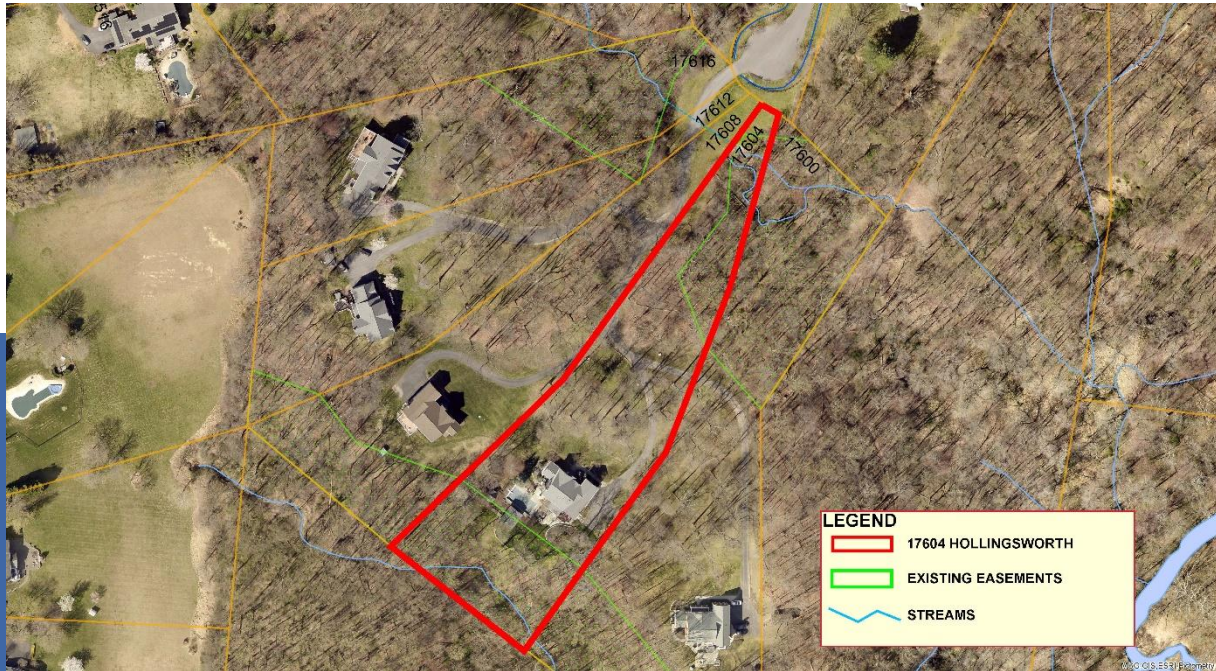


ROCK CREEK VISTA LOT 29, BLOCK B FOREST CONSERVATION PLAN AMENDMENT NO. F20230260



Description

In response to a violation, a request for approval of Forest Conservation Plan Amendment, No. F20230260, to convert 0.10 acres of Category I Conservation Easement to Category II at Rock Creek Vista Lot 29 Block B and provide mitigation onsite. Located at 17604 Hollingsworth Drive, Derwood, MD, Upper Rock Creek Master Plan; 2.98 acres of land zoned RE-2 in the Upper Rock Creek Overlay Zone and the Upper Rock Creek Special Protection Area.

No. F20230260

Completed: 11-23-2023

MCPB

Item No. 5

12-07-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

Planning Staff



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LOCATION/ADDRESS

17604 Hollingsworth Dr.
Derwood, MD 20855
Rock Creek Vista, Lot 29, Block B

MASTER PLAN

2004 Upper Rock Creek Master Plan

ZONE

RE-2

PROPERTY SIZE

2.98 acres

APPLICANT

Laura Reiff and Jeffrey Kozero

ACCEPTANCE DATE

May 23, 2023

REVIEW BASIS

Chapter 22A

- Staff recommends approval of Forest Conservation Plan Amendment no. F20230260 proposing the conversion of 0.10-acres of the existing on-site 1.09-acre Category I Conservation easement to Category II, and the addition of a new on-site 0.40-acre Category I Conservation easement as mitigation. This results in a new on-site Category I easement area of 1.49-acres.
- A total of 0.71-acres of onsite supplemental planting is proposed to mitigate for loss of regenerating understory due to mowing and to enhance the resulting easements.
- The Subject Property was originally part of a 5-lot subdivision approved July 5, 2001 under Preliminary Plan No. 120000730. This plan proposes to amend the original Final Forest Conservation Plan approved on June 30, 2003.
- As of the date of this Staff Report, staff has not received any community correspondence related to this application.

