

MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION
STAFF REPORT

Address:	10201 Menlo Ave., Silver Spring	Meeting Date:	9/9/2020
Resource:	Vacant Lot Capitol View Park Historic District	Report Date:	9/2/2020
Applicant:	Minter Farnsworth	Public Notice:	8/26/2020
Review:	HAWP	Tax Credit:	n/a
Case Number:	31/07-20F	Staff:	Dan Bruechert
PROPOSAL:	Tree Removal		

STAFF RECOMMENDATION

- Approve
- Approve with conditions

ARCHITECTURAL DESCRIPTION

SIGNIFICANCE: Vacant Lot within the Capitol View Park Historic District
STYLE: n/a
DATE: n/a

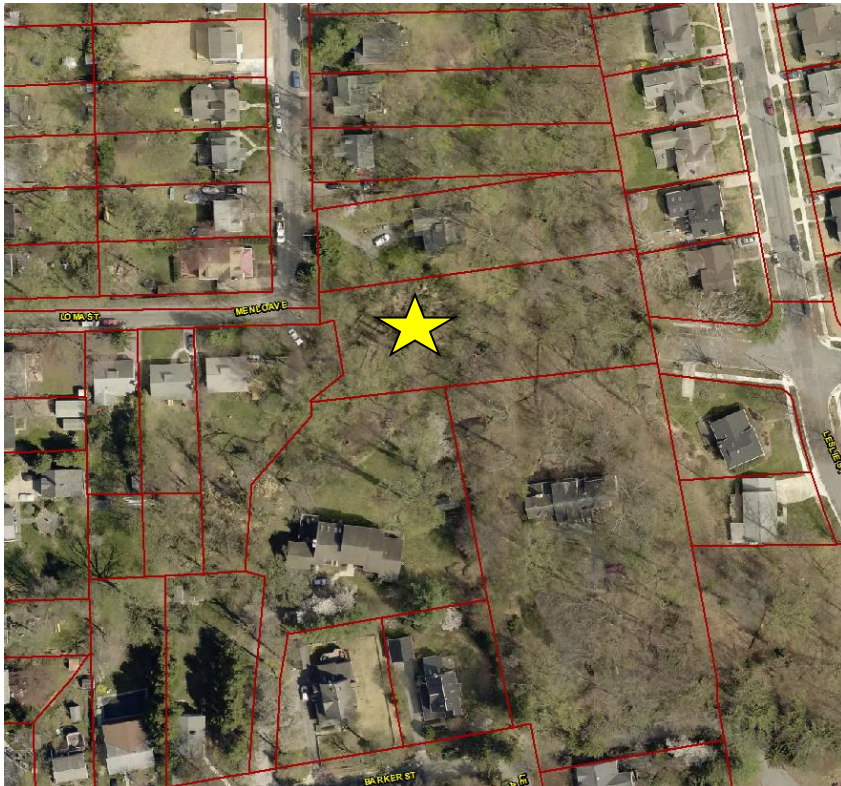


Fig. 1: 10201 Menlo Ave. is an undeveloped lot.

BACKGROUND

The subject property has a long administrative record. In October 2017, the applicant presented a proposal to develop the lot at 10201 Menlo Avenue in the Capitol View Historic District. On February 13, 2018, the applicant received an approved HAWP to construct a single-family house on the site. The approval was appealed to the Board of Appeals and the Board of Appeals overturned the approval.

The HPC issued an approved HAWP to construct a single-family house, install a driveway, regrade, and remove several trees from the property on April 24, 2019.¹ The approval was appealed and the Board of Appeals upheld the HAWP approval.²

PROPOSAL

The applicant proposes to remove 8 (eight) trees that were not included in the original HAWP approval.

APPLICABLE GUIDELINES

When reviewing alterations and new construction within the Capitol View Park Historic District several documents are to be utilized as guidelines to assist the Commission in developing their decision. These documents include the *Approved & Adopted Sector Plan for Capitol View & Vicinity (Sector Plan)*, *Montgomery County Code Chapter 24A (Chapter 24A)*, and the *Secretary of the Interior's Standards for Rehabilitation (Standards)*. The pertinent information in these documents is outlined below.

