FENCE
---	EXISTING WIRE FENCE
---	EXISTING RAIL FENCE
---	EXISTING DECIDUOUS TREE
---	EXISTING CONIFER TREE
---	EXISTING TREE WITH CRITICAL ROOT ZONE



VICINITY MAP  
SCALE: 1" = 2000'  
ADC MAP 46 - GRID B/C-3

**REDLAND ROAD**  
(70' R/W)  
(PRIMARY RESIDENTIAL ROAD)



- GENERAL NOTES**
- SITE ADDRESS IS 7009 GARRETT ROAD, DERWOOD, MD 20855
  - TAX I.D. NUMBER: 04-00118126
  - PLAT REFERENCE: PLAT 2038
  - DEED REFERENCE: LIBER 49677 FOLIO 284.
  - SITE IS LOCATED ON TAX MAP GT-341.
  - SITE IS LOCATED ON WSSC 200 SHEET No. 223-NW-07.
  - EXISTING WATER AND SEWER CATEGORY IS W-3 & S-3.
  - SITE HAS EXISTING WATER AND SEWER AVAILABLE.
  - EXISTING ZONING IS RE-1
  - EXISTING SOILS ARE 2B, GLENELG SILT LOAM, 3-8% SLOPES.
  - BOUNDARY SHOWN FROM AVAILABLE DEEDS AND PLATS.
  - TOPOGRAPHY BY FIELD SURVEY BY P.G. ASSOCIATES, INC. JUNE 2014.
  - WATERSHED: UPPER ROCK CREEK, CLASS IV
  - UTILITY COMPANIES:  
ELECTRIC: PEPCO  
WATER & SEWER: WSSC  
TELEPHONE: VERIZON  
CATV: COMCAST
  - OWNER: GARRETT GATEWAY PARTNERS, LLC  
16220 FREDERICK ROAD, SUITE 300  
GAITHERSBURG, MD. 20877  
PHONE: 301-208-0250
  - TOTAL DISTURBED AREA: 104,544 S.F. / 2.40 ACRES
  - THIS PROJECT SHALL BE DEVELOPED UNDER THE DESIGN FOR PROVISIONS OF ORDINANCE 18-02 AND AS MODIFIED BY 15-09. THIS CONDITIONAL USE PLAN SHALL BE DESIGNED PER SECTION 4.4.12.C TOWNHOUSE MEDIUM DENSITY ZONE (TMD), OPTIONAL METHOD DEVELOPMENT STANDARDS.

NET TRACT AREA:	
A. Total tract area	2.40
B. Land dedication areas (parks, county facility, etc.)	0.00
C. Land dedication for roads or utilities (not being constructed by this plan)	0.00
D. Areas to remain in or converted to agricultural production	0.00
E. Other deductions (specify)	0.00
F. Net Tract Area	2.40

LAND USE CATEGORY (from Tract Taxation Manual)	
Area of forest above afforestation threshold	15% x F = 0.36
Area of forest above conservation threshold	20% x F = 0.48

EXISTING FOREST COVER:	
I. Existing forest cover	0.00
J. Area of forest above afforestation threshold	0.00
K. Area of forest above conservation threshold	0.00

PROPOSED FOREST CLEARING:	
N. Total area of forest to be cleared	0.00
O. Total area of forest to be retained	0.00

PLANTING REQUIREMENTS:	
P. Reforestation for clearing above conservation threshold	0.00
Q. Reforestation for clearing below conservation threshold	0.00
R. Credit for retention above conservation threshold	0.00
S. Total reforestation required	0.00
T. Total afforestation required	0.36
U. Credit for landscaping (may not exceed 20% of "S")	0.00
V. Total reforestation and afforestation required	0.36

THE ENTIRE AFFORESTATION/REFORESTATION REQUIREMENT WILL BE MET BY TAKING THE ACREAGE TO AN OFF-SITE FOREST MITIGATION BANK.