Summary:

TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS	3
FOREST CONSERVATION PLAN AMENDMENT NO. F20230260.....	3
SECTION 2: SITE DESCRIPTION.....	4
VICINITY.....	5
PROPERTY DESCRIPTION.....	5
SECTION 3: BACKGROUND.....	6
PREVIOUS APPROVALS.....	7
VIOLATION HISTORY.....	7
SECTION 4: PROPOSAL.....	11
PROPOSAL.....	11
SECTION 5: FINDINGS & ANALYSIS	14
SECTION 6: COMMUNITY OUTREACH	16
SECTION 7: CONCLUSION	16
ATTACHMENTS	16

SECTION 1: RECOMMENDATIONS AND CONDITIONS

FOREST CONSERVATION PLAN AMENDMENT NO. F20230260

Staff recommends approval of Rock Creek Vista Lot 29, Block B, Forest Conservation Plan Amendment No. F20230260 (“FCP”), subject to the following conditions, which restate and supersede Condition 1 of the Planning Board’s Opinion approving 120000730, dated July 5, 2001:

Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits. Conditions of approval to include:

1.
 - Approval of five (5) lots as depicted on Forest Conservation Plan dated 3/12/01.
 - Record plat to reflect final delineation of the area dedicated to M-NCPPC (approx. 9.3 acres).
 - All stream valley buffers outside of M-NCPPC dedication to be referenced on the record and shown as ~~Category I~~ *Category I and Category II* conservation easements.
 - Final forest conservation plan to reflect two (2) foot topography within and immediately abutting the established limits of disturbance. Applicant to demonstrate that sediment control for all grading occurring on the lots will be controlled within the defined drainage area (shown on the plan) toward the front (northeast) of the lots.
 - Forest conservation requirements to be met through retention of forest within the M-NCPPC dedication area and the plat recorded stream valley buffers.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. F20230260, the Applicant must record new Category I and a Category II Conservation Easement Agreements reflecting all easement areas 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 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.
3. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. F20230260, the Applicant must submit a Deed of Release of Conservation Easement for the existing Category I Conservation Easement on Lot 29, Block B, as recorded on Record Plat No. 22323 pursuant to Category I Conservation Easement Agreement Book 13178 Page 412 and filed among the County Land Records on October 3, 2002. 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 easements are recorded and the onsite forest planting mitigation is satisfied.

4. 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 that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat must be recorded in the Montgomery County Land Records within 180 days of the mailing date of the Planning Board Resolution approving the amendment to the Site Plan.

5. Within one hundred twenty (120) days of mailing of the Planning Board Resolution approving F20230260, 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 0.71 acres of new onsite supplemental planting, planting maintenance, including invasive species management controls, and conservation easement markers.

6. 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.

7. 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.

8. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Final Forest Conservation Plan Amendment No. F20230260, 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.

9. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the permanent conservation easement markers and/or fencing along the perimeter of the conservation easements, as shown on the FCP, or as approved by the M-NCPPC Forest Conservation Inspector.

10. 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 F20230260, or as directed by M-NCPPC Forest Conservation Inspection Staff.

SECTION 2: SITE DESCRIPTION

VICINITY

The property located at 17604 Hollingsworth Drive (Lot 29, Block B Rock Creek Vista), is a 2.98-acre lot located about 2,300 feet southwest of the intersection of Hollingsworth Drive and Hollingsworth Terrace, Derwood Maryland (Figure 1) (“Property” or “Subject Property”). The Property is within the Rock Creek Vista subdivision and is outlined in red on Figure 1. It is within the Rock Creek Watershed and Upper Rock Creek Special Protection Area. The property is zoned RE2, and within the 2004 Upper Rock Creek Master Plan.