Montgomery County Code; Chapter 24A-8

- (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to ensure conformity with the purposes and requirements of this chapter, if it finds that:
 - (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
 - (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
 - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
 - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship;
- (d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district. (*Ord. No. 9-4, § 1; Ord. No. 11-59*)

¹ The Staff Report and application materials for the 2019 HAWP can be found here: <https://montgomeryplanning.org/wp-content/uploads/2019/04/LA-10201-Menlo-Avene-Silver-Spring.pdf>. The audio recording of that meeting can be found here: http://mncppc.granicus.com/MediaPlayer.php?publish_id=341cee53-6773-11e9-a164-0050569183fa.

² The Board of Appeals decision, issued January 23, 2020 can be found here: <https://www.montgomerycountymd.gov/BOA/Resources/Files/pdf/opinions/2020/A-6624.pdf>.

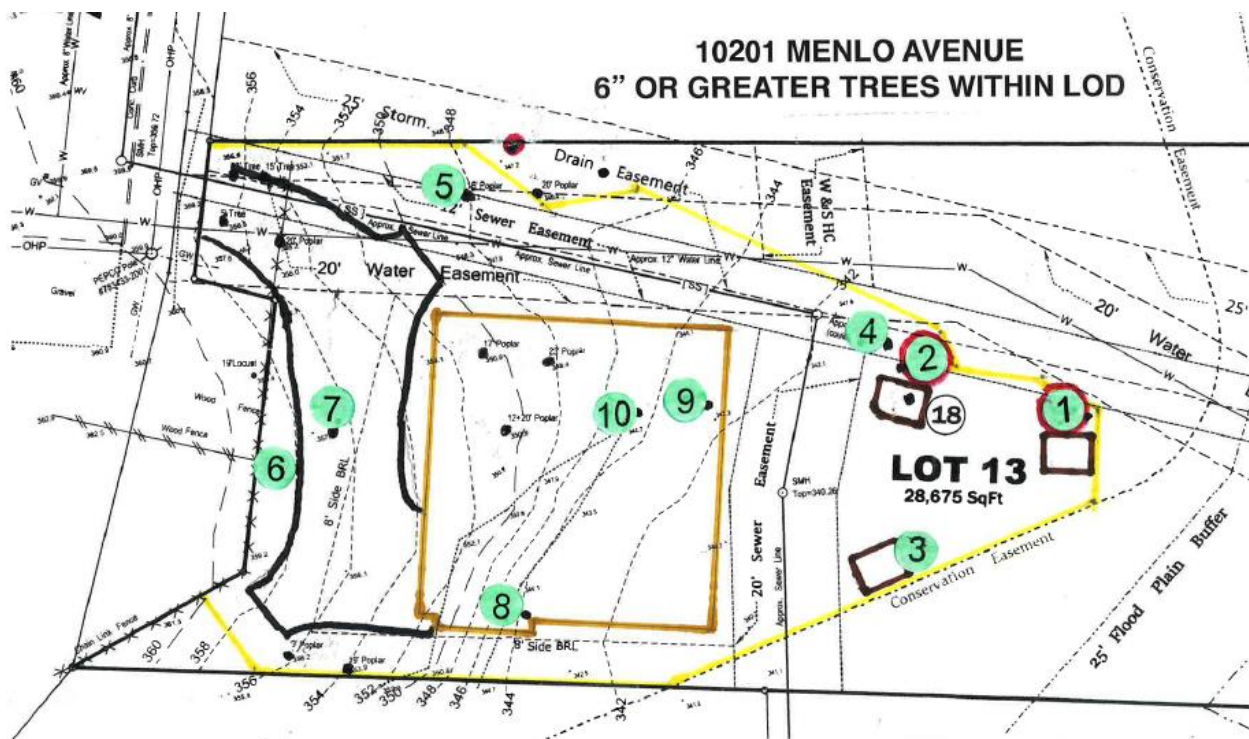
Secretary of Interior’s Standards for Rehabilitation

The Secretary of the Interior defines rehabilitation as “the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values.” The relevant *Standards* are as follows:

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

STAFF DISCUSSION

The applicant proposes to remove a total of 8 (eight) additional trees from the subject property. The applicant notes that many of these trees were less than the HPC required 6” (six inches) d.b.h. when the initial tree survey was completed before the 2017 Preliminary Consultation submission. Regardless of the tree condition at that time, current conditions require that the tree removal be permitted through a HAWP.



