

WARFIELD PROPERTY, LOT 70  
FOREST CONSERVATION PLAN AMENDMENT  
NO. 12000095A



**Description**

In response to a violation, a request for approval of Forest Conservation Plan Amendment No. 12000095A, to remove 0.21 acres (8,944 square feet) of Category I Conservation Easement from Lot 70 in the Warfield Property Subdivision (also known as Woodfield Estates) and provide 4:1 offsite mitigation.

No. 12000095A

Completed: 3-21-2024




MCPB

Item No. [5]  
[04-04-2024]

Montgomery County

Planning Board  
2425 Reedie Drive, Floor 14  
h, MD 20902

## Planning Staff

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### LOCATION/ADDRESS

24218 Primula Ct, Gaithersburg

Warfield Property, Lot 70

### MASTER PLAN

*2006 Damascus Master Plan*

### ZONE

RC

### PROPERTY SIZE

2.11-acres

### APPLICANT

Mr. Kayode Ogunsola

### ACCEPTANCE DATE

June 15, 2023

### REVIEW BASIS

Chapter 22A

### Summary:

- Staff recommends approval of Forest Conservation Plan Amendment No. 12000095A. This Amendment will resolve the pending violation.
- The Subject Property, which includes the 2.11-acre lot and the 0.21-acre onsite forest conservation easement, was created as part of a 13-lot subdivision approved April 16, 2002, under preliminary Plan No.12000950. This Application proposes to amend the original Final Forest Conservation Plan approved May 15, 2002.
- The Amendment proposes:
  - Removing the 0.21-acre onsite Category 1 Forest Conservation Easement.
  - Providing offsite mitigation at a 4:1 ratio by acquiring credits from a Forest Mitigation Bank or by paying a Fee-in-Lieu per Chapter 22A-12(e)(1)(A).
- As of the 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 NO. 12000095A

Staff recommends approval of Warfield Property, Forest Conservation Plan Amendment No. 12000095A (“FCP Amendment”, “Amendment”, or “FCP”) subject to the following new Conditions No. 13 - 17. Previously approved Conditions No. 1 - 12 from the Planning Board’s Opinion approving 120000950, dated April 16, 2002, (Attachment 2) remain in full force and effect:

13. Within sixty (60) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 12000095A, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Upper Great Seneca Creek watershed or Priority Area to satisfy the mitigation requirement for a total of .84 acres of mitigation credit. The off-site 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 for purchase within the Upper Great Seneca Creek watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
14. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 12000095A, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Warfield Property, Lot 70 as recorded on Record Plat No. 22305 pursuant to Category I Conservation Easement Agreement Book 13178 Page 412 and filed among the County Land Records on September 24, 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 offsite forest planting mitigation is satisfied.
15. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat of Correction that delineates the abandoned conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat of Correction must be recorded in the Montgomery County Land Records within 180 days of the mailing date of the Planning Board Resolution approving the amendment to the Forest Conservation Plan.
16. 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.
17. The Applicant must clearly define the boundary of the adjacent conservation easement by installing three permanent conservation easement boundary markers along the rear property line at the direction of the Forest Conservation Inspector.

## SECTION 2: SITE DESCRIPTION

### VICINITY

The vicinity is comprised of Rural Cluster zoned land with forested areas and low-density residential development. The Property is known as Warfield Property, Lot 70 and is located at 24218 Primula Ct, Gaithersburg Maryland (Figure 1) (“Property” or “Subject Property”). The Subject Property is within the RC Zone and the *Damascus Master Plan*. The property is within the Upper Great Seneca Creek Watershed.

