



Preliminary Plan Amendment 11995030A – in Response to a Violation – Hillmead-Bradley Hills, Lot 34, Block 3

SP Stephen Peck, Senior Planner, DARC, Stephen.Peck@montgomeryplanning.org, 301-495-4564

MP Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730

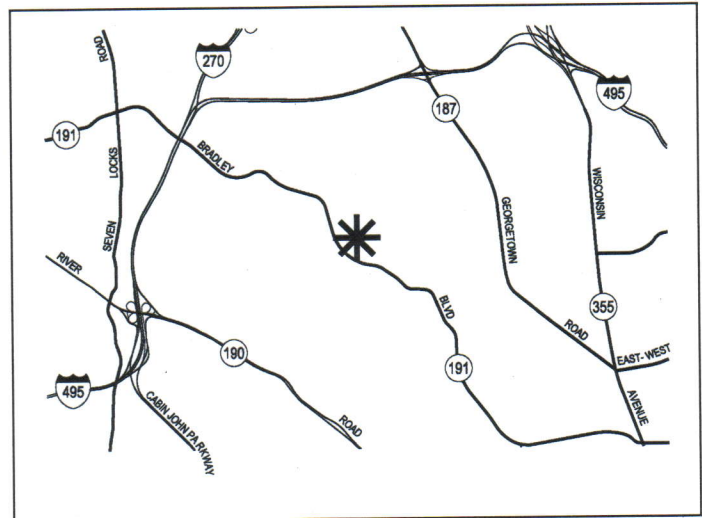
Completed: 05/6/13

Description

Limited Amendment, Preliminary Plan No. 11995030A, Hillmead-Bradley Hills, Lot 34, Block 3

Request to remove 2,473 square feet of existing Category I Conservation Easement and mitigate offsite.

- Located at 6306 Valley Road, 200 feet west of Melwood Road in Bethesda
- Within Bethesda-Chevy Chase Master Plan
- Applicant: Carl and Kimberly Weichel
- Submitted on January 11, 2013



Summary

- Staff recommendation: **Approval with conditions.**
- Proposal to remove 2,473 square feet of Category I Conservation Easement and mitigate for this removal by purchasing credits equal to 4,946 square feet (approximately 0.11 acres) within an M-NCPPC approved forest conservation mitigation bank.

STAFF RECOMMENDATION AND CONDITIONS

Approval of the limited amendment to the Preliminary Plan and associated Forest Conservation Plan Amendment, subject to the following conditions:

1. Applicant must submit a complete record plat application no later than ninety (90) days from the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan that delineates the revised Category I Conservation Easement. The existing Conservation Easement remains in full force and effect until the record plat is recorded in Montgomery County Land Records by the Applicant.
2. Applicant must delineate the Category I Conservation Easement boundary with permanent easement markers and appropriate signage as required by 11995030A no later than ninety (90) days from the recordation of the record plat and the new conservation easement.
3. All required shrub plantings required by 11995030A must be installed and accepted by M-NCPPC no later than ninety (90) days from the recordation of the record plat and the new conservation easement.
4. Applicant must submit a certificate of compliance to use an M-NCPPC approved offsite forest mitigation bank within ninety (90) days of the mailing date of the Planning Board Resolution approving 11995030A. The certificate of compliance must provide 4,946 square feet of mitigation credit. The certificate of compliance must be approved by the M-NCPPC Office of General Counsel and then be recorded in Montgomery County Land Records by the Applicant.
5. All other conditions of Preliminary Plan Number 119950300 that were not modified herein, as contained in the Planning Board's Resolution mailed March 3, 1995, remain unchanged and fully effective.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 19950300 "Hillmead-Bradley Hills" on February 23, 1995, and issued a written opinion on March 3, 1995. The approval was for two (2) lots on 1.18 acres of land in the R60 Zone pursuant to Section 50 of the Montgomery County Code (Figure 1). As part of the approval process for the Preliminary Plan of Subdivision, the Planning Board approved a Final Forest Conservation Plan (FCP). The Preliminary Plan of subdivision and the FCP show Category I Conservation Easements on forest save areas on both lots within the subdivision. The Preliminary Plan opinion required that the Category I Conservation Easements be shown on the record plat. The conservation easements for Lot 33 and 34 Block 3 are shown on Record Plat 19831.

In August 2012, Mr. Weichel, the property owner, inquired at the Planning Department Information Counter about a special exception for an accessory apartment at 6306 Valley Road. At this meeting, Staff received copy of a Location Drawing from April 2010, showing a stone wall and patio within a conservation easement on the property (Attachment 1). After informing the property owner of the procedure to apply for an accessory apartment, staff referred the inquiry to the forest conservation inspector for a follow up site inspection of the property's Category I Conservation Easement.

