



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 26, 2002

MCPB  
Item #10  
5/2/02

## Memorandum

TO: Montgomery County Planning Board

VIA: Jeff Zyontz, Chief  
Countywide Planning Division

Jorge A. Valladares, P.E., Chief  
Countywide Planning, Environmental Planning

FROM: Cathy Conlon for the Department of Park and Planning

SUBJECT: Hearing on administrative civil penalty #02-01 in accordance with Chapter 22A of the Montgomery County Code (Forest Conservation Law) for:  
Mr. Ebrahim Kazerouni, agent and contractor for the property owner of Lot 1, Block C, Potomac Farm Estates

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## RECOMMENDATION

The subject of this hearing is the imposition of an administrative civil penalty, in accordance with Section 22A-16(d) of the Forest Conservation Law, for clearing of forest on 3.78 acres, of which approximately 1.24 acres were completely cleared and 2.54 acres were cleared of all understory vegetation. If the penalty is imposed, staff recommends that it be \$0.40 per square foot of the forest which was completely cleared, or \$21,606.00. However, staff believes provision of off-site reforestation in an amount equal in cost to the proposed penalty is a better alternative and is consistent with previous Board guidance on forest conservation law violations. Using the forest conservation law's designated fee in lieu of planting of \$0.30 per square foot as the basis for calculation, 1.7 acres of off-site reforestation would be required.

## **BACKGROUND**

The subject property is an existing undeveloped, recorded lot located on a corner of the intersection of Chapel Road and River Road in Potomac, Maryland (see Attachment 1). The lot is 3.78 acres, all of which were forested. The lot is located within the Rock Run watershed which is designated as Use I-P. The lot is flat and contains no streams or wetlands.

In January, 2002, an inspector for the Park and Planning Department was notified by an inspector from Montgomery County Department of Permitting Services (DPS) that clearing of forest was occurring on the subject property. The DPS inspector indicated that the property had not received a land disturbance permit and work was being stopped. On January 17, 2002, shortly after this notification, a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) application was received by the Park and Planning Department. The NRI/FSD submitted by the consultant for the owner's agent, described the property as a completely forested 3.78 acre recorded lot on which a "timber harvest" had been conducted. Environmental Planning staff contacted DPS and verified that, in fact, a timber harvest permit was never applied for, or issued for this property.

Environmental Planning staff visited the property on February 15, 2002 to assess the situation. Based on this visit, staff confirmed that 1.24 acres of the property had been completely cleared and the tree stumps removed, and 2.54 acres of the property had been selectively cleared to remove all understory trees and shrubs. In the selectively cleared area, damage to several of the remaining trees and their roots due to heavy vehicle use was also observed. The extent of the clearing as shown on the NRI/FSD is included in Attachment 2. Photographs of the property after the clearing are shown in Attachment 3.

On March 8, 2002, staff met with Mr. Ebrahim Kazerouni, the contractor and agent for the property owner of the subject property. Mr. Kazerouni indicated that the clearing had been done by Butler Tree Service, a subcontractor hired by him, and acknowledged that no permits for the clearing had been obtained. He also disclosed the property owner's intent to develop the property for a single family residence. Per Chapters 19 and 22A of the Montgomery County Code, the clearing which has occurred on this property is in violation of both sediment control and forest conservation requirements.

In response to this violation, and in accordance with §22A-16(a) of the Code, a civil fine of \$1,000.00 was issued for the forest conservation law violation. This fine was paid by Mr. Kazerouni on March 9, 2002. In addition, in accordance with §§22A-16(d) and 22A-17 of the Code, an administrative order requiring that corrective action for the forest clearing be taken as part of the property development was issued on April 5, 2002. This order requires that a Forest Conservation Plan (FCP) be submitted and approved for the subject property. It further requires that this FCP include a restoration plan to replant the understory in the selectively cleared areas of the property (see Attachment 4).

With respect to the county sediment control law (Chapter 19 of the Code), the DPS inspector determined that sediment control problems had not resulted from the clearing and, therefore, did not issue a citation.