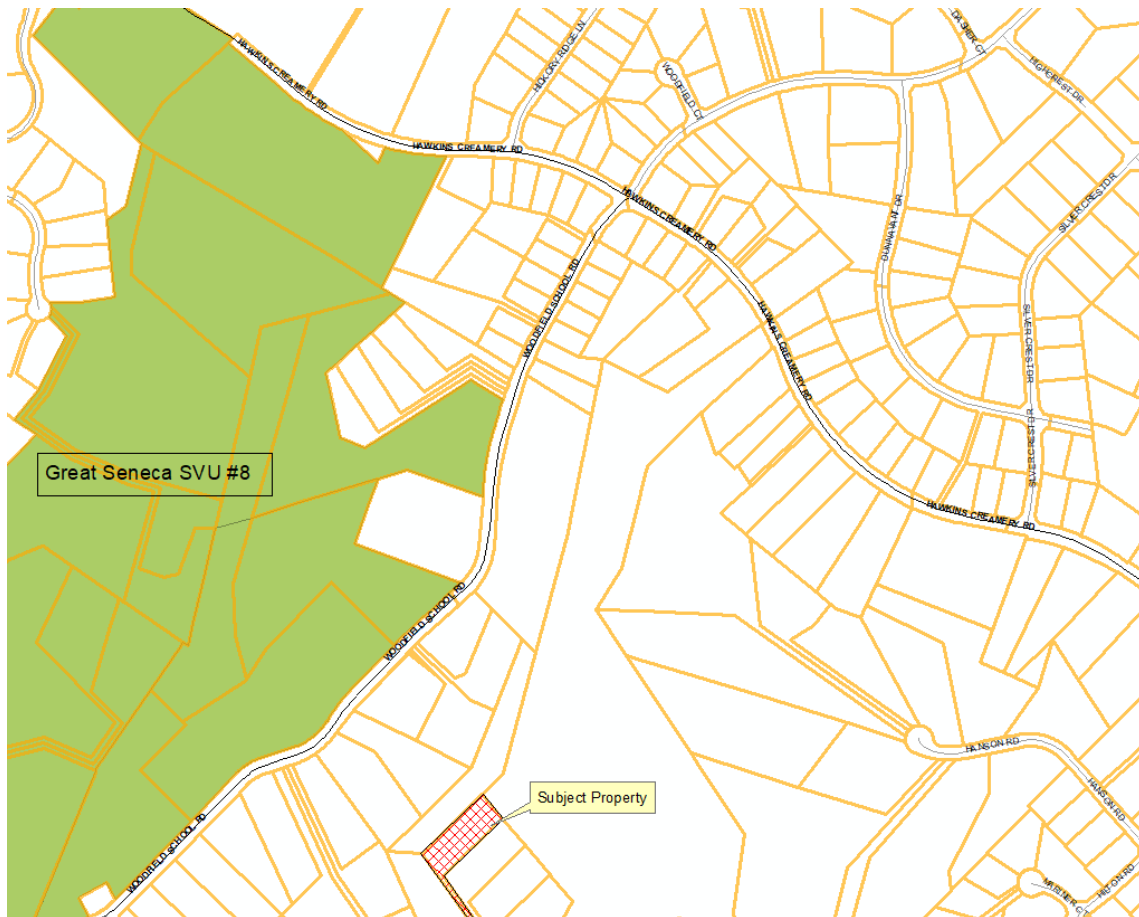


Figure 1 - Vicinity Map

On the aerial image in Figure 2 the entire Warfield Property is outlined by a heavy black polygon, and the finer lines show Lot 70. Green lines depict existing conservation easements.