PACKARD & ASSOCIATES, LLC  
16220 FREDERICK ROAD, SUITE 300  
GAITHERSBURG, MARYLAND 20877  
PHONE: 301-208-0250 \* FAX: 301-208-1270

Plan Prepared by:  
*Dean Packard*  
DEAN PACKARD, P.E.  
Qualified Professional  
CoMar 08.19.06.01

**SPECIMEN TREE LIST**

NO.	COMMON NAME	SPECIES NAME	DBH	REMARKS	CONDITION
1	SILVER MAPLE	ACER SACCHARINUM	44"	REMOVE	FAIR, HOLLOW TRUNK, DEAD LIMBS
2	RED MAPLE	ACER RUBRUM	26"	REMOVE	FAIR, LIGHTNING DAMAGE, HOLLOW TRUNK
3	SILVER MAPLE	ACER SACCHARINUM	38"	REMOVE	GOOD, POOR SHAPE
4	AMERICAN BEECH	FAGUS GRANDIFOLIA	49"	REMOVE	GOOD
5	AMERICAN HOLLY	ILEX OPACA	26"	REMOVE	GOOD

**VARIANCE TREE MITIGATION**

TO COMPENSATE FOR THE REMOVAL OF THREE ON-SITE VARIANCE TREES (1" DBH), WE PROPOSE TO PLANT A TOTAL OF 33", OR 11 - 3" ACER SACCHARUM TREES (SUGAR MAPLE) TREES SHOWN THUS

**PACKARD & ASSOCIATES, LLC**  
CIVIL ENGINEERS \* SURVEYORS \* LAND PLANNERS  
16220 FREDERICK ROAD, SUITE 300  
GAITHERSBURG, MARYLAND 20877  
PHONE (301) 208-0250 FAX (301) 208-1270

**PRELIMINARY FOREST CONSERVATION PLAN**  
PROPOSED LOTS No. 14 thru 32 - BLOCK B  
**CASHELL ESTATES**  
PART OF LOT 5, BLOCK B  
RECORDED IN PLAT 2038  
ROCKVILLE ELECTION DISTRICT No. 4 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=20'	DRAWN
DATE: 06-08-16	
ACAD FILE NAME	
SHEET 1 of 2	

