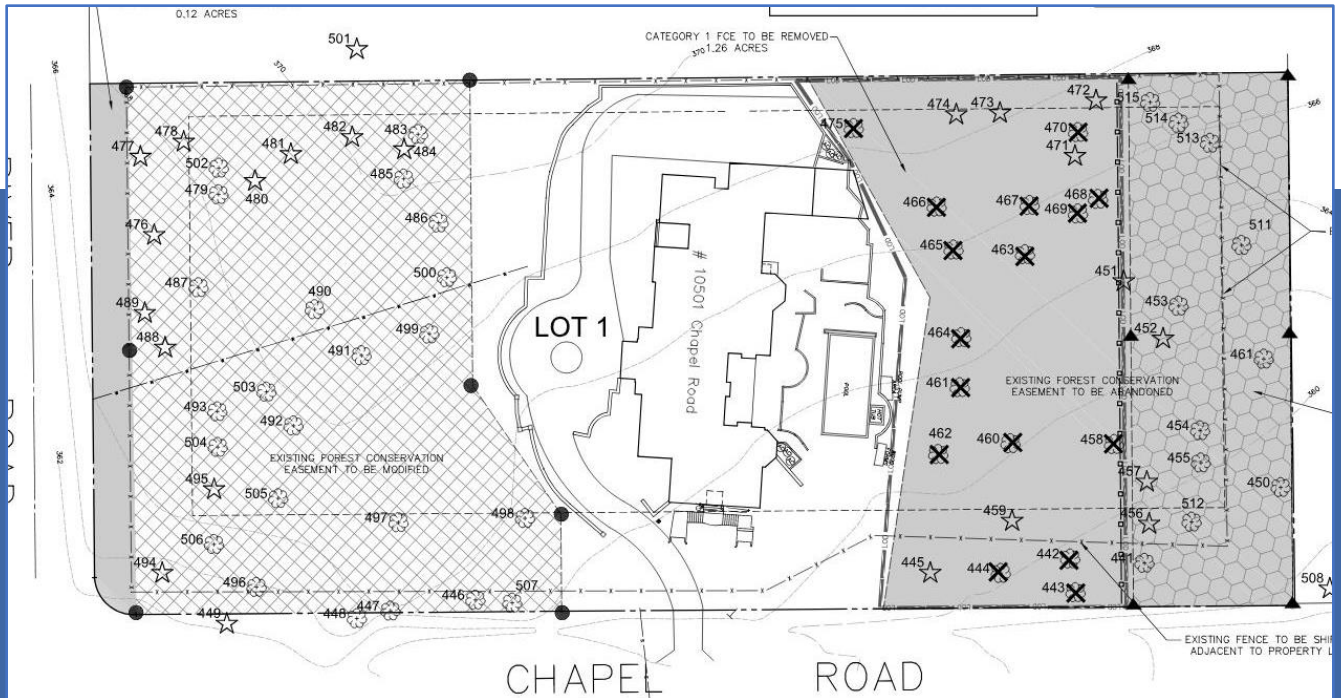


## POTOMAC FARM ESTATES LOT 1, BLOCK C FOREST CONSERVATION PLAN AMENDMENT NO. SC2022007



### Description

In response to a violation, a request for approval of Forest Conservation Plan Amendment, No. SC2022007, to remove 1.38 acres of Category I Conservation Easement from Potomac Farms Estates Lot 1, Block C and provide mitigation offsite and onsite. Located at 10501 Chapel Road which is in the northeast quadrant of the Chapel Road and River Road intersection in Potomac. 2002 Potomac Subregion Master Plan; 3.77 acres of land in the RE-2 Zone.