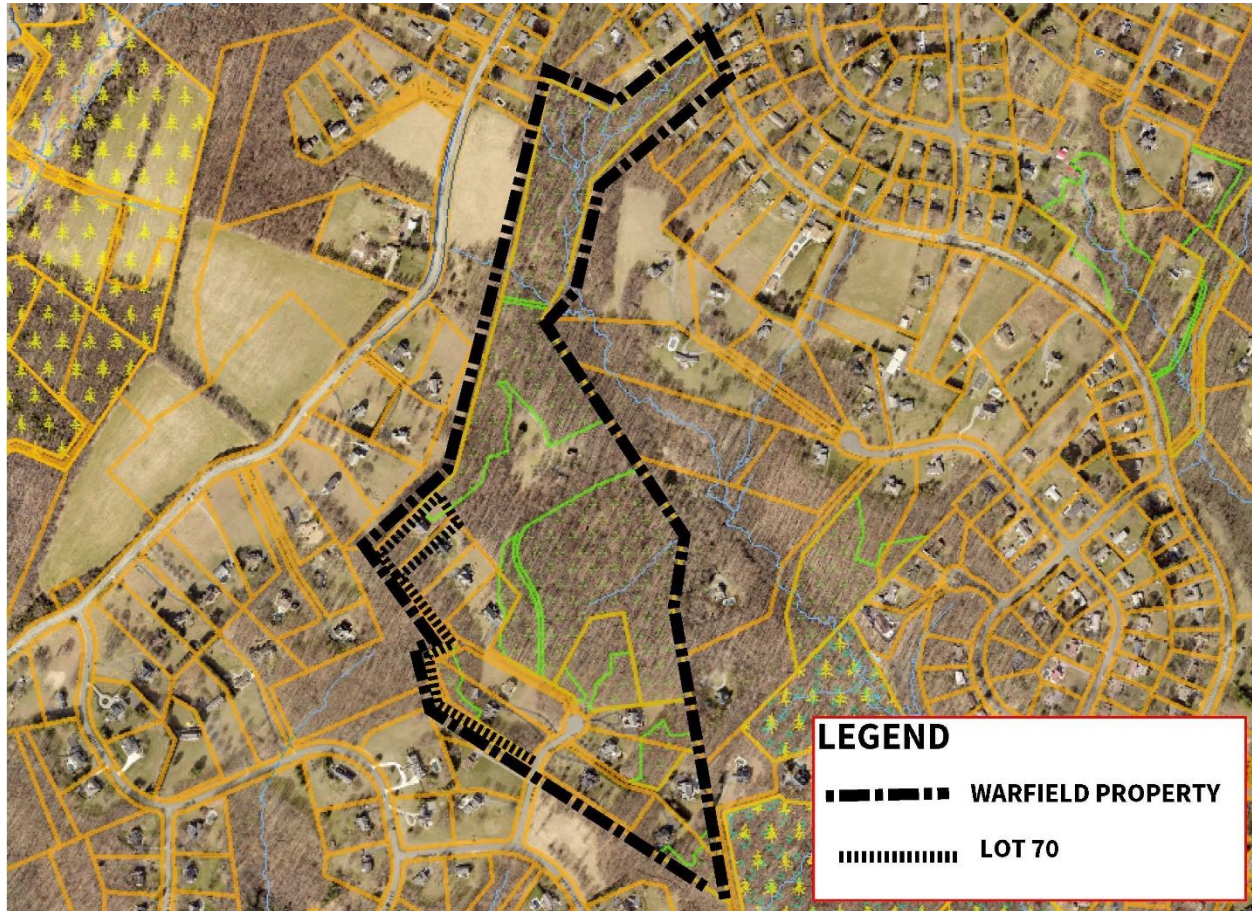
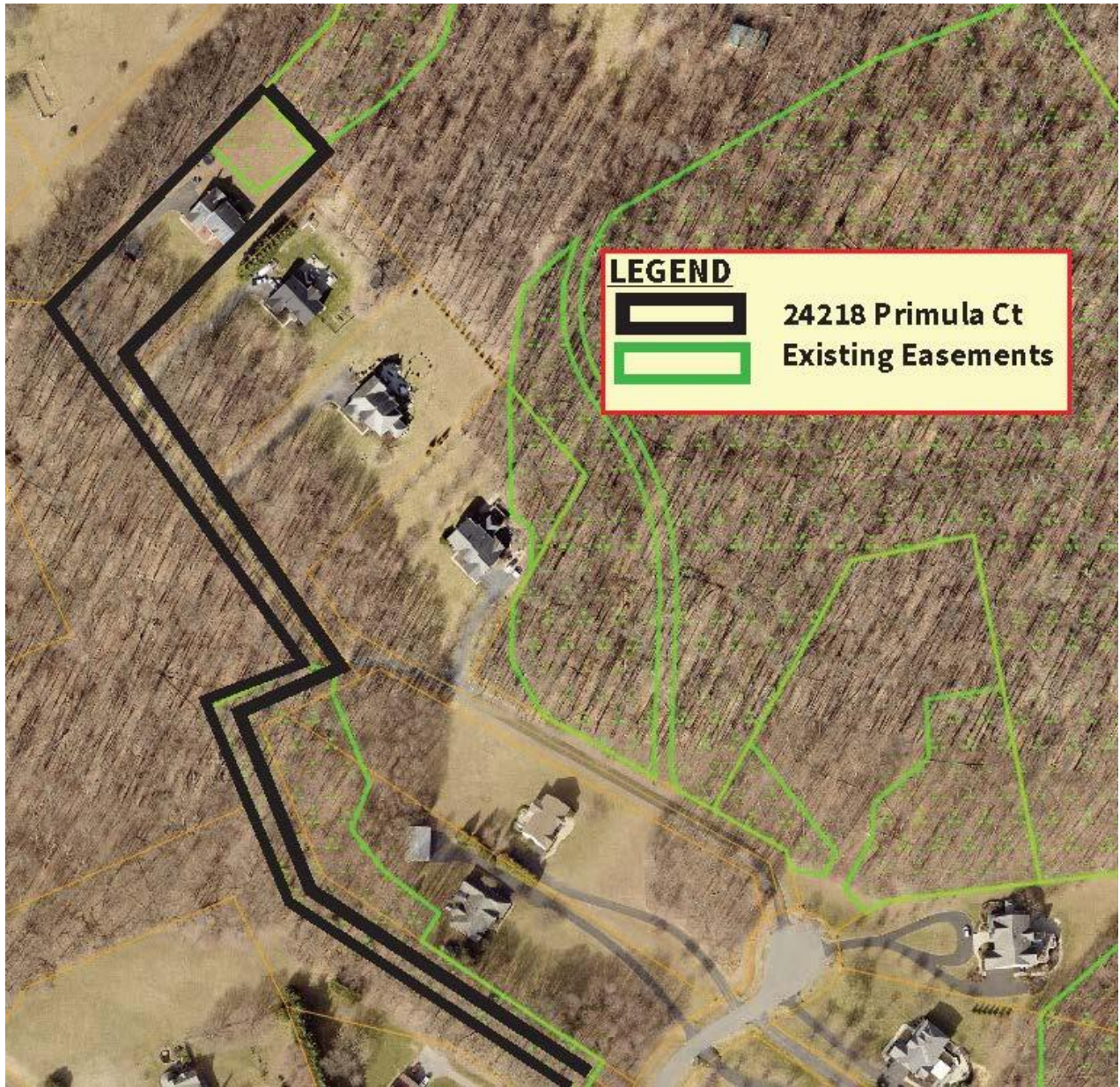