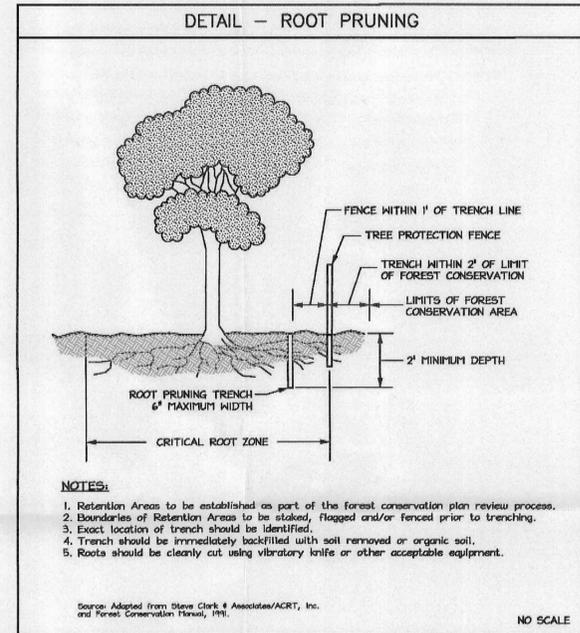
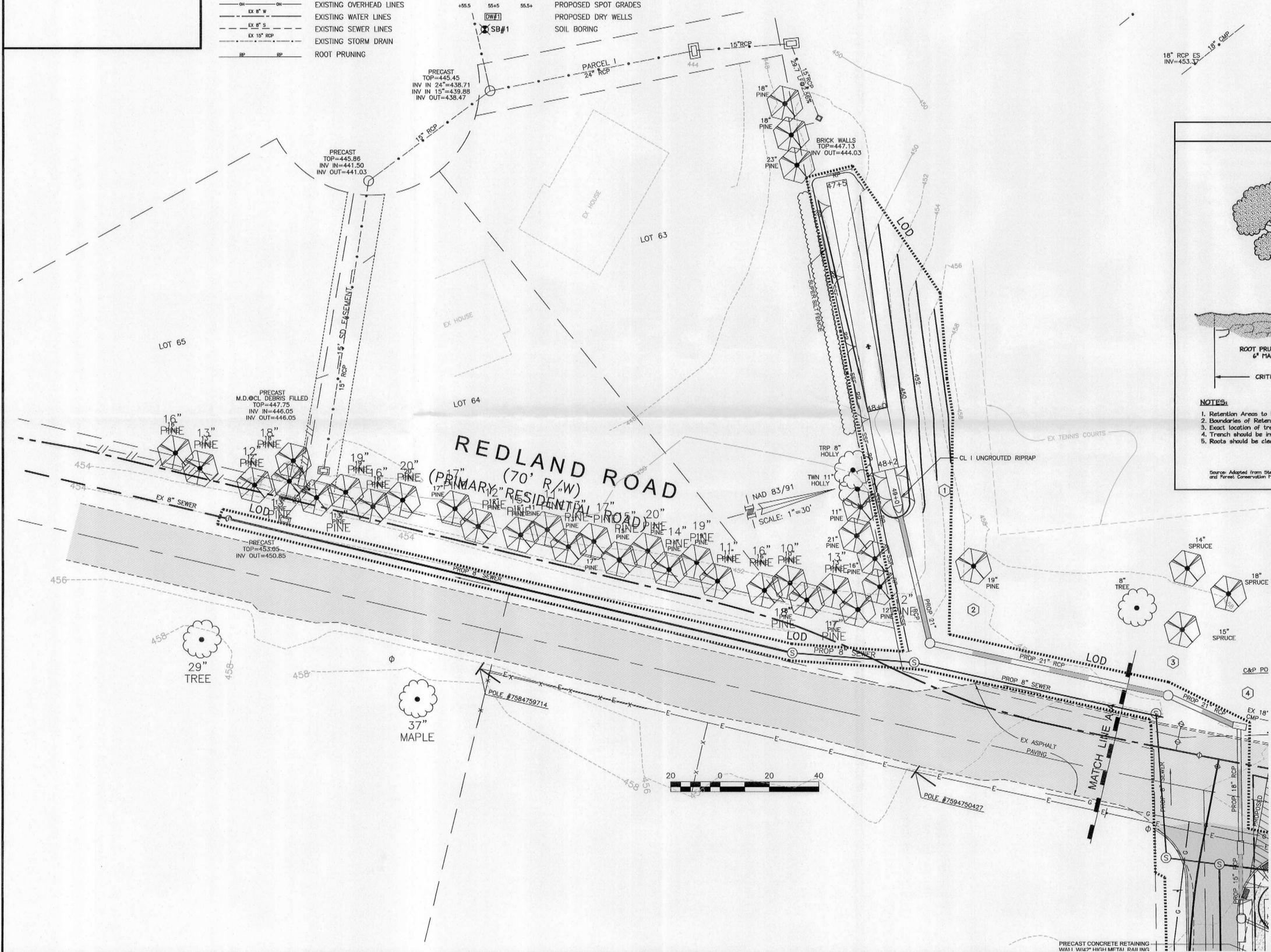
LEGEND

---	PROPERTY LINE	---	EXISTING UNDERGROUND GAS LINES
---	EXISTING CONTOUR	---	EXISTING UNDERGROUND ELECTRICAL LINES
---	PROPOSED CONTOUR	---	EXISTING UNDERGROUND TELEPHONE / CABLE LINES
---	LIMIT OF DISTURBANCE	---	EXISTING WOOD FENCE
---	ROOF TOP DISCONNECT FLOW PATH	---	EXISTING WIRE FENCE
---	TREE LINE	---	EXISTING RAIL FENCE
---	EXISTING OVERHEAD LINES	---	PROPOSED SPOT GRADES
---	EXISTING WATER LINES	---	PROPOSED DRY WELLS
---	EXISTING SEWER LINES	---	SOIL BORING
---	EXISTING STORM DRAIN		
---	ROOT PRUNING		

SOIL DATA

SYMBOL	DESCRIPTION	PRIME FARMLAND	HIGHLY ERODIBLE	HYDRIC
2B	GLENELG SILT LOAM 3-8% SLOPES	YES	NO	NO

NOTE: ALL SOIL ON SITE IS 2B, GLENELG SILT LOAM.