No. SC2022007

Completed: 5-27-2022

MCPB

Item No. XX

06-09-2022

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

[Montgomeryplanning.org](http://Montgomeryplanning.org)

Potomac Farm Estates Lot 1, Block C SC2022007

## Planning Staff



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### LOCATION / PROPERTY

10501 Chapel Road in Potomac  
Potomac Farm Estates Lot 1, Block C

### MASTER PLAN

2002 Potomac Subregion Master Plan

### ZONE

RE-2

### PROPERTY SIZE

3.77 acres

### APPLICATION

Forest Conservation Plan Amendment

### REVIEW ACCEPTANCE DATE

February 16, 2022

### REVIEW BASIS

Chapter 22A

## Summary:

- Staff recommends approval of Forest Conservation Plan Amendment no. SC2022007 proposing removal of 1.38 acres of Category I Conservation Easement with mitigation provided offsite and onsite.
  - Offsite mitigation of 4.14 acres of forest planting (3:1 mitigation ratio) to be provided at approved forest conservation bank.
  - A 1.16-acre Category I Conservation Easement will be retained at the front of the property and will be replanted with native trees and shrubs.
  - 0.50-acre Category II Conservation Easement to be provided at the rear of the property with supplemental planting.
- In 2002, in response to a forest clearing violation, the Planning Board approved a Settlement Agreement for Corrective Actions that required a forest conservation plan be approved for the property.
- 2007-Staff approved Final Forest Conservation Plan shows forest retention Category I Conservation Easements and house construction.
  - Amendment proposes removing Category I Conservation Easement to provide useable yard space and a maintenance area adjacent to existing powerlines.
  - As of date of the Staff Report, Staff has not received any community correspondence related to this Application.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### FOREST CONSERVATION PLAN AMENDMENT SC2022007

Staff recommends approval of Potomac Farms Estates Lot 1 Block C, Forest Conservation Plan Amendment No. SC2022007 (“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. SC2022007, the Applicant must record a new Category I Conservation and a Category II 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 and Category II Conservation Easements must be in forms 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 Agreements are recorded. M-NCPPC will not approve the new Conservation Easement Agreements until the offsite mitigation is satisfied.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. SC2022007, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement recorded among the County Land Records in Book 36801, Page 340 and identified on the 2007-approved Final Forest Conservation Plan in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the new easements are recorded and the offsite forest planting mitigation is satisfied.
3. Within ninety (90) days of the mailing of the Planning Board resolution approving SC2022007 the Applicant must satisfy the offsite planting requirements with recordation of a M-NCPPC approved Certificate of Compliance for the purchase of 4.14 acres of forest planting from an M-NCPPC approved forest mitigation bank within the same watershed. The offsite requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available to purchase within the same watershed. Only if no M-NCPPC-approved offsite forest conservation planting is available can the offsite mitigation be satisfied with fee-in-lieu payment.
4. 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.
5. Within one hundred twenty (120) days of mailing of the Planning Board Resolution approving SC2022007, 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.

6. The Applicant must provide invasive species management control measures within the Conservation Easements at the direction of the M-NCPPC Forest Conservation Inspection staff. The cost to control invasive species must be incorporated into the forest conservation financial surety.
7. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Final Forest Conservation Plan Amendment No. SC2022007, 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 planting areas credited towards meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
8. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the permanent conservation easement markers along the perimeter of the conservation easements, as shown on the FCP, or as approved by the M-NCPPC Forest Conservation Inspector.
9. The Applicant must install the plantings as shown on the approved FCP within six (6) months of the mailing of the Planning Board Resolution approving SC2022007, or as directed by M-NCPPC Forest Conservation Inspection Staff.

## SECTION 2: SITE DESCRIPTION

### VICINITY

The property located at 10501 Chapel Road (Lot 1, Block C Potomac Farm Estates), is a 3.77-acre lot located northeast of the River Road and Chapel Road intersection in Potomac, Maryland (Figure 1) (“Property” or “Subject Property”). The Property is outlined in red on Figure 1 and is within the Rock Run Watershed, a direct tributary of the Potomac River. The property is within the RE2 Zone and the Potomac Subregion Master Plan.