Figure 2 – Aerial Vicinity

## PROPERTY DESCRIPTION

The 2.11-acre Subject Property was created on September 24, 2002, with the filing of Record Plat No. 22305 among the Land Records of Montgomery County, Maryland (Attachment 1). The Subject Property, as delineated by a black polygon in Figure 3, is a flag lot with a single-family home, sharing a driveway with four other lots off the cul-de-sac of Primula Ct. The northeastern property line shares a boundary with forested property zoned Agricultural, much of which is encumbered by Category 1 Forest Conservation Easement.



*Figure 3 – Aerial Image Subject Property*

Approximately 0.21 acres of the Subject Property are encumbered by a Category I Conservation Easement that originally protected a mixed hardwood forest that is contiguous with off-site forest, some of which is protected by easement. Figure 4 illustrates the extent of the forested portion of the Subject Property in 2015.



*Figure 4 – 2015 Forest Extent*

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

The Subject Property is part of the Warfield Property Subdivision, a 67.52- acre tract of land. On April 16, 2002, the Montgomery County Planning Board issued an Opinion (Attachment 2) approving the development of the Warfield Property via Preliminary Plan No. 120000950 (Attachment 3), for 13 lots within the larger tract area. Natural Resource Inventory/Forest Stand Delineation No. 419982110 (Attachment 4) was recertified December 27, 2001. The Final Forest Conservation Plan approved with Preliminary Plan No. 120000950 (Attachment 5) shows forest conservation easements over stream



valley buffers and existing forest cover. There are no streams, wetlands, or floodplains on or near the Subject Property.