TREE #	STATUS	SIZE	TYPE	LOCATION & NOTES
1	Saved Tree	12.5"	Boxelder	Dry Well
2	Saved Tree	12"	Black Locust	Dry Well
3	6" or less at HAWP APP 3 yrs ago	6.25"	Tulip Poplar	Dry Well
4	Needlecast, Spider Mites	10"	Spruce	Poor Health
5	6" or less at HAWP APP 3 yrs ago	8.5"	Tulip Poplar	Driveway
6	6" or less at HAWP APP 3 yrs ago	8"	Maple	Driveway, Poor Health
7	6" or less at HAWP APP 3 yrs ago	7"	Maple	Driveway
8	6" or less at HAWP APP 3 yrs ago	9"	Maple	House
9	Obscured by Bamboo (see pix)	10.5"	Black Locust	House
10	6" or less at HAWP APP 3 yrs ago	8"	Oak	House

Figure 2: Partial site plan showing the location, size, and species of the proposed tree removal.

The site remained undeveloped since its subdivision in 1986 and has a forested and overgrown character. There is a significant amount of bamboo growing throughout the site. The rear third of the lot is a conservation easement and may not be disturbed without the approval of M-NCPPC.

Trees identified as 8, 9, and 10 are all within the footprint of the approved house. The applicant asserts that two of the trees were smaller than 6” d.b.h. when the 2017 Prelim was submitted; and the third tree was obscured by bamboo and missed by the applicant’s arborist. Regardless of the tree growth and the omission by the arborist the trees exceed 6” and require a HAWP. In April 2019 the HPC agreed with Staff’s finding that the only location a house could be placed on the lot (due to the restrictions of the conservation easement and several utility easements along with zoning requirements) is the location of the approved house. For the HPC to not approve the tree removal would frustrate the approved HAWP and Staff finds would violate 24A-8(b)(5), depriving the applicant of the reasonable use of the property. Staff recommends the HPC approve the removal of trees 8, 9, and 10 of the submitted tree survey.

Trees 6 and 7 are in or immediately adjacent to the proposed driveway. Due to the unique layout of this lot, with the only access point to Menlo Ave. at the northwestern corner of the lot, Staff finds the driveway can not be located in any other location on the site. Staff finds that trees 6 and 7, like the trees discussed above, need to be removed so that the site has vehicular access. Staff recommends the HPC approve the removal of trees 6 and 7 under 24A-8(b)(5). Staff also notes that tree 6 is identified in ‘poor health’ and while it is not a hazard yet if its health continues to degrade its removal will be required as a hazard without the HPC’s approval.

Trees 1, 2, 3, and 4 are located to the rear of the lot and are not visible from the right of way. Trees 1 and 2 will be retained in their location. Tree 3 is in the location of one of the three proposed dry wells on the site and is one of the trees the applicant identified as less than 6” at the time of the original submission. Tree 4 is a 10” d.b.h. spruce tree that is in poor health due to a spider mite infestation. Staff finds that tree 3 is barely above the 6” threshold and is in a location that is not visible from the public right-of-way. Its removal will not impact the historic character of the site or the surrounding district. Additionally, tree 3 is in the location of one of the proposed drywells. While this dry well could be relocated, that would expand the limits of disturbance and increase the potential erosion on site. Tree 4 is in poor health and only has needles at its crown. Staff finds that this tree will likely continue to degrade and become a hazard. Staff recommends the HPC approve the removal of trees 3 and 4 under 24A-8(b)(2), (4), and (5).