On August 21, 2012, the forest conservation inspector met with Mr. Weichel at Lot 34 (6306 Valley Road) and inspected the property's Category I Conservation Easement. At this inspection, the inspector discovered that Lot 34 was not in compliance with the terms of the Category I Conservation Easement agreement (Liber 13178 Folio 412 in the Montgomery County Office of Land Records). The Applicant was issued a Notice of Violation (NOV) (Attachment 2) for having structures within the Category I Conservation Easement. These violations consist of a patio, stone wall, table and chairs within the conservation easement (Attachment 3). The NOV carries no financial penalty, but does outline the violation and requests particular remedial actions. In this case, the NOV requested that the Applicant schedule and attend a meeting before September 21, 2012 with staff to determine appropriate corrective actions to be performed by a date certain.

Mr. Weichel met with staff on September 5, 2012 to discuss the conservation easement violation. Staff learned Mr. Weichel acquired the property in 2010 and the stone patio and wall existed within the conservation easement when he purchased the property. Staff discussed two options for bringing the property into compliance with the forest conservation law. The Weichel's could remove all the structures from the conservation easement or request changes be made to the conservation easement. The Applicant decided to request removal of a portion of the conservation easement and Staff provided the Applicant a checklist for submitting a limited amendment to the Preliminary Plan to be submitted to the Planning Department within 90 days.

Staff research of aerial photos of the property confirmed that a patio existed behind the house prior to the Applicant taking possession of the property in 2010. Please see Figures 2 and 3. In addition, review of documents in the Land Records revealed that the Weichel's are the third owner of the home, which was built in 1997.

Site Description

The subject property is quadrilateral in shape and is part of re-subdivision. The re-subdivision preserved the existing house on lot 33 and created lot 34. At the time of re-subdivision, the property became subject to the forest conservation law and the forest conservation requirements were met by preserving 0.466 acres of forest onsite. The retained forest is protected by a Category I Conservation Easement and all forest is behind the houses on lot 33 and lot 34. Tree canopy shades each lot (Figure 1).

The Preliminary Plan of Subdivision, 119950300, protected approximately 20,000 square feet forest on Lots 33 and 34 as Category I Conservation Easement. This forest is not within a stream buffer. The Category I Conservation Easement can be described as a mix of mature oak, hickory and American beech trees and native and non-native shrubs and vines. On lot 34, two large specimen red oak trees, specimen tree # 1 and # 2 makeup are large part of the canopy. Despite an abundance of non-native invasive English ivy there are native viburnum and spicebush shrubs and native trillium and Mayapple wildflowers along the forest floor.