## **DISCUSSION**

Staff believes that the forest clearing on this property involved a significant area and was egregious. In accordance with Section 22A-16 of the forest conservation law, several penalties and enforcement actions may be imposed. Those being applied and recommended by staff in this instance are as follows:

### Class A Violation - Civil Fine

Under this violation, the maximum fine is \$1,000.00. Civil fines are routinely issued by enforcement inspectors for forest clearing violations. Imposition of the maximum fine in this instance is based upon the significant size of the clearing area. As previously mentioned, this fine has already been paid by the property owner's agent.

Staff also intends to issue a violation for the maximum fine to Butler Tree Service, the company that conducted the clearing.

### Corrective Action

Section 22A-17 of the forest conservation law stipulates that an administrative order requiring corrective actions may be issued by the Planning Director. The corrective actions include: stopping work on the site; restoring or reforesting unlawfully cleared areas; submitting a forest conservation plan for the property; and placing forested or reforested land under long-term protection.

The administrative order issued for this violation requires submittal of a forest conservation plan for the property. As part of this plan, the maximum possible area of the remaining selectively cleared forest will be required to be protected in a Category I conservation easement. In addition, a restoration plan to replant the understory in the preserved area will be required. Given the size of house that will likely be proposed on this lot, off-site reforestation will probably be required as part of this forest conservation plan. The review and approval of this plan will be done at staff level as is typical for existing recorded lots.

As of the date of this memo, the forest conservation plan has not been submitted, however, Mr. Kazerouni has stated he will submit one in the near future.

#### Administrative Civil Penalty

In addition to the \$1,000.00 civil fine, the Board may impose a civil penalty. Per the law, the range for this penalty is from a mandatory minimum of \$0.30 per square foot to a maximum of \$1.00 per square foot of forest cleared. In determining the amount of this penalty, the following criteria must be considered:

- the willfulness of the violation;
- the damage or injury to tree resources;
- the cost of corrective action or restoration;
- any adverse impact on water quality (clearing in a stream buffer, wetland, or special protection area creates a rebuttable presumption that the clearing had an adverse impact);
- the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and
- other relevant factors.

Staff believes the imposition of an administrative civil penalty of \$0.40 per square foot of forest cleared is warranted for this violation. The reasons are as follows:

- The property owner's agent and the tree removal service that conducted the clearing knew permits were required for their activities, but failed to obtain them before proceeding.
- The clearing conducted on this property constituted a major impact to forest resources. Based upon observation of trees left

standing and the trunks of cleared trees, the forest consisted of predominately large, mature, hardwood trees (mostly tulip poplar) in good condition. Since understory vegetation was completely cleared, and no suitable adjacent remaining forest areas exist around the property which could be compared, a determination of forest structure cannot be definitively made. However, based upon observation of the clearing debris and the ground beneath remaining trees, staff believes the understory did not contain any significant amounts of undesirable invasive species.

- The forest conservation law establishes a fee of \$0.30 per square foot which may be accepted in lieu of reforestation planting. Staff uses this amount as an estimate for the general cost of reforestation planting. Using this amount, the cost to reforest the 1.24 acres of forest cleared on this property would be approximately \$17,000.00.
- The property does not contain any streams or wetland, and is not located within a special protection area. Given the developed nature of the surrounding area, it is unlikely that any impact has resulted to the water quality of Rock Run. As previously mentioned, the DPS inspector did not issue a citation for the failure to get a sediment control permit because he felt that no sediment control problems had resulted.
- There is no indication that this violation is part of a recurrent pattern of similar violations by Mr. Kazerouni.
- The property is being developed for a single family residence and is required to separately account for all forest clearing (including the violation area) as part of a forest conservation plan.

#### Alternative to the Civil Penalty

During the Board hearing for the other forest clearing violation in which staff recommended that an administrative civil penalty be applied, the Board expressed a desire to place forested or reforested land in long-term protection rather than collect fines. This is also desirable from a staff perspective given the logistics required to administer use of collected funds and the delays it can cause in providing the reforestation or protected forest.

As an alternative to collecting the civil penalty in this instance, staff recommends requiring off-site reforestation in an amount equal in cost to the civil penalty. To estimate the cost of reforestation, staff used

the \$0.30 per square foot, or \$13,068.00 per acre, which the law requires as a fee in lieu of planting as part of a forest conservation plan. Based upon staff's review of actual cost estimates for reforestation projects, this amount is reasonable. Since the civil penalty recommended by staff is \$21,606.00, off-site reforestation of an area equal or greater than 1.7 acres would be required. This is approximately 1.4 times the area of the forest clearing. This would be in addition to any reforestation required as part of the FCP approval required as a corrective action by the administrative order.