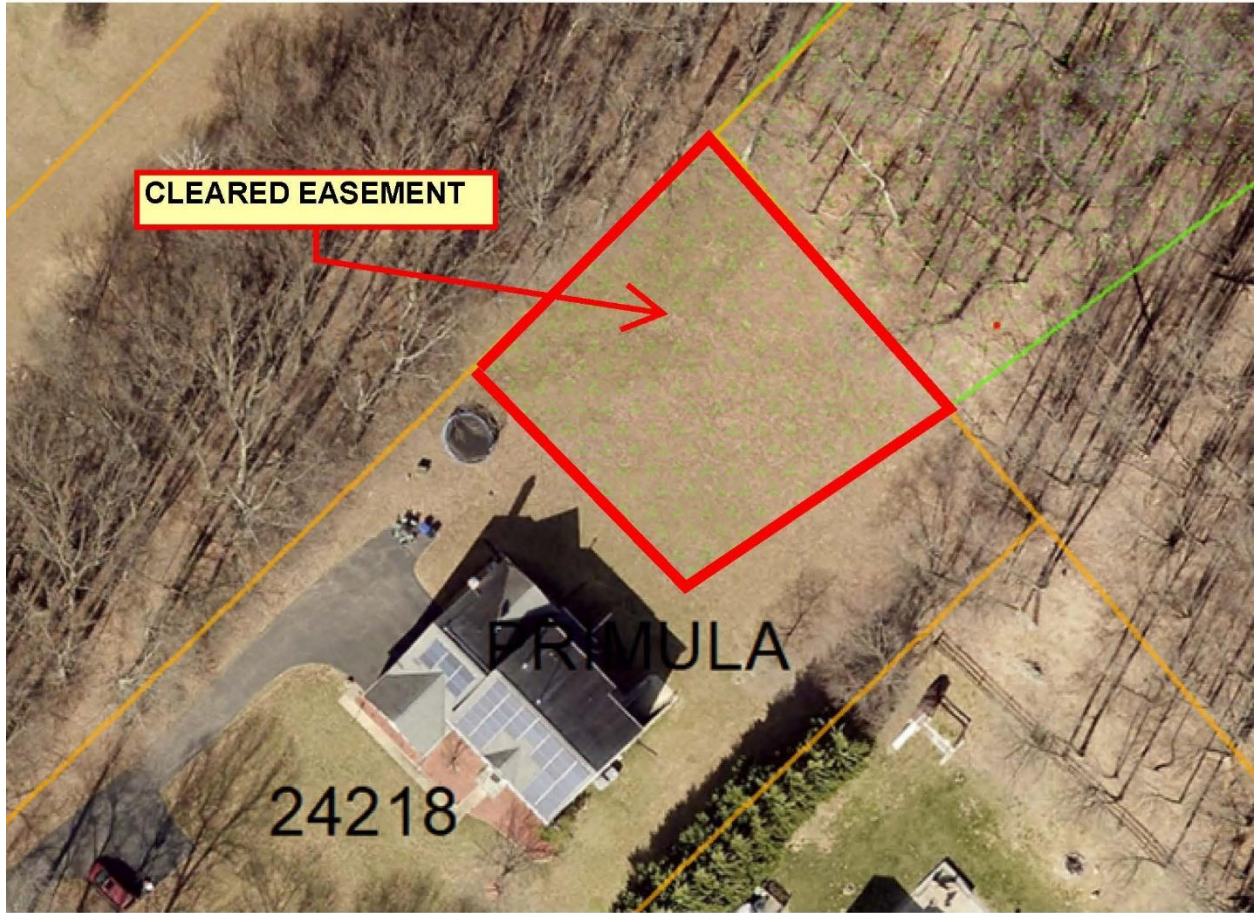
Record Plat No. 22305 established the Subject Property and delineated the Category I Conservation Easement area of the Property. The terms of the Category I Conservation Easement Agreement are recorded among land records at Book 13178, Page 412 (Attachment 6). The Applicant purchased the Property with the finished home in July of 2013.

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#### **NOTICE OF VIOLATION**

In December of 2021, the Applicant consulted with a pool contractor who advised that a portion of the Property was encumbered by conservation easement, and that Planning Department authorization would be required before building permits could be obtained. The Applicant contacted Forest Conservation Inspector Michael Sharp about building a pool on the Property, indicating he was unaware that the proposed pool location was in a recorded forest conservation easement. The Applicant and the Inspector discussed the true location of the easement, and the easement agreement which forbids construction, excavation or grading, and any erection of any structural improvements on or above ground.