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THE MARYLAND-NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION  
**Forest Conservation Plan**  
 Submitted for Planning Board  
 Approval  
 Plan No. CU2016-11  
 Signature D. Johnson Date 6.15.2016

PACKARD & ASSOCIATES, LLC  
 16220 FREDERICK ROAD, SUITE 300  
 GAITHERSBURG, MARYLAND 20877  
 PHONE: 301-208-0250 \* FAX: 301-208-1270  
 Plan Prepared by:  
Dean Packard 6/10/16  
 DEAN PACKARD, P.E.  
 Qualified Professional  
 CoMar 08.19.05.01

SCALE 1"=20'	DRAWN DP
DATE 06-08-16	
ACAD FILE NAME	
SHEET 2 of 2	

**Request for a Tree Variance In Connection with the Review of a Conditional Use application and subsequent Preliminary Plan - Cashell Estates  
A Re-Subdivision of Part of Lot 5, Block B**

A Variance is hereby requested pursuant to Section 22A-21 of Chapter 22A of the Montgomery County Code, 2004, as amended (the "County Code") on behalf of the Applicants, Garrett Gateway Partners, LLC, the owners of Part of Lot 5, Block B, Cashell Estates Subdivision (the "Subject Property"). This Tree Variance Request is submitted in connection with the coordinated review of the above referenced Preliminary Plan of Subdivision and the Preliminary Forest Conservation Plan.

Three (3) protected trees have to be removed in order to develop the proposed 19 lot subdivision. The proposed driveways, roadways and necessary grading necessitate the removal of these trees. These trees are identified on the approved Natural Resource Inventory Plan at #'s 1, 3 & 4. There are no other protected trees or critical root zone impacts on or abutting the property.

**1. Background Information**

A Chapter 22A Variance is required in order to secure approval of the removal or disturbance of certain identified trees that are considered priority for retention and protection under the Natural Resources Article of the Maryland Annotated Code. Accordingly, Packard & Associates hereby requests a Tree Variance for the property identified as Part of Lot 5, Block B, Cashell Estates Subdivision. This Variance request is submitted pursuant to Section 22A-21 of Chapter 22A of the County Code and Section 5-1607(c) and Section 5-1611 of Title 5 of the Natural Resources Article of the Maryland Annotated Code, (the "Natural Resources Article").

The Subject Property consists of part of one recorded lot in the area of Derwood, known as Cashell Estates, Part of Lot 5, Block B, on a plat identified as "Lots 5 to 12, Block B, a Re-subdivision of Lots 1, 2 & 3, Block B, Cashell Estates Subdivision", recorded as Plat Number 2038. The subject property and adjacent portion of Lot 5 were surveyed in 1960 by then County Surveyor, R.K. Maddox. Lot 5 was subdivided by that certain deed dated October 27, 1960 recorded among the Land Records of Montgomery County in Liber 2796 at Folio 293, into the West 2 acres, with the East 3 acres remaining as residue from the parent deed recorded in Liber 1122 at Folio 222.

The property is improved with a single family detached dwelling constructed in 1946 and shall be demolished upon approval of the plans and issuance of the permits. Access is provided via a driveway from Garrett Road adjacent to the Garrett Road/Redland Road intersection.

The property is fairly flat with grades of 5% or less with no forest or any other environmental features on or abutting the property. The Subject Property has frontage along Redland Road, on the west and Garrett Road to the south.



## 2. Unique adjacency relationships

The Subject Property is bounded on the north and east by vacant land acquired by the State Highway Administration (the “SHA”) for Maryland Route 200, the Inter-County Connector (the “ICC”). The ICC effectively serves as the eastern neighborhood boundary, separating the western portion of Cashell Estates from the eastern segment of the Cashell Estates community.