Tree 5 is a Tulip Poplar that the applicant contends was less than 6” d.b.h. at the time of the original submission. Based on the soft wood and quick growth of the species, Staff concludes this was likely the case. The location of this tree is near the turn-around for the previously approved driveway and in the middle of the approved timber terraces. In Staff’s discussions with the applicant, the applicant identified the approved on-site re-grading and terracing as a method to limit runoff and erosion into the creek; a concern voiced by many members of the community in the various Preliminary Consultations, HAWP hearings, and administrative appeals. Staff recommends the HPC approve the removal of Tree 5 under 24A-8(b)(2) and (d).

In summary, the applicant will remove a total of eight trees of the ten trees within the limits of disturbance. Staff finds approval of removing the trees that are either in the house or driveway footprint or immediately adjacent (Trees 5 – 10) should be approved under 24A-8(b)(5); as the site could not be developed without removing them. Tree 3 is not visible from the right of way and is in the location of one of the approved drywells. Staff finds this tree is not visible from the surrounding district and recommends its removal under 24A-8(b)(1). Finally, Tree 4 is only partially visible from the right-of-way and is in poor health. Staff recommends the HPC approve the removal of this tree under 24A-8(b)(1) and (4).

Tree #	Proposal (remove/retain)	Size (in d.b.h)	Species	Notes
1	Retain	12.5”	Boxelder	Not visible from ROW
2	Retain	12”	Black Locust	Not visible from

				ROW
3	Remove	6.25"	Tulip Poplar	Not visible from ROW
4	Remove	10"	Spruce	Needle cast/spider mite infection
5	Remove	8.5"	Tulip Poplar	Adjacent to driveway
6	Remove	8"	Maple	In driveway and poor health
7	Remove	7"	Maple	In driveway
8	Remove	8"	Maple	In house footprint
9	Remove	10.5"	Black Locust	In house footprint
10	Remove	8"	Oak	In house footprint

STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the HAWP application under the Criteria for Issuance in Chapter 24A-8(b)(1), (2), (4), (5) and (d), having found that the proposal will not substantially alter the exterior features of the historic resource and is compatible in character with the district and the purposes of Chapter 24A;

and with the *Secretary of the Interior's Standards for Rehabilitation #2*;

and with the general condition that the applicant shall present the **3 permit sets of drawings, if applicable, to Historic Preservation Commission (HPC) staff for review and stamping** prior to submission for the Montgomery County Department of Permitting Services (DPS) building permits;

and with the general condition that final project design details, not specifically delineated by the Commission, shall be approved by HPC staff or brought back to the Commission as a revised HAWP application at staff's discretion;

and with the general condition that the applicant shall notify the Historic Preservation Staff if they propose to make **any alterations** to the approved plans. Once the work is completed the applicant will contact the staff person assigned to this application at 301-563-3400 or dan.bruechert@montgomeryplanning.org to schedule a follow-up site visit.

Description of Property: Please describe the building and surrounding environment. Include information on significant structures, landscape features, or other significant features of the property:

The property located at 10201 Menlo is a 28,675 square foot vacant wooded lot in Capitol View Park. This lot is impeded by a conservation easement that covers approximately the eastern third of the lot, as well as a water easement, a stormwater easement, sewer easements and also the zoning limitations as far as front and side setbacks which leave a buildable envelope that is just over 5000 square feet.

Description of Work Proposed: Please give an overview of the work to be undertaken:

We propose to save the two trees numbered 1 and 2. We propose to remove 2 trees in poor health numbered 4 and 6. We propose to remove the remaining trees numbered 3,5,7,8,9 and 10 due to their locations. Many of these trees were less than 6" at the time of the original HAWP and Natural Resource Inventory performed in 2017. Trees number 9 and 10 were obscured by a thick bamboo grove.

We will follow the law and guidelines imposed by the Montgomery County DPS canopy law for replacement trees.