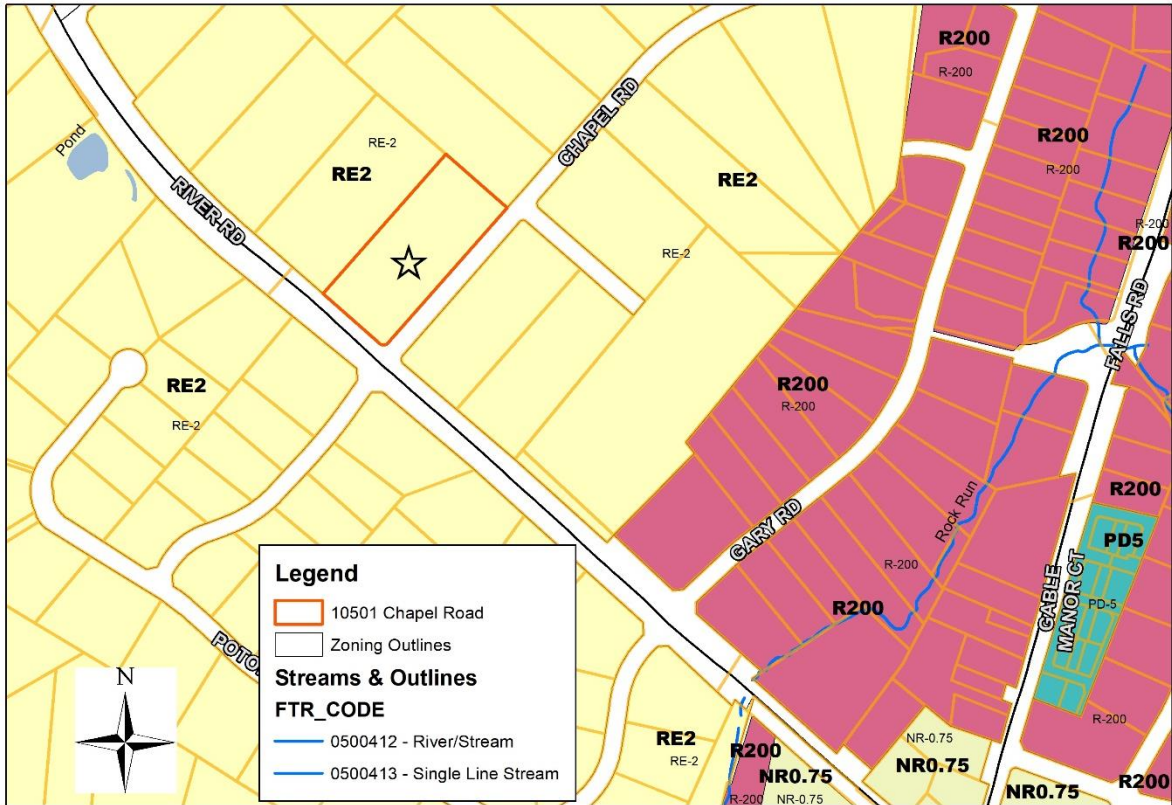


Figure 1 – Vicinity Map

## PROPERTY DESCRIPTION

The Property was established on July 8, 1952 with the filing in Plat Book No. 43 of Record Plat No. 3174 among land records of Montgomery County, Maryland. The property consists of a tulip poplar forest that has been cut and cleared on multiple occasions. The property is mostly flat with a slight swale bisecting the eastern corner of the property. Most of the trees including eleven (11) specimen trees on the property are tulip poplar. There are no streams, stream buffers, wetlands, floodplains, environmental buffers, steep slopes or erodible soils on or adjacent to the property. There are two existing Category I Conservation Easements on the Property, a west Conservation Easement area of 1.28 acres and an east Conservation Easement area of 1.26 acres. The house, driveway and accessory improvements are located between the respective conservation easements in a cleared area of 1.23 acres as shown on Figure 2. The conservation easements protect forest that consists of tulip poplar trees and a recently cleared understory of native trees and shrubs.



Figure 2 – Subject Property

## SECTION 3: BACKGROUND

### PREVIOUS APPROVALS/BACKGROUND

After establishment in 1952, the Property remained vacant and regenerating trees became a mature tulip poplar forest. In 2002, a previous property owner, cut and completely cleared 1.24 acres of forest and 2.54 acres of small plants, small trees, and forest understory. This forest clearing was done without prior M-NCPPC approval in violation of the Forest Conservation Law. In response to this violation, M-NCPPC Staff and the previous property owner entered into a Settlement Agreement for Corrective Actions that included submittal and approval of a forest conservation plan, reforestation planting, and establishment of forest conservation easements over forest retention areas of the Property. A Natural Resource Inventory Forest Stand Delineation was submitted for M-NCPPC Staff