Figure 1: Hillmead-Bradley Hills Subdivision, 119950300



Figure 2: March 2008 Aerial View of Lot 34

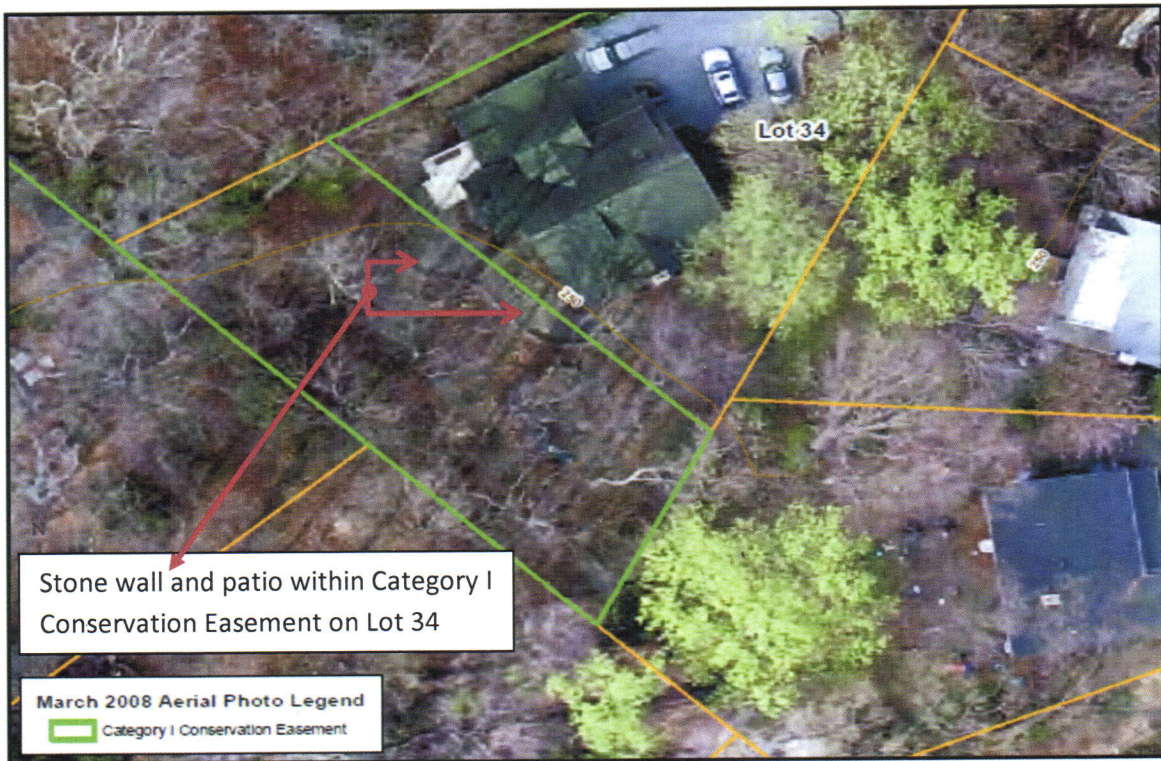
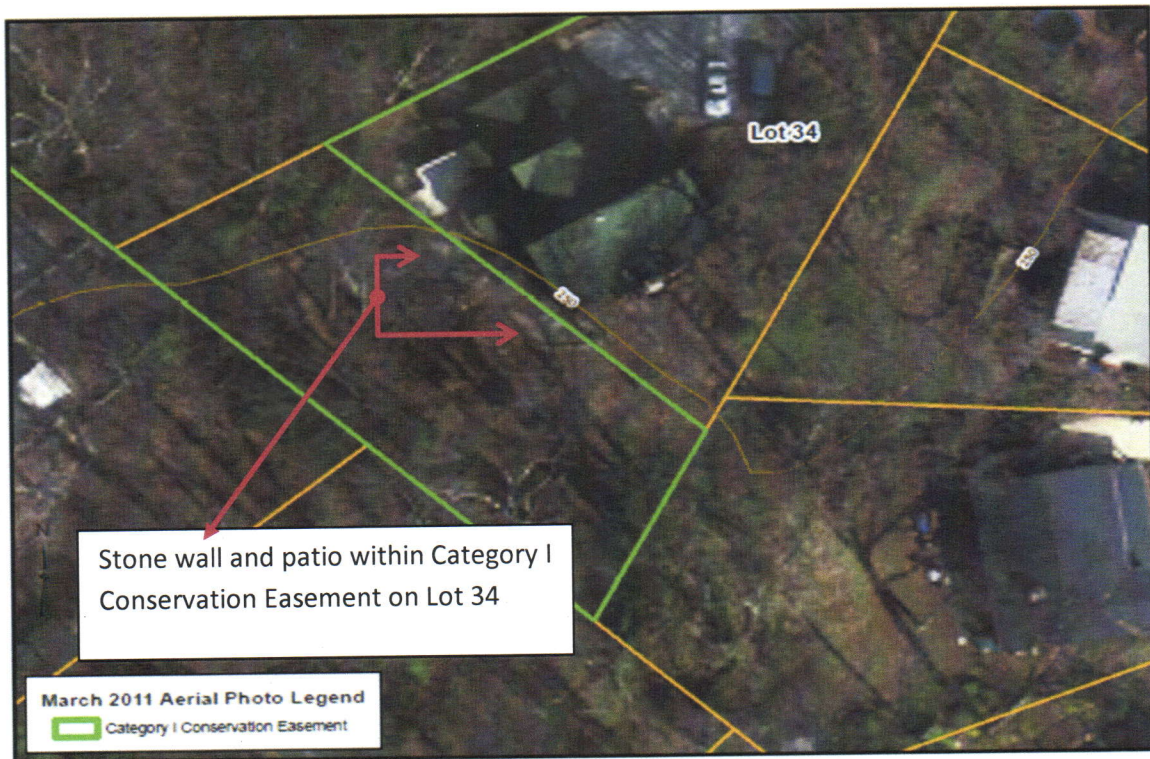


Figure 3: March 2011 Aerial View of Lot 34



PROPOSAL

On January 11, 2013, the Planning Department accepted an application to amend Preliminary Plan of Subdivision 119950300 to modify the Category I Conservation Easement on Lot 34. The Applicant proposes to remove 2,473 square feet of Category I Conservation Easement (Attachment 4). The area of Category I Conservation Easement to be removed encompasses the existing stone patio and walls and is approximately 20 feet deep and 130 feet at its longest length (Figure 4). The proposed removal maintains a straight Category I Conservation Easement boundary at least 23 feet from the edge of the home and 3 feet beyond the existing wall.