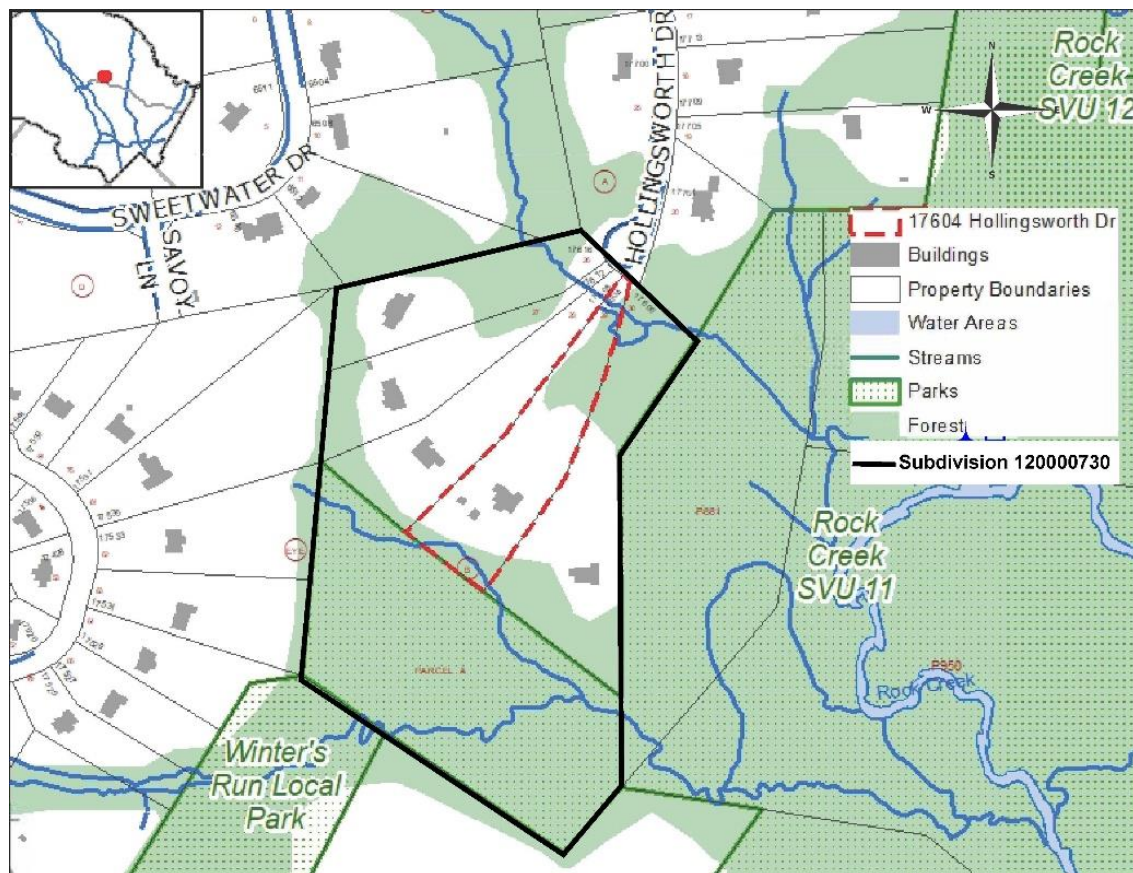


Figure 1 – Vicinity Map

PROPERTY DESCRIPTION

The Subject Property (Figure 2) was established on October 3, 2002 with the filing of Record Plat No. 22323 among land records of Montgomery County, Maryland (Attachment 1). It shares a common driveway with 4 other lots. The house is sighted at the highest elevation on the lot, with steep-sloped stream buffer in the rear falling to a tributary of Rock Creek. The gentler front slope features the septic field, driveway, ultimately falling to another tributary of Rock Creek. There are streams, stream buffers, steep slopes, and erodible soils on site. The property is encumbered in two places by an existing Category I Conservation Easement. The southern portion covers an area of 0.77 acres and the northern portion covers an area of 0.32 acres. The house, driveway and accessory improvements are located between the respective conservation easements, with structures encroaching on the southern portion. The protected forest consists of mixed hardwoods including Tulip Poplar, Hickory, Oak, and Maple trees, with much of the understory maintained as lawn.

The entire Property is within the Upper Rock Creek Special Protection Area. Streams located at the northern and southern ends of the Property are identified as Mainstem Fraley Farm, Use Class III, and are tributaries to Rock Creek. The Property is bounded to the south by M-NCPPC Parkland, and otherwise by single-family homes.