review after the forest clearing (Attachment 1). Later, on February 22, 2007, A Final Forest Conservation plan for forest conservation planting, forest retention and new home construction on the property was approved by Planning Staff (Attachment 2). The official plan number for this Forest Conservation Plan is “Per Civil Administrative Civil Penalty Agreement 05/2002 Case 02-01” and hereafter this approved Forest Conservation Plan will be referred to as “2007 Approved Forest Conservation Plan” or “2007 Approved FCP.” On March 20, 2009, a Category I Conservation Easement Agreement (Book 36801 Page 340) was recorded among land records for the two forest retention areas on the Property (Attachment 3). The previous property owner built the existing home in 2009 and fully implemented and satisfied the planting requirements of the 2007 Approved FCP. Implementation of the 2007 Approved FCP included planting and maintaining native shade trees and shrubs, managing invasive plants and posting “Do Not Disturb” conservation easement markers along the conservation easement boundary. The previous property owner also built a metal ornate fence through portions of the forest conservation easement and secured M-NCPPC staff approval of this fence in 2010.

The Applicant purchased the property in February 2021. On October 21, 2021, the M-NCPPC Forest Conservation Inspector (“Inspector”) met the Applicant onsite and discovered that 43,000 square feet of forest understory had been recently cut and cleared from portions of the Category I Conservation Easement. The Inspector measured 21,000 square feet of small tree, shrub and herbaceous clearing from the West Conservation Easement area located between River Road and the front driveway and 22,000 square feet of small tree and shrub clearing from the East Conservation Easement area between the house and the rear property line (Attachments 4 and 5: Citation No. 0006 and Citation No. 0007). The fines associated with the Citations have been paid by the Applicant.

The Applicant further proposes to resolve the violations with this amendment to the 2007-Approved Forest Conservation Plan.