Under this alternative scenario, staff proposes that a reforestation plan for the off-site reforestation be reviewed and approved at the staff level. The planting must occur within a priority area as defined by the forest conservation law. The site selection process followed by the violator must include investigation of at least three sites within the Rock Run watershed. Evidence of this investigation and justification for not choosing a site within the watershed must be provided to staff before sites in other watersheds are considered.

If staff determines that planting in the Rock Run watershed is not feasible, sites within other county watersheds would be considered in descending order, as follows: sites within a special protection area; sites in Use III or IV watersheds; and sites anywhere in the county. Existing reforestation banks would also be considered as possible locations for securing the necessary acreage if staff determines that planting within the Rock Run watershed is not feasible. However, the total amount of the civil penalty (\$21,606.00) must be used to purchase bank credit and the credit must be a minimum of 1.7 acres.

Staff recommends using the reforestation alternative instead of collecting the civil penalty. Protection of existing forest would also meet this reforestation requirement provided a minimum of 3.4 acres of existing forest, or two times the amount of the recommended reforestation, is preserved. The existing forest must be in a priority area and the quality of the forest must equal or exceed the quality of the forest cleared as part of the violation.



Map compiled on April 28, 2002 at 10:09 AM | Site located on base sheet no - 213NW10

**NOTICE**

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

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Key Map



Research & Technology Center

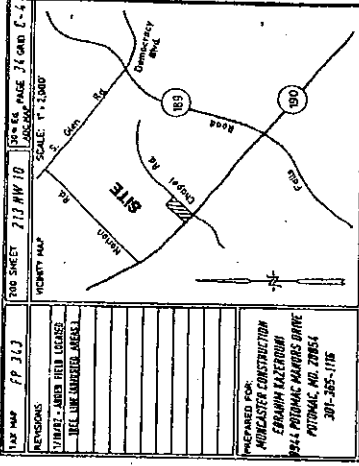
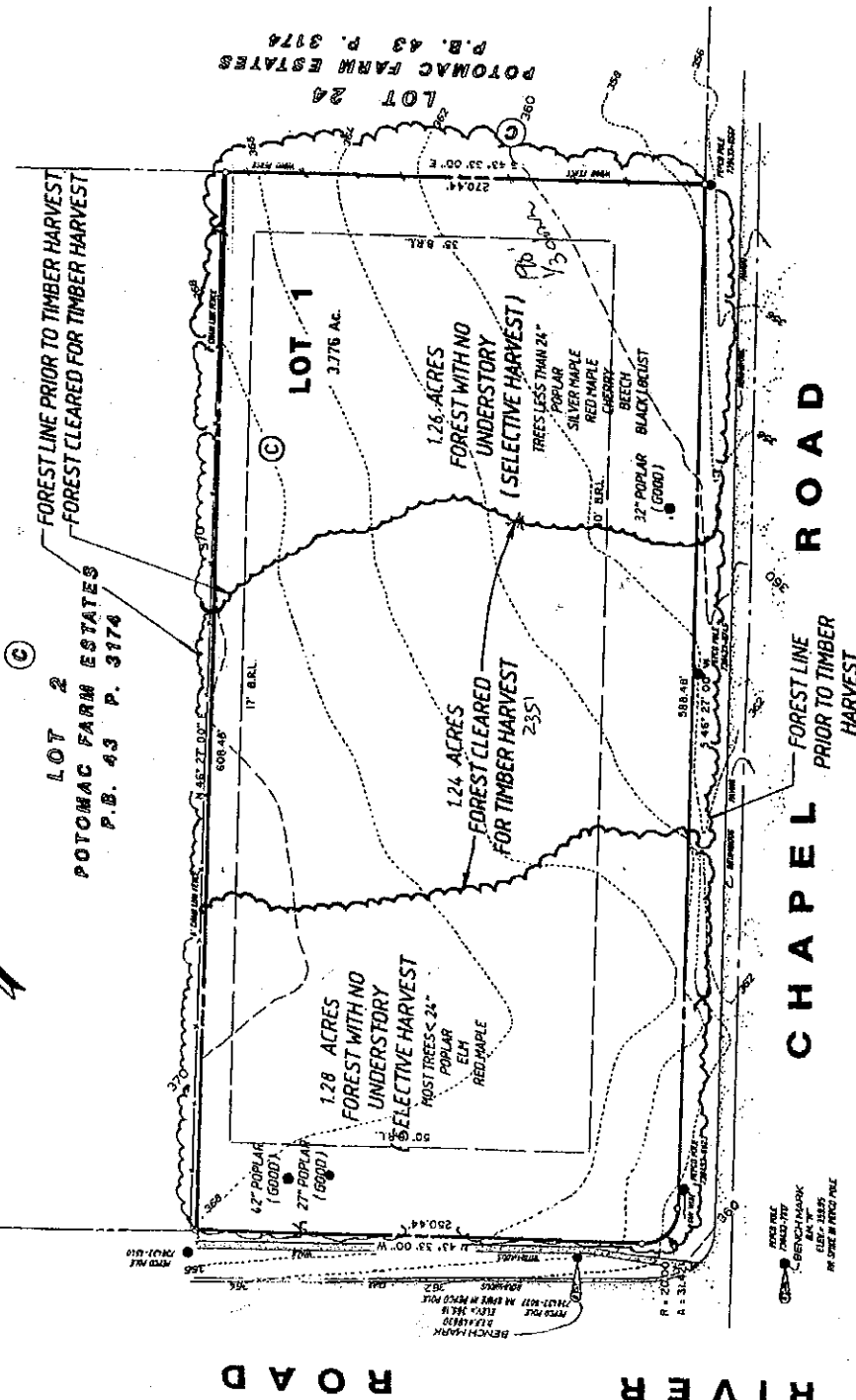