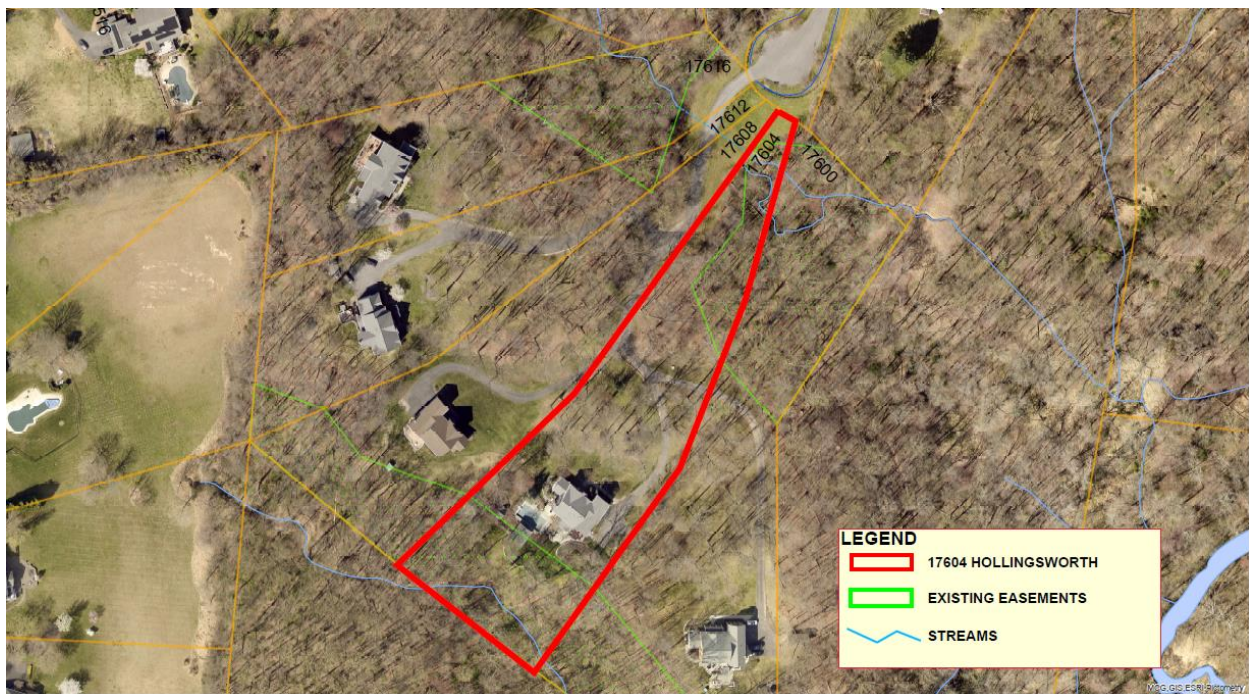


Figure 2 – Subject Property

SECTION 3: BACKGROUND

PREVIOUS APPROVALS

The Subject Property is part of the Rock Creek Vista subdivision, a 23.08-acre tract of land that was approved by the Planning Board Opinion dated July 5, 2001 (Attachment 2) as Preliminary Plan 120000730 (Attachment 3) for development of 5 lots. Approximately 9.3-acres of the tract were dedicated to M-NCPPC and is now protected parkland. The Subject Property is Lot 29 and is included on Final Forest Conservation Plan 120000730 (Attachment 4).

Record Plat No. 22323 established the Subject Property and delineated the Category I Conservation Easement that encumbers 1.09-acres of the Property. The terms of the Category I Conservation Easement Agreement are recorded among land records at Book 13178, Page 412 (Attachment 5).

VIOLATION HISTORY

The Applicants, Ms. Reiff and Mr. Kozero, purchased the home in 2009. Planning Department inspection records show that Mr. Kozero met with a former Inspector in November of 2010 while assisting a neighbor in resolving an unrelated easement violation. Mr. Kozero was directed to cease mowing and leaf removal within his part of the easement to allow the area to naturalize. A pool and patio were built in 2010-2011 without apparent easement encroachments. By early 2014, according to satellite imagery, an accessory pool house and fenced enclosure were added which encroach an estimated 250 square feet into the easement. In 2019 a covered deck/pavilion and walkway were added to rear of the pool patio, adding about 1,000 square feet to the encroachment into the easement. In 2020 a wooden play structure covering about 500 sq. ft. was built in the easement to the west of the pool house. These structures and evidence of mowing are shown below in Figures 3, 4, 5, and 6. The Easement Agreement, recorded at Liber 13178, Folio 412, explicitly prohibits mowing, construction, erection of any building or structural improvements.

March 7, 2022 – Inspector Sharp met with Mr. Kozero at the property to investigate possible encroachments into the easement, as identified by satellite imagery, and issued a Notice of Violation (NOV) for construction and mowing within a Category 1 Conservation Easement against the terms of the Easement Agreement (Attachment 6). Mr. Kozero was directed to have the easement boundary surveyed and staked, then to schedule a site meeting to determine the extent of the disturbances and determine the appropriate corrective action. The alleged encroachment was later confirmed by the survey.

August 24, 2022 – Inspector Sharp met with Mr. Kozero on site to discuss two possible options for resolving the easement violation, which were to either remove all structures and restore the easement by reforestation or seek to modify the easement. Mr. Kozero indicated he would apply to modify the

easement by amending Forest Conservation Plan that created it. A second NOV was issued directing Mr. Kozero to submit a complete application by September 30, 2022 proposing to amend Forest Conservation Plan No. 120000730 by modifying the easement and mitigating for the encroachments (Attachment 7).

November 8, 2022 to January 4, 2023 - Following a review of the matter with Environmental Reviewers in the Planning Department, and negotiations between Mr. Kozero and Planning staff, a set of minimum standards to be met by the proposed amendment were recommended.