## SECTION 4: PROPOSAL

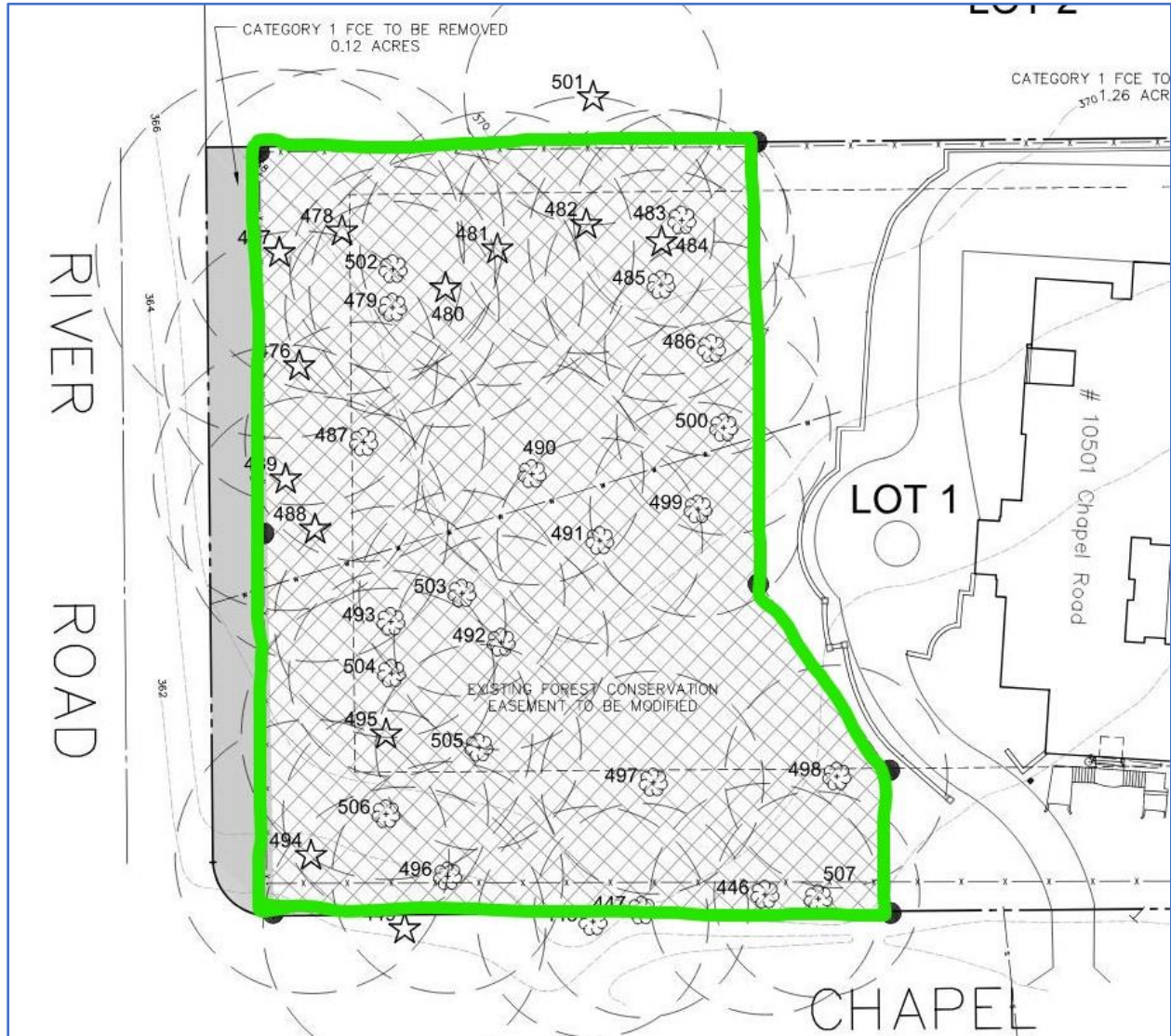
### PROPOSAL

The Applicant requests changes to the Easements to allow for a mowable yard and a maintained play space for their children and to retain forest and tree save area on the property (Attachment 6: Forest Conservation Plan Amendment submitted for Planning Board approval).

At the front or west side of the Property, the Applicant proposes removing a 0.12-acre area of the Category I Conservation Easement “(West Easement”) that is between the metal fence and the River Road property line. This area is being mowed and has a row of planted ornamental evergreen trees. The area is next to power poles and powerlines and a multi-use trail on the River Road right-of-way (Figure 3). A 1.16-acre portion of the West Easement will be retained at the front of the property. Areas recently cut will be replanted with native trees and shrubs and maintained for five (5) years to