1:9600

**GENERAL NOTES**

- BOUNDARY FROM RECORDED PLAT TITLED "POTOMAC FARM ESTATES" LOT 1 BLOCK C, RECORDED AS PLAT 3174 PLAT BOOK 43
- TOPOGRAPHY FROM A FIELD SURVEY BY THIS OFFICE, DECEMBER, 2001.
- ZONING: RC-2
- FOREST ON SITE 3.78 ACRES. 1 FOR FOREST CONSERVATION PURPOSES 1 FOREST AFTER TIMBER HARVEST : 2.54 ACRES
- CONSERVATION THRESHOLD : 0.95 ACRES  
BREAK EVEN POINT : 1.52 ACRES
- WATERSHED: ROCK RUN
- THERE ARE NO STREAMS, FLOOD PLAIN OR WETLANDS ON SITE OR WITHIN 200 FEET OF SITE.
- THERE ARE NO HISTORIC FEATURES OR CULTURAL RESOURCES ON SITE.
- NO RARE, THREATENED, OR ENDANGERED PLANT OR ANIMAL SPECIES WERE OBSERVED ON SITE.

*Shad L. Covert, P.E. Professional*



**WITMER ASSOCIATES, LLC**  
Land Surveying, Land Planning & Design  
3144 Arundel Drive, Annapolis, MD 20689  
Tel: (410) 294-6600 Fax: (410) 296-1400

**Lot 1, Block C**  
**POTOMAC FARM ESTATES**  
10th TENTH ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND

**WITMER ASSOCIATES**

DATE: JANUARY, 2002  
SHEET NO. 1 of 1

THIS PRINT MADE  
JAN 18 2002  
WITMER ASSOCIATES



ATTACHMENT 3 . Areas of complete forest clearing (1 of 3)



ATTACHMENT 3 , Areas of complete forest clearing (2 of 3)



ATTACHMENT 3. Areas of understory forest clearing (3 of 3)



M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

ATTACHMENT 4 (1 of 3)

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

NOTICE OF ADMINISTRATIVE ORDER

NOTICE OF HEARING ON ADMINISTRATIVE CIVIL PENALTY

IN ACCORDANCE WITH CHAPTER 22A OF THE MONTGOMERY COUNTY CODE

April 5, 2002

Mr. Ebrahim Kazerouni  
6405 Bradley Boulevard  
Bethesda, Maryland 20817

Re: Forest Clearing at Lot 1, Block C  
Potomac Farm Estates

Dear Mr. Kazerouni:

In January, 2002, an inspector for The Maryland-National Capital Park and Planning Commission was notified by an inspector from Montgomery County Department of Permitting Services (DPS) that clearing of forest was occurring on the above-referenced property. On January 17, 2002, shortly after this conversation, a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) application was received by the Park and Planning Department. The NRI/FSD described the property as a completely forested 3.78 acre recorded lot on which a "timber harvest" had been conducted. Ms. Cathy Conlon of our Environmental Planning staff has confirmed with DPS that, in fact, a timber harvest permit was never applied for, or issued for this property.