During a property inspection on December 28, 2021, the forest conservation inspector determined that the entirety of the conservation easement, approximately 8,944 square feet, had already been cleared of forest by the applicant and was being mowed and maintained as lawn. Satellite imagery shows that the clearing was done in the conservation easement between the winter of 2015 and spring of 2017. Figures 5 and 6 illustrate the current condition of the cleared easement.



*Figure 5 - 2023 Cleared Easement*



*Figure 6 – Cleared easement Fall 2023*

A Notice of Violation (Attachment 7) was issued to the Property Owner December 28, 2021, for failing to comply with the terms of approved Forest Conservation Plan #120000950 and the recorded Conservation Easement Agreement. The Notice of Violation directed the owner to choose to either restore the cleared forest or obtain an amendment to the approved Forest Conservation Plan. The owner chose to pursue a plan amendment with the intention to build the proposed pool, as noted in the Statement of Justification (Attachment 8) included with the Application.

## PROPOSAL

The Applicant proposes to resolve the violation case with Forest Conservation Plan Amendment No. 12000095A. The Amendment proposes to abandon the 0.21 acres of onsite Category I Conservation Easement (Figure 7) and mitigate for the loss of protected forest off-site at a 4:1 ratio. This Amendment will result in permanent protections for 0.84-acres of offsite forest and resolve the pending violation. The Applicant's October 30, 2023, statement of justification letter is attached to this Staff Report (Attachment 8).