Figure 3 – 2023 Aerial Photo Showing Easement Encroachments

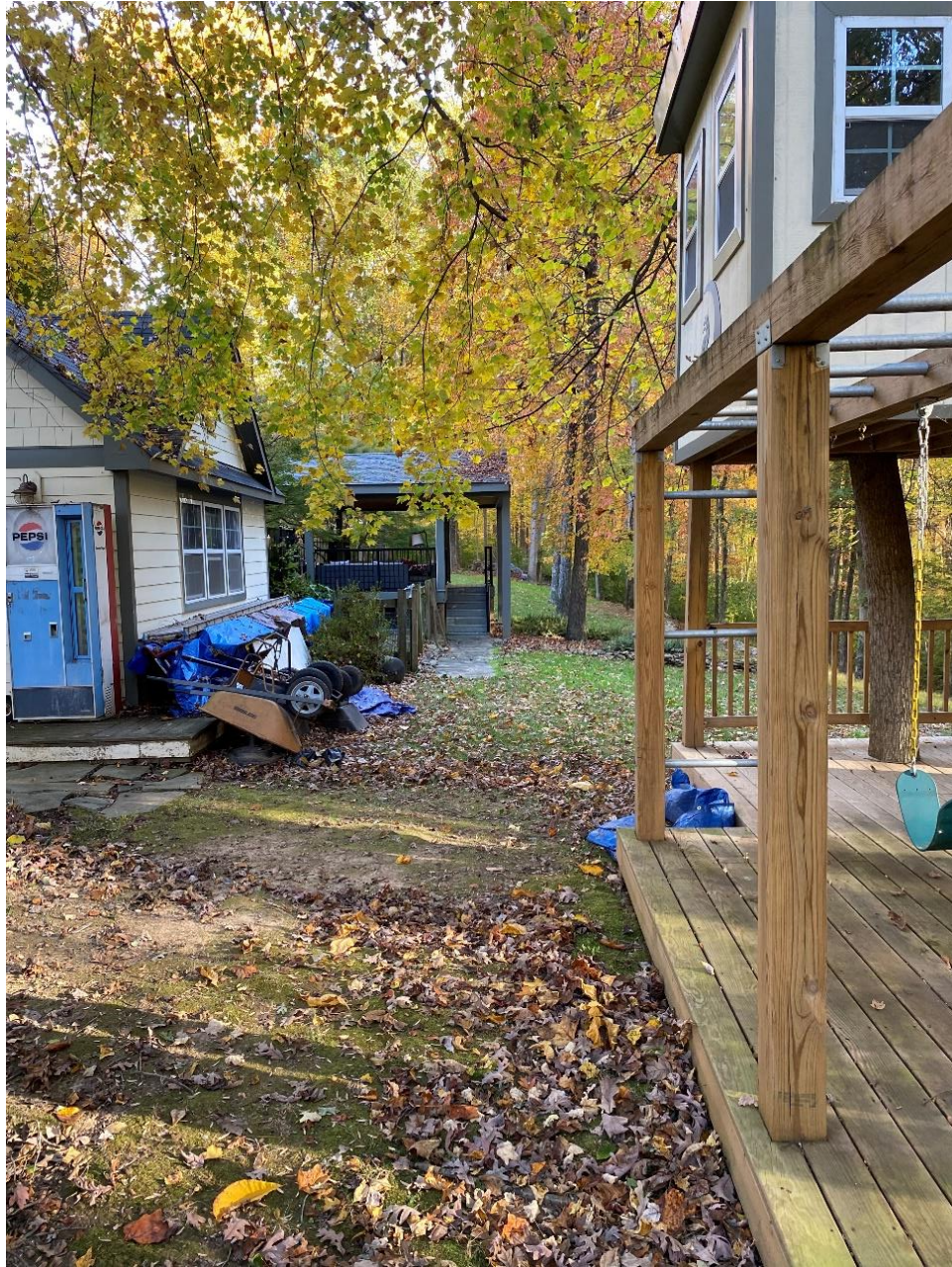


Figure 4 – Play Fort, Pool House, and Pavilion



Figure 5 – Mown Forest Understory



Figure 6 – Pavilion and Play Fort

SECTION 4: PROPOSAL

PROPOSAL

The Applicant proposes to resolve the violation case with the submitted Forest Conservation Plan Amendment. The Applicant requests modifications to the existing Category I Easement (illustrated in Figures 7, 8, and 9 below) to allow the pavilion, pool house, and associated walkway to remain as built, while removing the play fort from the easement. The proposed modification converts 0.10-acres of the existing on-site 1.09-acre Category 1 Easement at the rear, southwest side of the property, to a Category II conservation easement. This preserves tree canopy and other benefits associated with mature trees while providing perpetual protections to restrict other disturbances to the stream buffer.

The Amendment also proposes recording a new on-site 0.40-acre Category 1 easement, a 4:1 mitigation for the modified existing easement. The new easement adjoins an existing on-site

easement and protects a deeply cut ephemeral channel leading to Rock Creek, comparable in environmental value to the area proposed for modification to Category II.

Additionally, a total of 0.71-acres of onsite supplemental planting is proposed to mitigate for mowing and to enhance the resulting easements. The enhancement plantings, consistent with Chapter 22A regulations, include 71 trees, 24 shrubs, and an herbaceous layer of native woodland vegetation. A financial surety bond and 5-year maintenance agreement will assure successful establishment of the enhancements. The Applicant’s March 15, 2023 Statement of Justification letter is attached to this Staff Report as (Attachment 8).