The Applicant does not propose to cut any trees as part of this amendment. The proposal maintains a straight Category I Conservation Easement boundary and protects the mixed hardwood forest including specimen tree # 1 and #2. The remaining Category I Conservation Easement would be at least 35 feet wide and would connect to the existing Category I Conservation Easement on Lot 33 and unprotected tree canopy on adjacent properties (Figure 4).

The proposed 2,473 square feet of easement removal would be replaced offsite, at the 2:1 mitigation rate, at an M-NCPPC approved forest conservation bank. A total of 4,946 square feet (approximately 0.11 acres) of mitigation credit will need to be acquired by the Applicant.

of easement removal would be replaced offsite at the 2:1 mitigation rate at an M-NCPPC approved forest conservation bank.

Removal of the conservation easement will allow the applicant to maintain the existing stone patio and stone wall. Staff research determined that this retaining wall and patio existed in this location prior to the Applicant acquiring the subject property in 2010. The proposal maintains a straight conservation easement edge and includes the posting of two permanent conservation easement markers at the boundary to make the Category I Conservation Easement location visible to property owners.

The Applicant will plant six mountain laurel shrubs within the Category I Conservation Easement and will remove the English ivy that affects the existing tree growth and the proposed shrub plantings. Staff believes the proposed invasive plant management and supplemental shrub planting will enhance the retained Category I Conservation Easement.

Staff believes retention of the small area of Category I Conservation Easement on lot 34 is warranted. This rectangular forest area includes two specimen oak trees in good health and is a part of a mixed-hardwood forest that extends on to Lot 33. The retained Category I Conservation Easement on lot 34 connects to Category I Conservation Easement on lot 33. In total, on Lot 33 and Lot 34, the protected Category I Conservation Easement forest would be at least 17,000 square feet in size. The forest conservation law defines a forest as "a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand." The forest on Lot 34 has the same character and composition as the forest on Lot 33. The proposal would continue to protect minor portions of a forest stand on Lot 34 that connect with protected forest on Lot 33.

In conclusion, the proposal would: 1) rectify the situation on Lot 34 by taking the retaining wall and stone patio area out of Category I Conservation Easement, 2) provide mitigation for the easement removal equivalent to approximately 0.11 acres of mitigation credit at an approved forest conservation bank and; 3) improve the retained forest stand with the removal of invasive English ivy and the planting of native mountain laurel shrubs.

NOTIFICATION and OUTREACH

The subject property was properly signed with notification of the upcoming Preliminary Plan amendment prior to the acceptance of the application on January 11, 2013. All adjoining and confronting property owners, civic associations, and other registered interested parties were notified of the upcoming public hearing on the proposed amendment. As of the date of this report, Staff has received no inquiries. Any comments received hereafter will be forwarded to the Board.

RECOMMENDATION

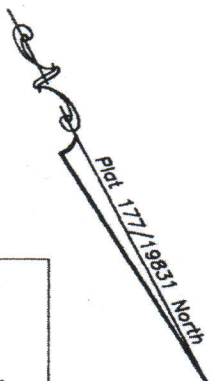
Staff recommends that the Planning Board approve this limited Preliminary Plan of Subdivision revising the Forest Conservation Plan and Category I Conservation Easement with the conditions specified above.

ATTACHMENTS

1. 2010 Location Diagram of Lot 34, Block 3 Hillmead-Bradley Hills
2. Notice of Violation
3. August 21, 2012 Photo of Lot 34 Category I Conservation Easement encroachment
4. Amended Final Forest Conservation Plan 11995030A

INFORMATION NOTES:

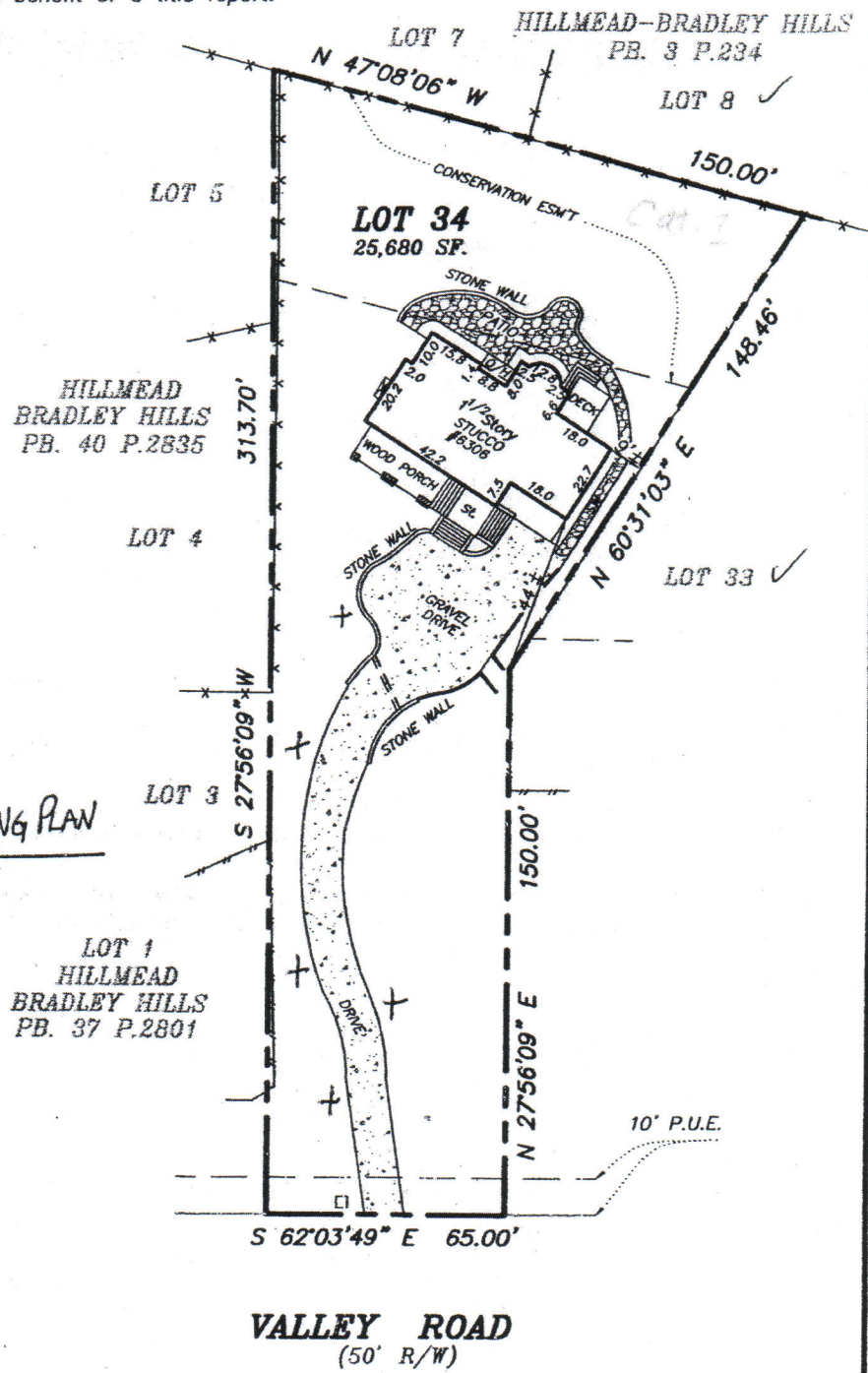
This drawing is a benefit to a consumer only insofar as it may be required by a lender or a title insurance company or in connection with contemplated transfer, financing or re-financing; this drawing is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or proposed improvements; this drawing does not provide for the accurate identification of property boundary lines, but such identification may not be required for transfer of title or securing financing or refinancing. The level of accuracy and accuracy of apparent setback distances is one foot, more or less. THIS LOCATION DRAWING IS NOT TO BE USED IN CONNECTION WITH ANY TYPE OF PERMIT APPLICATION. This location drawing was prepared without the benefit of a title report.



LEGEND	
St.	Stoop
SW.	Sidewalk
O/H	Over Hang
Wood Fence	
Chain Link Fence	
Brick Area	
Gravel Area	

LANDSCAPE & LIGHTING PLAN

+ WALKWAY LIGHTS



LOCATION DRAWING
LOT 34, BLOCK 3
HILLMEAD-
BRADLEY HILLS

MONTGOMERY COUNTY, MARYLAND

VALLEY ROAD
(50' R/W)

SURVEYOR'S CERTIFICATE		REFERENCES		ALIMO & ASSOCIATES LLC	
This location drawing and the surveying work reflected in it were prepared by the surveyor or the surveyor was in responsible charge over its preparation, all in compliance with requirements set forth in COMAR Regulation 09.13.08.12.		PLAT BK.	177	LAND SURVEYORS 3515 Singers Glen Drive Olney, Maryland 20832 Tele.: (240) 888-7631 Fax: (301) 570-0967	
		PLAT NO.	19831		
By: <i>F. Alimo</i> 4/10/10 MD Professional Land Surveyor #21382 Date		LIBER		DATE OF LOCATIONS	SCALE: 1" = 50'
		FOLIO		WALL CHECK:	DRAWN BY: F.A.
				HSE. LOC.: 04-10-2010	JOB NO.: 2010-0050