With the northern and eastern boundaries abutted by properties of the SHA, the western boundary across Redland Road abutted by the MNCPPC, Redland Park, and older RE-1 homes built at least 50 years ago to the south, the Subject Property stands isolated from most development in the area.

## 3. Tree Removal and Critical Root Zone Disturbance

The Design for Life development proposed by this re-subdivision applications requires approval of a Specimen Tree Variance pursuant to Section 22A-21 of Chapter 22A of the County Code. Approval of the requested Specimen Tree Variance will allow the removal of three (3) protected trees and no disturbance of the critical root zones of any other trees. Approval of the Specimen Tree Variance Request will enable the Applicant to develop the Subject Properties in a manner consistent with other properties in the neighborhood. Two of the three trees are Silver Maples, with tree #1 having a hollowed out trunk filled with concrete to stabilize the tree structure. Silver Maples are on the low priority list for saving because of their weak wood structure and shallow root systems which cause damage to foundations, sidewalks and road beds. Tree #4 is an American Beech which is partially in the public right of way of Garrett Road and public utility easement. Any improvements to Garrett Road, to county standards, nor any development, along Garrett Road, is possible without removal of the tree.

Approval of this Tree Variance Request in conjunction with the re-subdivision application will enable the Applicant to redevelop the Subject Property by replacing the existing dwelling with 19 townhomes, designed as the prototype Design for Life Community long sought by the county administration. It will also seek approval of a Landscape Plan to promote and enhance the esthetic character of the neighborhood.

## 4. The Variance Requirements

Section 5-1607 of the Natural Resources Article requires a variance for the removal or disturbance of trees having a diameter of 30 inches when measured at 4.5 feet above the ground. Section 5-1611 of the Natural Resources Article authorizes a local jurisdiction to grant a variance:

“where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant.”

Chapter 22A of the County Code implements the Natural Resources Article of the State Law and specifies the circumstances that permit the Planning Board to grant a variance from Chapter 22A.

Section 22A-21(a) of the County Code establishes the “minimum criteria” for securing a Tree Variance and an applicant seeking a variance from any Chapter 22A requirement must:

- “(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance; and
- (4) provide any other information appropriate to support the request.”

A Tree Variance that meets the “minimum criteria” set out in Section 22A-21(a) of the County Code may not be approved if granting the request:

- “(1) will confer on the applicant a special privilege that would be denied to other applicants;
- (2) is based on conditions or circumstances which result from the actions by the applicant;
- (3) is based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- (4) will violate State water quality standards or cause measurable degradation in water quality.”

The following paragraphs illustrate the factual basis supporting Planning Board approval of this Tree Variance. Technical information for this request has been provided by the Applicants’ engineer, Dean Packard, PE, of Packard & Associates, LLC.

**The special conditions that are peculiar to the Subject Property that would cause the unwarranted hardship are described as follows:**

Development around near or around Silver Maple trees #1 & #3 would provide a hazard to of the proposed townhouses by invasive root systems, danger of falling limbs and health of the tree from impacts. The American Beech tree #4 is partially in the right of way of Garrett Road and couldn’t sustain impacts to the structural critical root zone necessary to improve the road or install the utilities. The unwarranted hardship is that if the trees were saved, the development of sought after, Design for Life Community, would be so restricted that townhouses couldn’t be built to achieve the county initiative.

The Subject Property was selected to become a Design for Life Community because of the isolated nature of its location as a result of construction of the ICC, splitting it off from the rest of the Cashell Estates community. To meet the amended zoning text, allowing a Conditional Use Application to develop Design for Life townhouse living, special level design considerations, access and amenities are necessary to fulfil the requirement. The denial of the Variance to remove these three trees would deny the ability to fulfil the requirements to build the community.