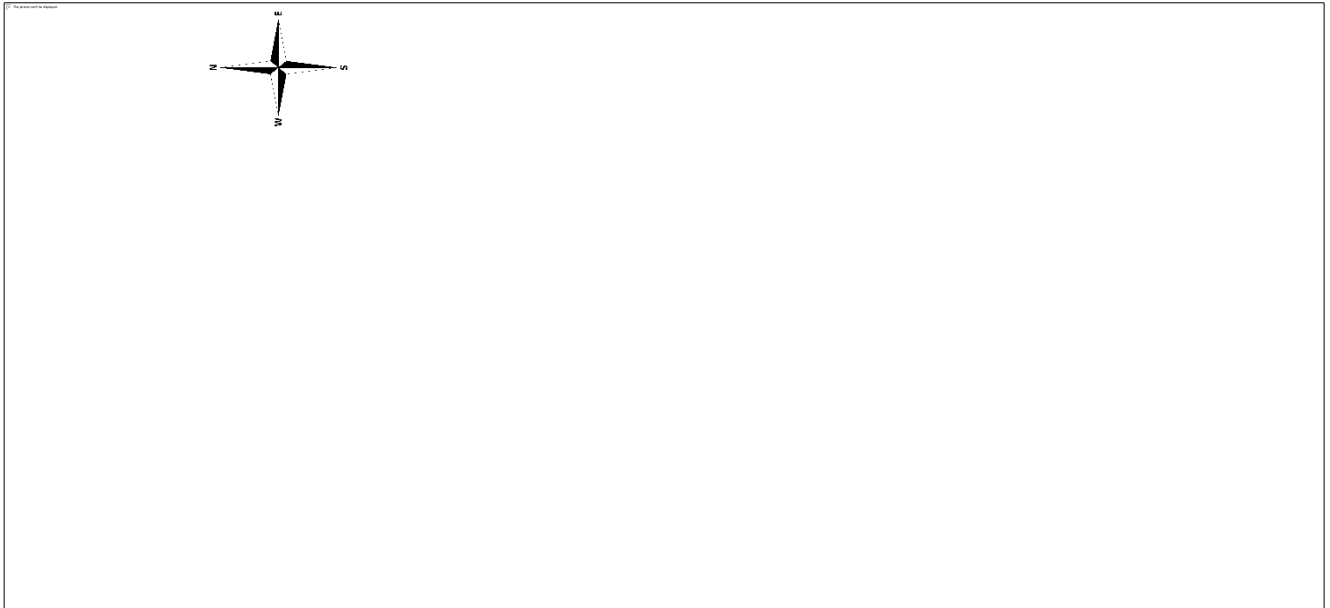


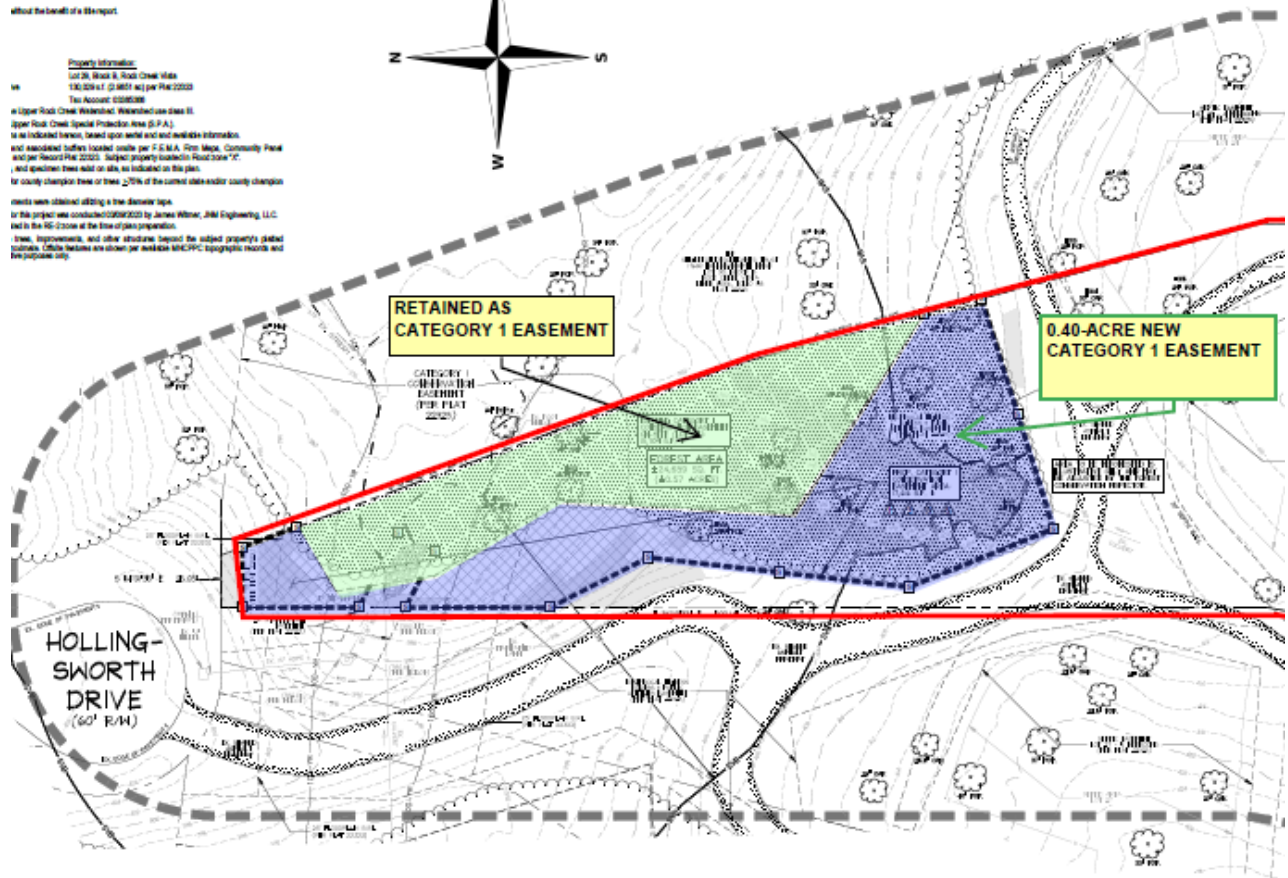
Figure 7: F20230260 – Proposed Conservation Easement reconfiguration.