On February 15, 2002, Ms. Conlon and Mr. Mark Pfefferle of our Environmental Planning staff conducted a field visit to the property to assess the situation. They observed that the middle 1.24 acre section of the property had been completely cleared and the tree stumps removed. Grading in preparation for construction of the property had also begun in this area. On the remaining 2.54 acres at either end of the property, they observed that all the understory vegetation and smaller trees in the forest had been completely cleared. Damage to the remaining trees in these areas and heavy vehicle impact to their roots as part of the clearing operation were also observed.

According to the Montgomery County Code Chapters 19 and 22A, the clearing and grading which has occurred on this property is in violation of both sediment control and forest conservation requirements. The civil fine issued by the Commission on March 8, 2002, in accordance with §22A-16(a) of the Code, fines you \$1,000.00 for the Forest Conservation Law violation. In addition, by this letter, and in accordance with §§22A-16(d) and 22A-17 of the Code, the Commission is instituting the following additional enforcement actions:

- (A) As the Planning Director, and in accordance with §22A-17, I am issuing an administrative order requiring corrective action for the forest clearing be undertaken by you, as the property owner, as detailed in Attachment One to this letter; and
- (B) On May 2, 2002, the Montgomery County Planning Board will hold a public hearing (as required by §22A-20) to consider the amount of the administrative civil penalty to be imposed pursuant to §22A-16(d). In determining the amount of the civil penalty at the hearing, pursuant to § 22A-16(d)(2), the Board will consider the willfulness of the violation; the damage or injury to tree resources; the cost of corrective action or restoration; any adverse impact on water quality; the extent to which the current violation is a part of a recurrent pattern of the same or similar type of violation committed by the violator; and other relevant factors. As detailed in that Section, the penalty imposed by the Planning Board must be not less than \$0.30<sup>1</sup> and up to \$1.00<sup>2</sup> per square foot of forest cleared.

The hearing before the Planning Board noted above will be held in the Planning Board's Hearing Room at 8787 Georgia Avenue, Silver Spring, Maryland 20910. At this hearing, you will have an opportunity to be heard by the Board before it makes its final decision on the amount of the penalty. Additionally, at the May 2, 2002 hearing, you may elect to have a hearing before the Board on the administrative order for corrective action, as required by §22A-20(d).

If you have any questions, please contact Ms. Cathy Conlon at (301)495-4542.

Sincerely,



Charles R. Loehr  
Director of Park and Planning

Attachment One - Corrective Action

cc: Dick Witmer, Witmer Associates, Inc.  
Cathy Conlon, MNCPPC  
Michele Rosenfeld, MNCPPC - Legal

CL:CC:cc

<sup>1</sup> This amount identified in §5-1608(c) of the Natural Resources Article of the Maryland Code.

<sup>2</sup> This amount is the maximum amount established by the Montgomery County Council by 1992 L.M.C., ch. 4, §2.

ATTACHMENT ONE  
CORRECTIVE ACTION FOR EBRAHIM KAZEROUNI  
LOT 1, BLOCK C, POTOMAC FARM ESTATES  
POTOMAC, MARYLAND 20854

1. Prior to issuance of a building permit and any further land-disturbing activities on the property, the property owner is required to obtain approval by M-NCPPC of a forest conservation plan (FCP). The FCP must include a restoration plan to replant the understory in the selectively cleared areas of the property. The majority of these areas shall be included as forest retention in the FCP. The restoration planting must include both trees and shrubs which are typical of forest understory and are native species. The trees must be a minimum of ¾" caliper, container grown stock. The shrubs must be a minimum 18-24" in height and also be container grown. The species selected must be a minimum of three different trees and four different shrubs. The number and location of the plantings should be determined based upon the size of the cleared gaps within the stands, and with the intent of creating the structure of a typical upland hardwood forest stand. The restoration planting plan must be implemented by the property owner before the end of the 2002 growing season.