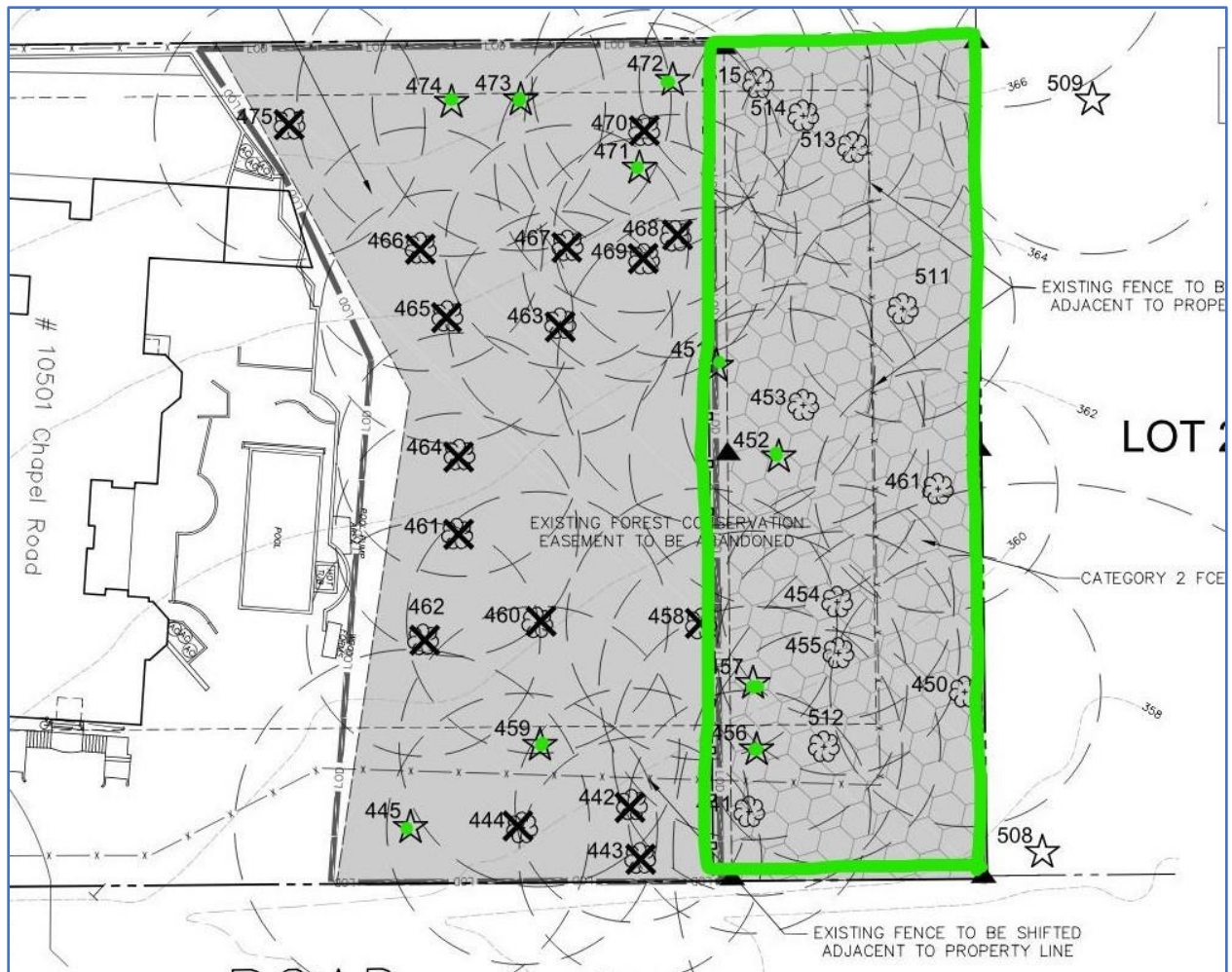


control invasive plants and stimulate forest regeneration. This forest retention area is outlined in green and shown in a crosshatch pattern on Figure 3.



*Figure 3 – West / Front Property - Proposed Conservation Easement Changes*

The Applicant proposes to release the entire a 1.26-acre Category I Conservation Easement (East Easement) at the rear of the property to allow for a mowable or maintained rear yard. (Figure 4). The Applicant proposes to establish a 0.50-acre Category II Conservation Easement in the rear yard to protect specimen trees, supplemental planting and all trees at least 6 inches in diameter or at least 30 feet tall. A supplemental tree planting of twelve (12) two- inch caliper trees will occur within the Category II Conservation Easement. This Category II Conservation Easement is outlined in green and is represented as a hexagonal pattern in Figure 4.



*Figure 4 – East / Rear Property - Proposed Conservation Easement Changes*

No specimen trees, represented by stars in Figure 3 and 4, are proposed to be cut or cleared. In areas proposed for release from Category I Conservation Easement, the Forest Conservation Plan provides root protection measures to be implemented to prevent compaction and damage to specimen trees. Please see attached Variance Report listing the specimen trees to be impacted (Attachment 7).

As a result of the most recent forest conservation law violation, the Applicant has offered mitigation at a ratio of 3 acres of forest planting mitigation for every 1 acre removed. Acceptable mitigation includes purchasing 4.14 acres of forest planting mitigation credit from a M-NCPPC approved forest conservation bank in the same watershed or if not available in the same watershed then any approved forest conservation bank in Montgomery County.

## SECTION 5: ANALYSIS AND FINDINGS

### STAFF REVIEW

The 2007-Approved Final Forest Conservation Plan was approved after a violation where forest clearing and land disturbance started without prior M-NCPPC approval. The 2007-Approved Forest Conservation Plan provided two large forest retention areas protected in conservation easements, of 1.26 acres and 1.28 acres on either side of a buildable clear area of 1.23 acres. The construction of the house by the previous owner, took up most of the 1.23 acres and did not provide any usable yard space. Behind the house, portions of the existing house are immediately adjacent to the Category I Conservation Easement. The builder of the home did not provide a useable yard space between the house and the Category I Conservation Easement. Staff's practice is to ensure approved forest conservation plans provide usable yard space for a homeowner. Staff also enforces conditions of existing approved forest conservation plans and Conservation Easement Agreements.