See Category 1

Upper Suburban Sewerage Commission
Plan and Maps

Without the benefit of a site report

Property Information:
Lot 29, Block B, Rock Creek Vista
130.0541' (2.887) sq ft per Parcel 2020
Tax Account: 0580086
in Upper Rock Creek Watershed, Watershed Use Class II,
Upper Rock Creek Special Protection Area (S.P.A.)
As indicated herein, based upon aerial and field available information,
and associated buffers located outside per F.S.M.A. 2001 Map, Community Forest
and per Record Plat 20203. Subject property located in Road State "T".
All specified trees noted on site, as indicated on this plan,
for study changes from or from 20% of the current site under study changes
to the project was conducted on 08/20/2020 by James Wilson, JMW Engineering, LLC,
and to the RC 2006 at the time of plan preparation.
Trees, improvements, and other structures beyond the subject property's platted
boundaries. Effects features are shown per available GIS/PPC. Topographic records and
are prepared only.



Es. Shows Data with Metadata
08/20/2020

FOREST AMENDMENT TABULATION	
AREA OF FOREST WITHIN CATEGORY 1 FCE MOWED	17,895 SF
AREA OF FOREST WITHIN CATEGORY 1 FCE TO BE RE-PLANTED	13,130 SF
AREA OF EXISTING CATEGORY 1 FCE TO BE REPLACED WITH CATEGORY 1 EASEMENT*	4,425 SF