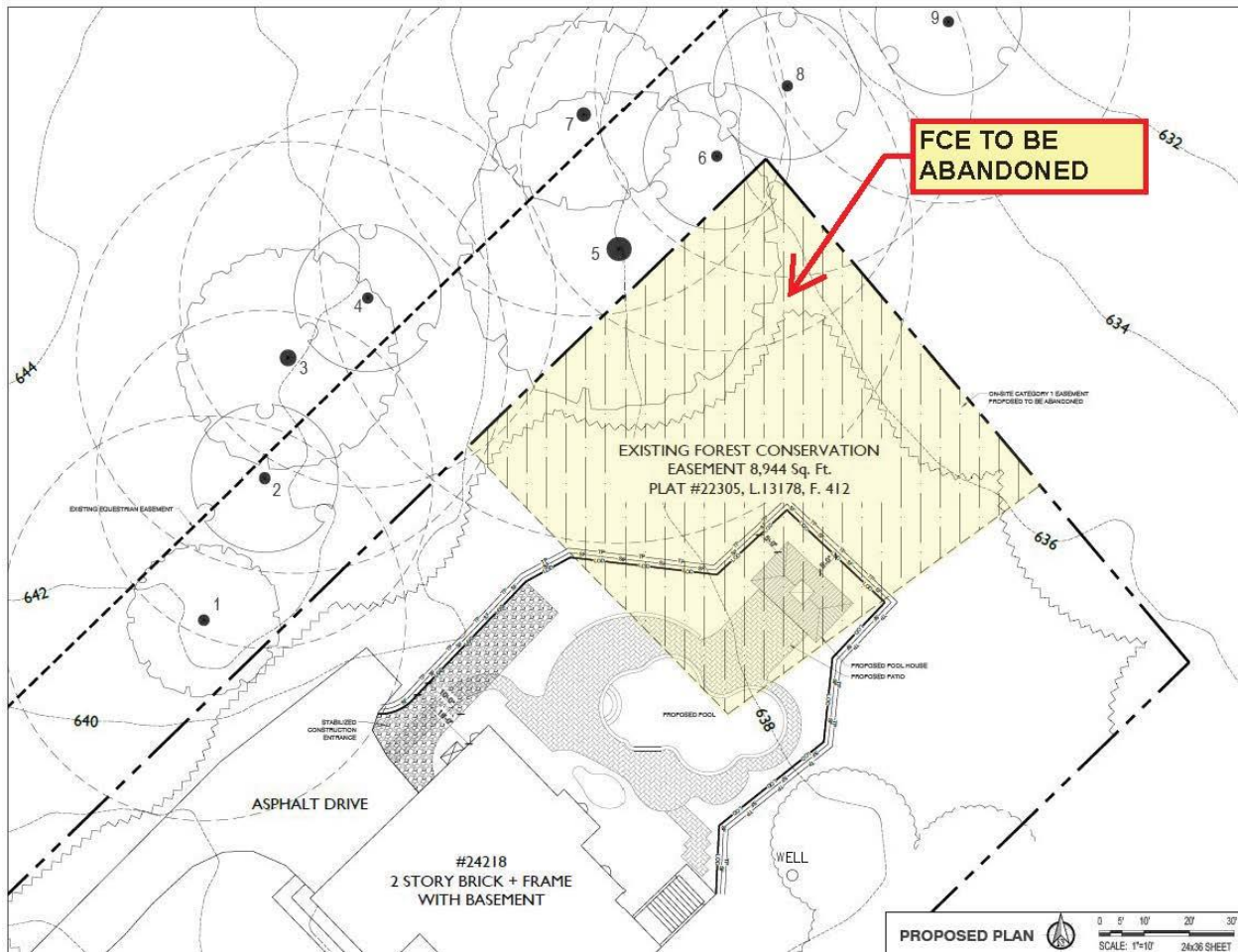


Figure 7 – Proposed Easement Abandonment and Pool

## SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements for this Application.

As of the date of this Staff Report, no correspondence has been received.

## SECTION 5: FOREST CONSERVATION PLAN AMENDMENT 12000095A

### FINDINGS AND ANALYSIS

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.

Amendment No. 12000095A proposes to amend Forest Conservation Plan No. 120000950. The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”). To permit the Applicants request to build the proposed pool and associated structures, the long-term protective agreement encumbering portions of the Property would need to be abandoned. Therefore, 12000095A proposes to abandon 0.21 acres of Category I Conservation Easement from the rear yard of Warfield Property, Lot 70, to allow for pool and patio construction and maintenance of the same.

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”. The subject easement was created to protect a small section of the adjacent existing forest that is also protected by easement. No sensitive environmental buffers such as streams or wetlands are found within the subject easement.

Onsite mitigation of easement removal is generally preferable to offsite mitigation. However, certain site factors favor support of mitigation offsite. The subject easement is a small peninsula with an equestrian easement along its’ western side and cleared land to the south and east. To accommodate the septic system, the house had to be located toward the rear of this flag lot, leaving only about a third of an acre available for recreational use. Half of that area was encumbered by easement. In recent years the Board has sought to avoid encumbering properties where the easement would significantly restrict reasonable use of the yard. Development plans are now designed to conserve natural resources where they will be less prone to encroachment and are thereby more sustainable long-term. Staff considered that reforestation of the cleared land, while providing some ecological benefits, would continue to restrict use in the manner no longer favored on development plans. By mitigating the loss offsite, the conservation efforts can be directed towards high priority afforestation projects in sensitive environments.

Therefore, the Applicant proposes to abandon the 0.21-acre easement and provide 4:1 offsite mitigation for loss of forest. This exceeds the Planning Board's standard policy of requiring 2:1 offsite mitigation or 1:1 onsite mitigation. The Applicant is proposing to mitigate for the loss of protected forest by purchase of 0.84-acres of offsite Forest Bank credits or, if credits are unavailable, by paying an equivalent amount in fee-in-lieu. This represents a 4:1 mitigation ratio that will enhance areas deemed high priority for long-term conservation.

## SECTION 6: 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. 12000095A (Attachment 9) with the conditions specified at the beginning of this report.

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### ATTACHMENTS

*Attachment 1: Record Plat No. 22305*

*Attachment 2: 120000950 Planning Board Opinion*

*Attachment 3: Preliminary Plan 120000950*

*Attachment 4: Approved NRI/FSD 419982110*

*Attachment 5: Forest Conservation Plan 120000950*

*Attachment 6: Category I Conservation Easement Agreement – Book 13178 Page 412*

*Attachment 7: Notice of Violation*

*Attachment 8: October 30, 2023 – Statement of Justification*

*Attachment 9: Forest Conservation Plan Amendment 12000095A*