HAWP APPLICATION: MAILING ADDRESSES FOR NOTIFYING
 [Owner, Owner's Agent, Adjacent and Confronting Property Owners]

Owner's mailing address	Owner's Agent's mailing address
10201 MENLO LLC 2501 PEACHTREE RD CLARKSBURG, MD 20871	MINTER P. FARNSWORTH 2501 PEACHTREE RD CLARKSBURG, MD 20871
Adjacent and confronting Property Owners mailing addresses	
J. STAGUHN AND K. FLORIAN STAGUHN 10203 MENLO AVE SILVER SPRING, MD 20910	PHILLIP HAUSSMANN 10200 MENLO AVE SILVER SPRING, MD 20910
TOVI LEHMAN AND NOA LIVNI LEHMAN 2900 LOMA ST SILVER SPRING, MD 20910	LYNN J. BUSH 2905 BARKER ST SILVER SPRING, MD 20910
HARRY A. AND E.C. VOLZ 2801 BARKER ST. SILVER SPRING, MD 20910	BABEL AND CHLOE PEREZ 10202 LESLIE ST. SILVER SPRING, MD 20902

HAWP APPLICATION: MAILING ADDRESSES FOR NOTIFYING
 [Owner, Owner's Agent, Adjacent and Confronting Property Owners] ..

Owner's mailing address	Owner's Agent's mailing address
10201 MENLO LLC 25101 PEACHTREE RD CLARKSBURG, MD 20871	MINTER P. FARNSWORTH 25101 PEACHTREE RD CLARKSBURG, MD 20871
Adjacent and confronting Property Owners mailing addresses	
RICHARD NICHOLLS ETAL 10200 LESLIE ST. SILVER SPRING, MD 20902	MICHAEL E. LIVERMORE AND FUMIYO HASHIDA 10118 LESLIE ST. SILVER SPRING, MD 20902

TREE #1
12.5" Boxelder
Plan is to save this tree



TREE #2
12" Black Locust
Plan is to save this tree



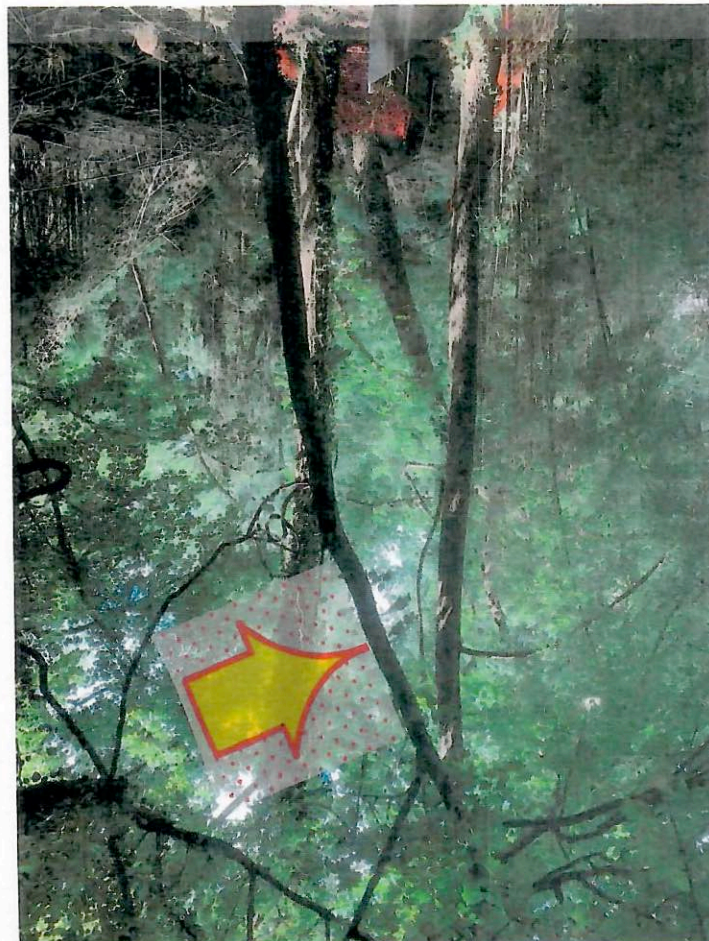
TREE #3
6.25" Tulip Poplar
Not planning to save - Dry well location
Encroaching into the area of replanting a willow oak



TREE #4
10" Spruce
Not planning
to save due to
poor health
Needlecast and
Spider Mites



TREE #5
8.5" Tulip Poplar
6" on 2017 NRI
Not planning to
save due to
leaning over
neighbor's
property and
in fill area for
driveway