Figure 8: F20230260 New Easement - Northern Area

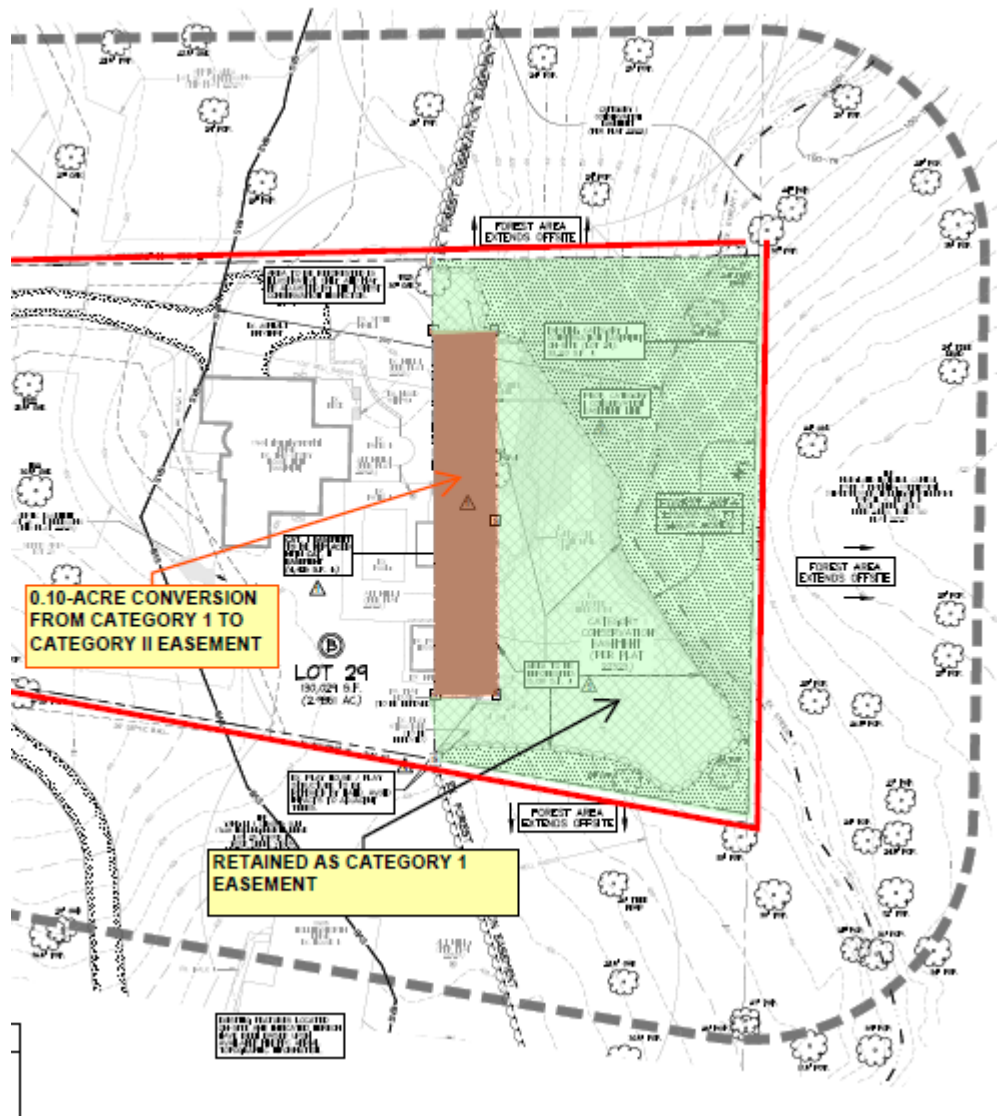


Figure 9: Easement Reconfiguration – Southern Area

SECTION 5: FINDINGS & ANALYSIS

STAFF REVIEW

On July 5, 2001, Preliminary Plan 120000730 was approved to create 5 lots with conditions. The total net tract area for forest conservation purposes included 23.8 acres, and the Property is within the RE2 zone. The reforestation/afforestation requirement was met by retention of forest within the M-NCPPC dedication area, and the plat recorded stream buffers which were encumbered by conservation easement.

The Site is located within the Upper Rock Creek Special Protection Area (SPA), and includes tributaries of Rock Creek, designated use Class III, within the Mainstem Fraley Farm sub-watershed. As required by Chapter 22A, a Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) #420001790 was approved by Staff on March 7, 2000, and a Final Forest Conservation Plan (“FFCP”) was approved with Preliminary Plan of Subdivision No. 120000730.

F20230260 proposes to amend Forest Conservation Plan #120000730. The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”). No forest clearing is proposed by this amendment. Structures built within the easement were completed with minimal disturbances and no canopy trees were cleared. Forest understory vegetation was removed and maintained as turfgrass to minimize erosion. To permit the Applicants request for the structures to remain, the long-term protective agreement encumbering portions of the Property must be modified or abandoned. A total of 0.10-acres is proposed to be modified from Category 1 to Category II. The Applicant is proposing to mitigate for this modification by creating 0.40-acres of new Category 1 Easement on site to protect forested stream buffer. This equals a 4:1 mitigation ratio. All proposed on-site Category I Easement areas will be enhanced by reforestation to improve the quality of the riparian buffers. The Amendment includes provisions for maintenance and management within proposed Conservation Easements.

FOREST CONSERVATION

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Article III as it is the result of an enforcement action. The Applicant seeks to resolve the violation by amendment of the Forest Conservation Plan with a limited Preliminary Plan amendment for forest conservation purposes. The Preliminary Plan amendment does not alter the intent of the previous findings, which remain applicable. It is therefore also subject to the Law under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.”

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. This is especially true in a Special Protection Area. Therefore, the Applicant proposes to retain the protective elements of a Category II Easement while proposing 4:1 onsite mitigation for the modification. This exceeds the Planning Board’s standard policy of requiring 2:1 offsite mitigation or 1:1 onsite mitigation.

A total of seventy-one (71) trees, twenty-four (24) shrubs, and a native herbaceous groundcover will be planted on the Property as part of this Amendment. These afforestation requirements are consistent

with Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations. The Amendment results in a net gain 0.30-acres of Category I Conservation Easement on the property while preserving Category II protections for the 0.10-acre modified area.

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-21 (“Variance”). Otherwise, such resources as defined under Section 22A-12(b)(3) must be left in an undisturbed condition. No impacts to high priority trees are proposed by this amendment, therefore no Variance was requested or reviewed.

SECTION 6: COMMUNITY 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

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. F20230260 (Attachment 9) as conditioned in this staff report to mitigate the easement abandonment on site as proposed.

ATTACHMENTS

Attachment 1: Record Plat No. 22323

Attachment 2: Planning Board Opinion dated July 5, 2001

Attachment 3: Preliminary Plan 120000730

Attachment 4: Forest Conservation Plan 120000730

Attachment 5: Conservation Easement Agreement, Book 13178, Page 412

Attachment 6: Notice of Violation April 7, 2022

Attachment 7: Notice of Violation August 24, 2022

Attachment 8: Statement of Justification

Attachment 9: Forest Conservation Plan Amendment F20230260