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 Amendment offers a 0.50-acre Category II Conservation Easement and supplemental planting at the extreme rear or east edge of the Property and directs restoration planting in a front 1.16-acre forest retention, Category I Conservation Easement. The Amendment provides the restoration planting directed by Forest Conservation Citation No. 0007 issued for violations in the front West Easement. The Amendment includes provisions for non-native plants maintenance within proposed Conservation Easements.

As a result of the understory clearing violation within East Category I Conservation Easement, as documented in Forest Conservation Citation No. 0006, staff negotiated with the Applicant to provide offsite mitigation at a 3:1 offsite mitigation rate. The Applicant's proposal is to provide offsite forest planting of 4.14 acres through a M-NCPPC approved forest bank. Only if no offsite forest planting or forest mitigation bank credit is available can the mitigation be satisfied with a fee-in-lieu payment.

The provided offsite mitigation is consistent with the Planning Board's standard policy of 2:1 offsite mitigation.

### 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 minor impact to specimen trees in a letter dated May 19, 2022. The Applicant proposes impact to eleven (11) specimen trees consisting of ten (10) tulip poplar trees and one (1) silver maple tree. This potential impact is from removing smaller trees in the area and seeding the area with grass. No specimen trees are to be removed. A tracked skid steer and a stump grinder will operate within the critical root zone of specimen trees and may cause some compaction. Some grading may affect specimen tree roots. However, root protection matting consisting of wood chips or mats will be installed to prevent impact to roots of specimen trees and tree protection fencing will be installed and approved by the M-NCPPC forest conservation inspector prior to any grading so overall impact to specimen trees will be minimal.

The Applicant anticipates needing a sediment control permit for the proposed tree clearing and yard establishment.

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 because only minimal impact to existing specimen tree roots would occur during approved tree work and stress reduction measures are provided by the Forest Conservation Plan to mitigate any root compaction impact to specimen trees. Also, no specimen trees will be removed. 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

1. *Will not confer on the Applicant a special privilege that would be denied to other Applicants.* The minor impacts to these trees are for landscaping in the area to establish a useable yard space. The previous recordation of the lot anticipated the proposed house construction and residential uses in a RE-2 Zone. The Applicant's Forest Conservation Plan Amendment minimizes impacts by providing root protection matting and tree protection measures prior to any tree work. Using any part of the rear yard that is not forest conservation easement as mowed grass would result in unavoidable impact to Protected Trees. Therefore, granting of this Variance is not a special privilege that would be denied to other applicants who have large trees in mowed yards that are not within Category I Conservation Easements.
2. *Is not based on conditions or circumstances which are the result of the actions of the Applicant.* The requested Variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested Variance is not for the removal of any specimen trees

and will have very minor potential impact on the specimen trees. The Variance is required due to the location of small trees near the specimen trees and is not a result of actions by the Applicant.

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 existing improvements, 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. Root protection measures will be implemented, actual ground disturbance will be limited areas that become grass yard. The tree canopy will remain and the ability of the protected trees to absorb and filter stormwater remains intact. Also, stormwater management is not required as part of this project.

## 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. SC2022007 to amend the Forest Conservation Plan with conditions cited in the Staff Report to release two areas of Category I Conservation Easement, establish a 1.16-acre Category I Conservation Easement at the front on the property, establish a 0.50-acre Category II Conservation Easement in the rear of the Property, provide forest planting and tree planting onsite and mitigate removal of 1.38 acres of Category I Conservation Easement offsite at a 3:1 rate.

### ATTACHMENTS

*Attachment 1: Submitted Natural Resource Inventory / Forest Stand Delineation*

*Attachment 2: 2007-Approved Forest Conservation Plan*

*Attachment 3: Existing Category 1 Conservation Easement Agreement*

*Attachment 4: Citation No. 0006*

*Attachment 5: Citation No. 0007*

*Attachment 6: Forest Conservation Plan Amendment SC2022007*

*Attachment 7: SC2022007 Variance Report*