TREE #6
8" Maple
Not planning to save
due to poor health
and within driveway



TREE #7
7" Maple
6" on 2017 NRI
Not planning to
save due to
location within
the driveway



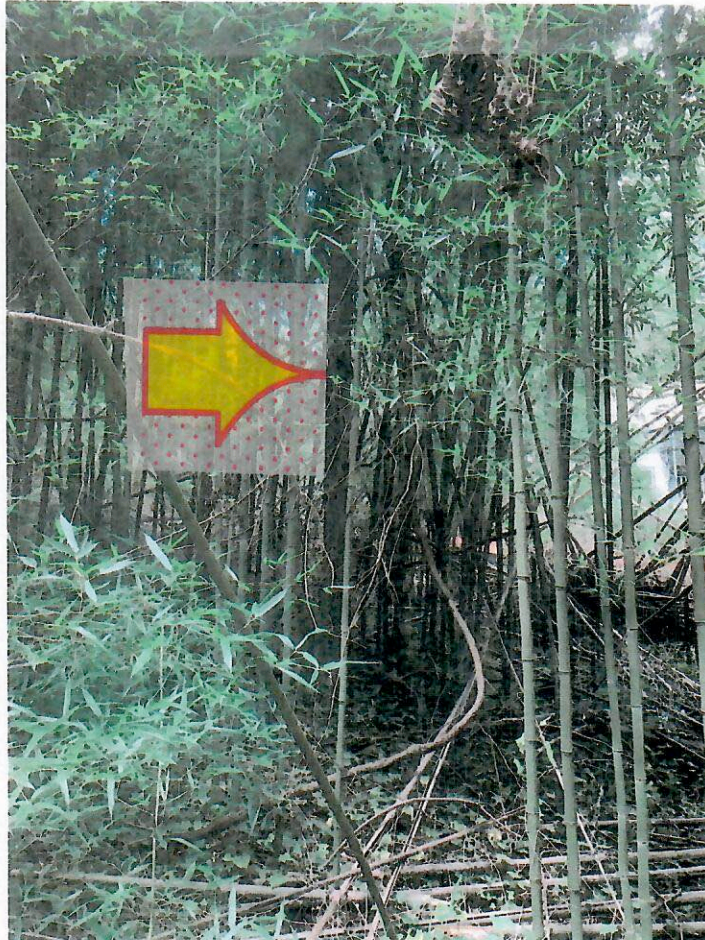
TREE #8
9" Maple
Not planning to save
due to location
within the house, deck and
retaining wall construction



TREE #9
10.5" Black Locust
Not planning to
save due to
leaning toward
neighbor's house
and within the
house, deck and
retaining wall
construction



TREE #10
8" Oak
6" or less at
2017 HAWP
Not planning
to save due to
within the
house, deck
and retaining
wall construction