Attachment #2



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue, Silver Spring, Maryland 20910
Environmental Planning Division 301.495.4540 Fax: 301.495.1303
www.MontgomeryPlanning.Org

NOTICE OF VIOLATION

EDPNOV 0001

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, 08/21/2012 the recipient of this NOTICE, Carl L. Weichel
Date Recipient's Name

who represents the property owner, Carl L Weichel & Kimberly V Weichel
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 6306 Valley Road Bethesda, MD 20817

Plan No: <u>19950300</u>	Explanation: <u>Structural improvements - patio and stone wall and patio table and chairs within category 1 conservation easement</u>
VIOLATION:	
<input type="checkbox"/>	Failure to hold a required pre-construction meeting.
<input type="checkbox"/>	Failure to have tree protection measures inspected prior to starting work.
<input type="checkbox"/>	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
<input type="checkbox"/>	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector
<input type="checkbox"/>	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
<input type="checkbox"/>	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
<input type="checkbox"/>	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
<input checked="" type="checkbox"/>	Other: <u>violation of category 1 conservation easement agreement</u>
Failure to comply with this NOV by <u>09/21/12</u> may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at <u>301-495-4540</u> when the corrective action is complete. The following corrective action(s) must be performed as directed and within any time frames specified below:	
<input type="checkbox"/>	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
<input type="checkbox"/>	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
<input type="checkbox"/>	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
<input type="checkbox"/>	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
<input type="checkbox"/>	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
<input checked="" type="checkbox"/>	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
<input type="checkbox"/>	Other:

MNCPPC Inspector

Stephen Peck
Printed Name

Stephen Peck
Signature

08/21/2012
Date

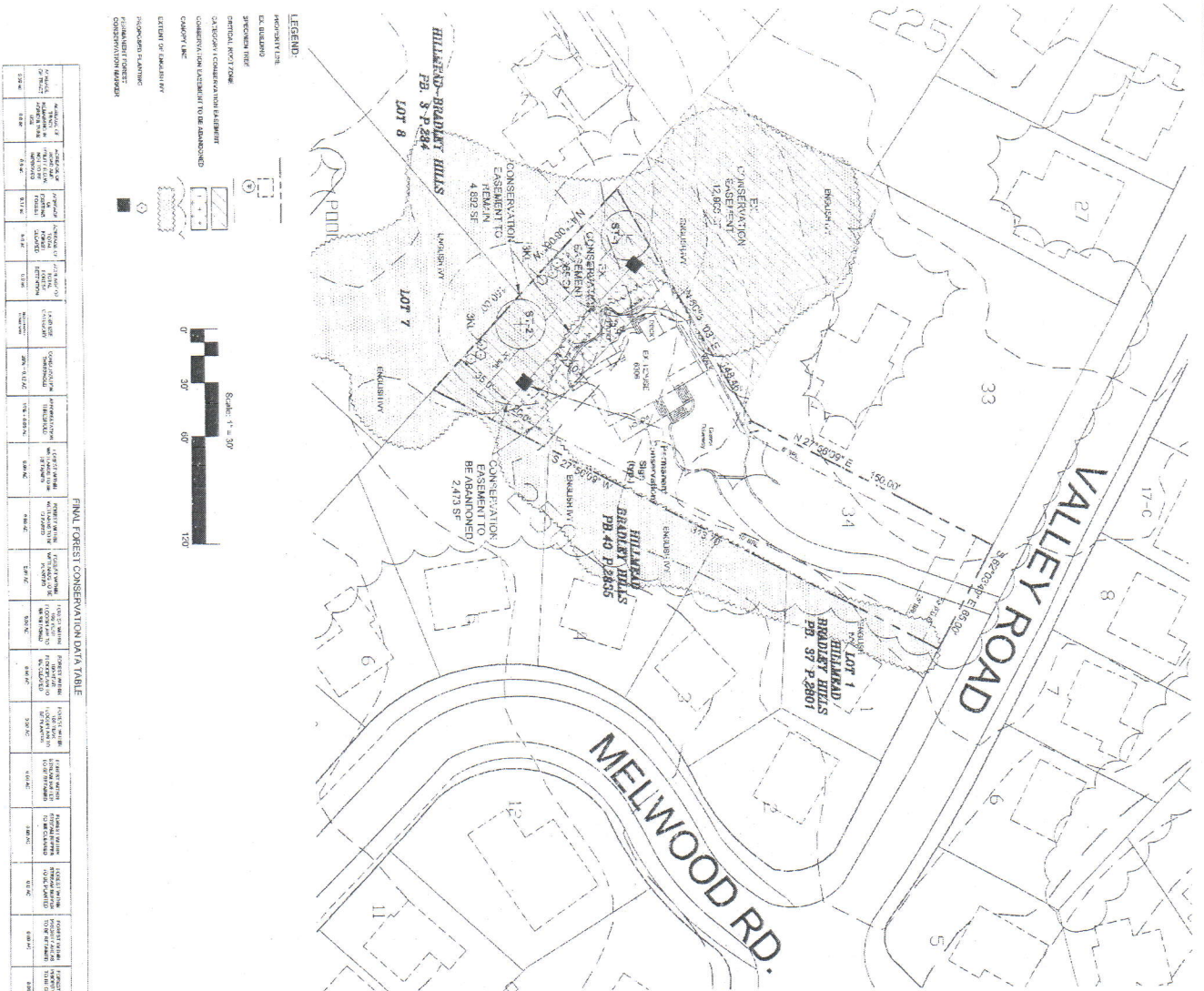
RECEIVED BY:

CARL L. WEICHEL
Printed Name

[Signature]
Signature

08/21/2012
Date





FINAL FOREST CONSERVATION DATA TABLE

LOT NO.	ACRES	CONSERVATION EASEMENT AREA (SQ. FT.)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA	CONSERVATION EASEMENT AREA (ACRES)	PERCENTAGE OF LOT AREA
LOT 1	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 2	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 3	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 4	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 5	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 6	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 7	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%
LOT 8	0.99	12,800	12.93%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%	0.13	13.13%

- NOTES:**
1. AREA OF PROPERTY - 26,690 SF (0.99 AC.)
 2. EXISTING ZONING - R-60
 3. SITE IS SERVED BY PUBLIC SEWER AND WATER
 4. EXISTING UTILITIES & WATER SERVICE CATEGORIES: S-1, W-1
 5. LOCATED IN THE CABIN JOHN CREEK WATERSHED
 6. PROPERTY LOCATED ON TAX MAP Q254, YSSSC SHEET 210NW06
 7. UTILITIES (as available): Washington Gas, Verizon, PECO
- LIST OF AMENDMENT ITEMS:**
1. THIS PLAN PROPOSES THE REMOVAL OF 2,473 SQUARE FEET OF CONSERVATION EASEMENT FROM LOT 34.
- FINAL FOREST CONSERVATION PLAN NOTES:**
1. MITIGATION FOR REMOVAL OF THE CONSERVATION EASEMENT TO BE SATISFIED BY PURCHASING CREDITS FROM AN APPROVED FOREST CONSERVATION BANK. FOREST BANK CREDITS TO BE PURCHASED AT RATE OF 2:1 RATE FOR PLANTING. 4:1 RATE FOR RETENTION.
 2. NO TREE CLEARING OR CONSTRUCTION IS PROPOSED UNDER THIS APPLICATION.

NOTE:
TREE SPECIES, SIZES AND CONDITIONS ARE FROM A SITE VISIT BY PATRICK PERRY ON 11/20/12.

* Possible additions to the species

TREE NUMBER	PHOTOGRAPH	TREE ID	COMMON NAME	HEIGHT (FT.)	DBH (IN.)	CONDITION	REMARKS	STATUS
ST-1		0.50	Red Oak	20'	4.5"	Good		Remove
ST-2		0.50	White Oak	20'	4.5"	Good		Remove

PLANT SCHEDULE - RECOMMENDED SPECIES LIST

TREE ID	QUANTITY	SIZE	SPECIES NAME	COMMON NAME	BRONZE	COMMENTS
ST-1	1	5-6"	Red Oak	Red Oak		
ST-2	1	5-6"	White Oak	White Oak		

NOTES:

1. THE PROPOSED PLANTING LOCATIONS FOR THE SHRUBS SHOWN ON THIS PLAN TO BE DETERMINED BY THE APPLICANT AND THE MNCPC FOREST CONSERVATION INSPECTOR AT THE PRE-PLANTING MEETING.
2. DUE TO THE AMOUNT OF ENGLISH IV WITHIN THE CONSERVATION EASEMENT AREAS OF IV WILL REQUIRE REMOVAL TO PROTECT THE EXISTING SPECIMEN TREES AND ALLOW FOR THE PROPOSED PLANTING. AREAS OF ENGLISH IV REMOVAL TO BE DETERMINED DURING THE PRE-PLANTING MEETING.

DEVELOPER'S CERTIFICATE

The undersigned agrees to register with the State of Maryland the Final Forest Conservation Plan No. 11999025, including financial bonding, from Patrick Perry, Montgomery County, MD on the date of registration.