**Unwarranted hardship is demonstrated, for the purpose of obtaining a Chapter 22A Variance when an applicant presents evidence that denial of the variance would deprive the Applicant of the reasonable and substantial use of the property.**

Section 5-1611 of the Natural Resources Article authorizes the Planning Board to grant a forest conservation variance “where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant.” Those special features are described above.

Section 22A-21 of the County Code authorizes the grant of a variance under that Chapter when an applicant “shows that enforcement would result in unwarranted hardship.” The phrase “unwarranted hardship” used in both the State Code and County Code is not defined in either. Under Chapter 22A of the County Code a variance may only be granted following consideration of a list of factors set out in the Code, one of which is the presence of special conditions that would result in unwarranted hardship if the variance were denied. The decision of the Maryland Court of Appeals in *White v. North* is instructive. In that case the Court of Appeals concluded that the list of factors “must be considered are part of the entire matrix that defines what information is necessary to reach a finding as to the existence or nonexistence of an unwarranted hardship.” The list of factors in *White vs. North* is strikingly similar to the variance requirements in Chapter 22A of the County Code.

The factors identified in the described as:

- (1) a deprivation of rights commonly enjoyed by others;
- (2) that no special privilege will be conferred on an applicant;
- (3) that the need for relief not be caused by an applicant’s own acts;
- (4) the need for a variance does not arise from conditions on adjacent property;
- (5) a variance will not adversely affect water quality, (736 A.2d at 1083.)

According to the Court of Appeals “If total compliance with every specific requirement were necessary, relief would be really impossible and serious “taking” questions might arise.” The Court went on to express its view “that these specifically stated requirements are to be considered in the context of the entire variance ordinance, to the end that, when interpreted as a whole, either they are or are not generally met.”

Interpreting the factors that apply under the County Code, these Applicants would suffer unwarranted hardship if the removal of the designated trees were not allowed. If the requested Variance were denied the Applicants would be precluded from redevelopment the subject property by being unable to meet the restrictive Design for Life standards, a right commonly and previously enjoyed by the owners of other properties designed for accessibility.

**State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variances.**

A Stormwater Management Concept Plan has been submitted to the Department of Permitting Services for the Subject Property using environmental site design techniques to the maximum extent practicable and the proposed 19 lot development, upon approval, will meet State water quality standards. The approval of the requested Variance will not result in any measurable degradation in water quality standards.

**Other information that supports the requested variances:**

The Approved and Adopted trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Specimen Tree Variance. Generally, the Technical Manual recognizes that clearing is appropriate to create a building envelope for development and for street and driveway construction to provide access to new development and to create a building envelope for development. Among the development factors that the Technical manual considers appropriate for consideration when a Variance request is before the Planning Board is whether an urban form of development is desired at a particular location. The area in which the Subject Property is located, with its higher density residential zoning is far more appropriate for an urban form of development that will result from approval of the proposed re-subdivision.

**TREES TO BE REMOVED**

Tree	Common Name	Tree Species	DBH	Condition	Variance Request
#1	Silver Maple	<i>Acer saccharinum</i>	44"	Fair	Yes
#3	Silver Maple	<i>Acer saccharinum</i>	38"	Good	Yes
#4	American Beech	<i>Fagus grandifolia</i>	49"	Good	Yes

(cont.)

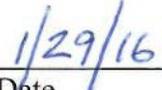
Tree	Comments	% CRZ Impacts	Disposition
#1	Impacts for common driveway, sidewalk grading and utilities	100%	Remove
#3	Impacts for grading and utilities	100%	Remove
#4	Impacts for public road construction, driveway, sidewalk, grading and utilities	100%	Remove

**5. Conclusion**

For the above reasons, and on behalf of the Applicants, Garrett Gateway Partners, LLC, we respectively request that the Planning Board Grant the Applicant’s request for a Variance from the provisions of the Montgomery County Forest Conservation Ordinance, Chapter 22A of the County Code as identified on the Preliminary Forest Conservation Plan.

Respectfully submitted,  
PACKARD & ASSOCIATES, LLC

  
\_\_\_\_\_  
By: Dean Packard  
Qualified Professional

  
\_\_\_\_\_  
Date