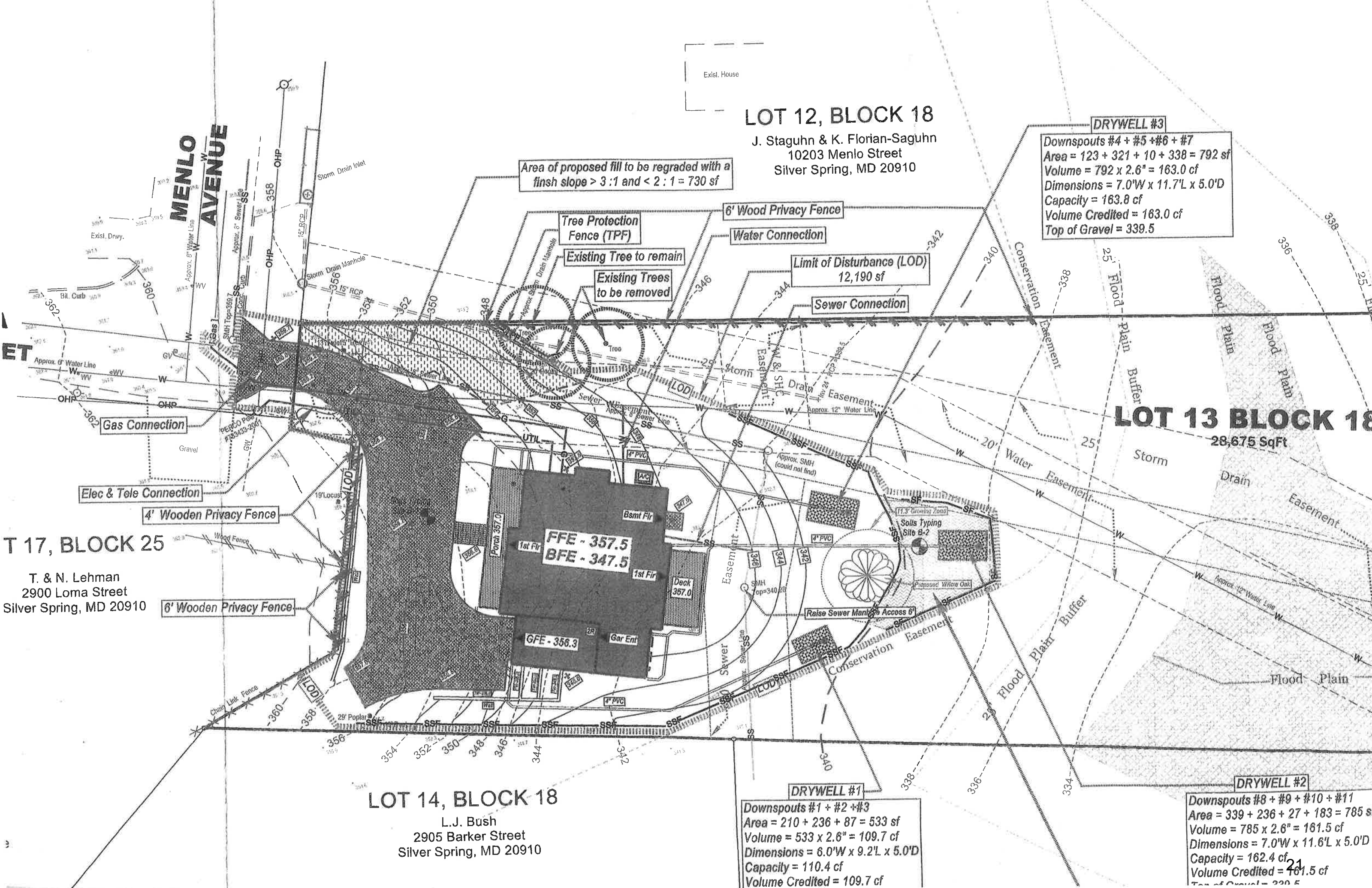


LOT 12, BLOCK 18

J. Staguhn & K. Florian-Saguhn
10203 Menlo Street
Silver Spring, MD 20910

Area of proposed fill to be regraded with a
finish slope > 3 : 1 and < 2 : 1 = 730 sf

DRYWELL #3
Downspouts #4 + #5 + #6 + #7
Area = 123 + 321 + 10 + 338 = 792 sf
Volume = 792 x 2.6" = 163.0 cf
Dimensions = 7.0'W x 11.7'L x 5.0'D
Capacity = 163.8 cf
Volume Credited = 163.0 cf
Top of Gravel = 339.5



Tree Protection
Fence (TPF)