Developer's Name: **Carl & Kimberly Weichel**
 Contact Person or Owner: **Carl & Kimberly Weichel**
 Address: **6306 Valley Road, Bethesda, MD 20817**
 Phone and Email: **240-489-8610**
 Signature: _____

OWNER:
Carl & Kimberly Weichel
 6306 Valley Road
 Bethesda, MD 20817
 240-489-8610

FINAL FOREST CONSERVATION PLAN (AMENDED)
HILLMEAD-BRADLEY HILLS
 LOT 34, BLOCK 3
 6306 VALLEY ROAD
 MONTGOMERY COUNTY, MARYLAND

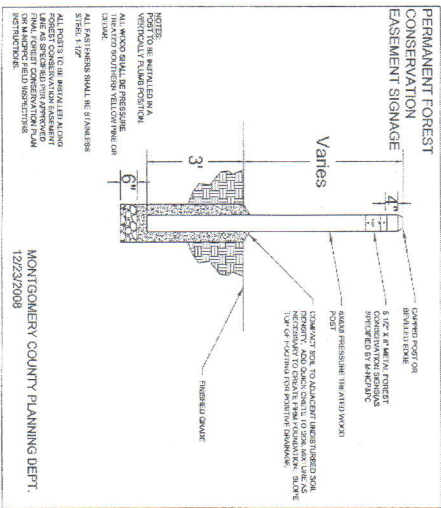
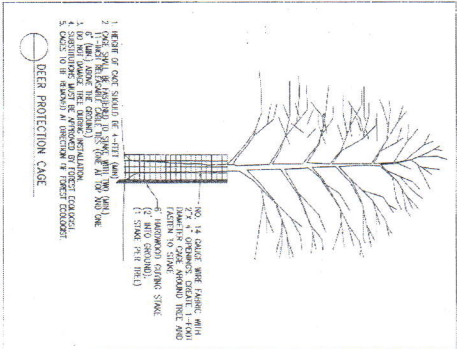
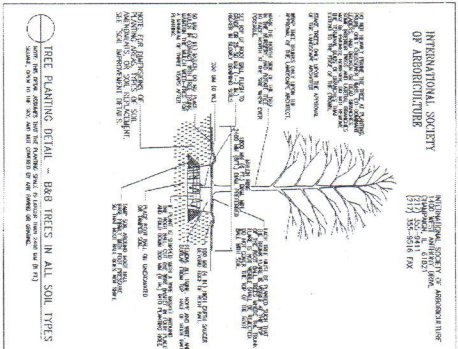
B&A Benning & Associates, Inc.
 Land Planning Consultants
 8855 Shady Grove Court
 Gaithersburg, MD 20878
 (301) 946-0240

date: 12/3/2012
 scale: 1" = 30'

Sheet 1 of 1
 11/11/12

Sequence of Events for Property Owners Required to Comply With Forest Conservation and/or Tree-Save Plans

1. The property owner must obtain a copy of the Forest Conservation and/or Tree-Save Plan from the Planning Department.
2. The property owner must obtain a copy of the Forest Conservation and/or Tree-Save Plan from the Planning Department.
3. A. Attached to the plan shall be a copy of the Forest Conservation and/or Tree-Save Plan. B. A. Attached to the plan shall be a copy of the Forest Conservation and/or Tree-Save Plan. B. A. Attached to the plan shall be a copy of the Forest Conservation and/or Tree-Save Plan.
4. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
5. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
6. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
7. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
8. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
9. Temporary protection devices shall be installed and maintained by the landowner in accordance with the Forest Conservation and/or Tree-Save Plan.
10. After inspection and completion of compliance measures have been undertaken, all temporary protection devices shall be removed from the site. No additional grading, sodding or burial may take place.



FOREST CONSERVATION AREA

DO NOT DISTURB

UNDER PENALTY OF LAW

NO DUMPING

NO MOTORIZED VEHICLES

MHCPCP
 Environmental Planning
 (301) 495-4540

FOREST CONSERVATION SIGN
 N.T.S.

DEVELOPER'S CERTIFICATE

I, the undersigned, certify that the information provided in the attached plan is true and correct and that the plan complies with all applicable laws, regulations, and ordinances.

Developer's Name: **Forest Company Name**

Contact Person or Owner: **Carl & Kimberly Welch**

Address: **388 Valley Road, Beltsville, MD 20817**

Phone and Email: **301-495-4540**

Signature: _____



FINAL FOREST CONSERVATION PLAN (AMENDED)
HILLMEAD-BRADLEY HILLS
 LOT 34, BLOCK 3
 6306 VALLEY ROAD
 MONTGOMERY COUNTY, MARYLAND



Berning & Associates, Inc.
 Landscape Architecture
 5633 Shady Grove Court
 Gaithersburg, MD 20877
 (301) 948-0240

date: 12/3/2012
 scale: 1" = 30'