6' Wood Privacy Fence

Water Connection

Limit of Disturbance (LOD)
12,190 sf

Sewer Connection

Existing Tree to remain

Existing Trees
to be removed

LOT 13 BLOCK 18

28,675 SqFt

T 17, BLOCK 25

T. & N. Lehman
2900 Loma Street
Silver Spring, MD 20910

4' Wooden Privacy Fence

6' Wooden Privacy Fence

LOT 14, BLOCK 18

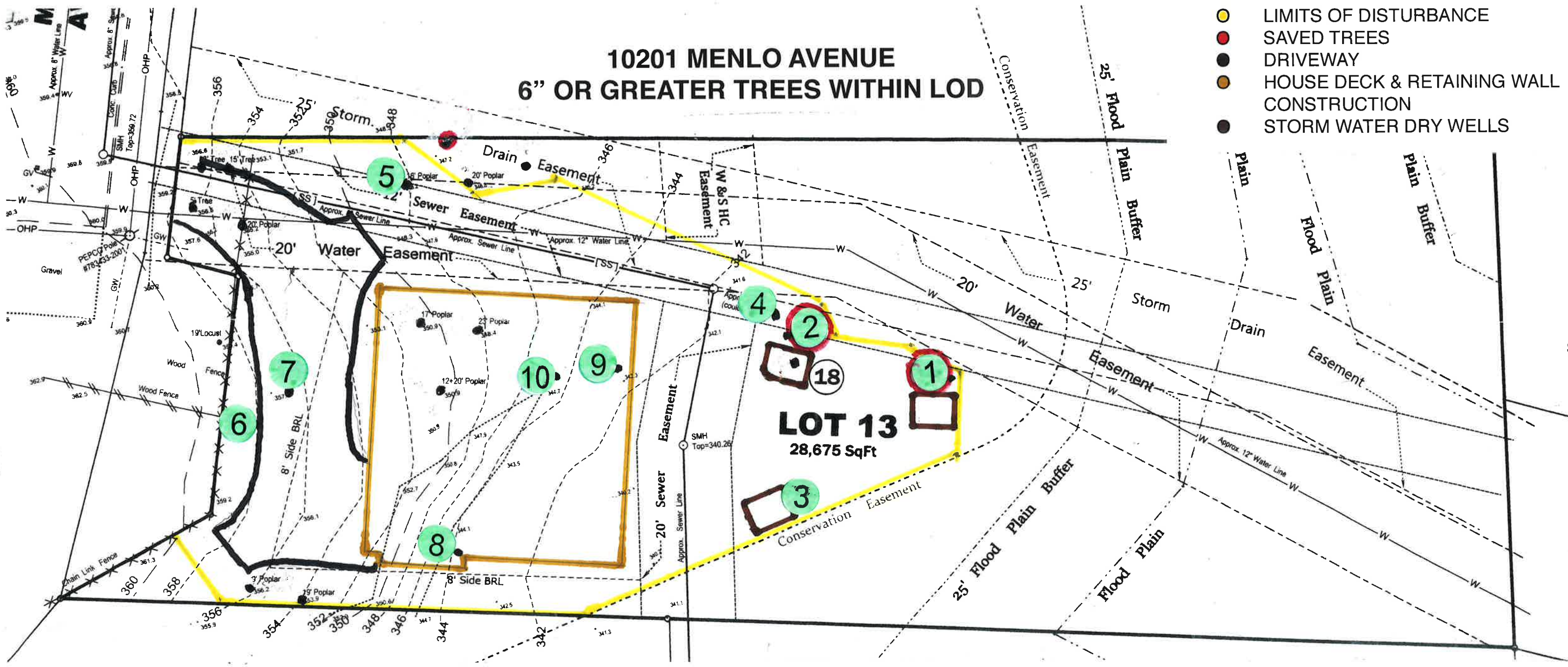
L.J. Bush
2905 Barker Street
Silver Spring, MD 20910

DRYWELL #1
Downspouts #1 + #2 + #3
Area = 210 + 236 + 87 = 533 sf
Volume = 533 x 2.6" = 109.7 cf
Dimensions = 6.0'W x 9.2'L x 5.0'D
Capacity = 110.4 cf
Volume Credited = 109.7 cf

DRYWELL #2
Downspouts #8 + #9 + #10 + #11
Area = 339 + 236 + 27 + 183 = 785 sf
Volume = 785 x 2.6" = 161.5 cf
Dimensions = 7.0'W x 11.6'L x 5.0'D
Capacity = 162.4 cf
Volume Credited = 161.5 cf
Top of Gravel = 339.5

10201 MENLO AVENUE 6" OR GREATER TREES WITHIN LOD

- LIMITS OF DISTURBANCE
- SAVED TREES
- DRIVEWAY
- HOUSE DECK & RETAINING WALL CONSTRUCTION
- STORM WATER DRY WELLS



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1	Saved Tree	12.5"	Boxelder	Dry Well
2	Saved Tree	12"	Black Locust	Dry Well
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