



Gilbert Residence, Site Plan Amendment for Forest Conservation Plan Purposes, 81992023A

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Completed: 1/18/18

Description

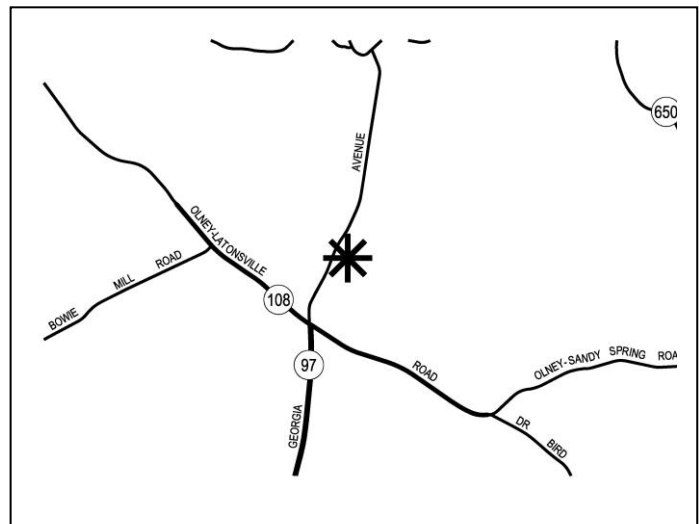
**Gilbert Residence: Site Plan No. 81992023A**

Application to remove and relocate 583 square feet of Category II Conservation Easement; Located at 2801 Shadowridge Drive, Olney, MD; 0.22 acres; Zoned RE-2/TDR; Olney Master Plan.

**Applicant:** Mr. Anthony Gilbert

**Acceptance Date:** May 11, 2017

**Review Basis:** Chapters 59 and 22A



**Summary**

- Staff Recommendation: **APPROVAL WITH CONDITIONS**
- Applicant requests to remove approximately 583 square feet of Category II Conservation Easement on Lot 44, Block A, Ashley Hollow Subdivision and to mitigate at an off-site forest bank at a 4:1 rate for the purposes of creating buildable area for a swimming pool in the rear yard.
- The application was previously presented to the Planning Board on December 14, 2017 with a Staff recommendation of denial. The Planning Board deferred the application, requesting staff and applicant to seek resolution.

## RECOMMENDATIONS AND CONDITIONS

**SITE PLAN NO. 81992023A:** All other conditions of Site Plan No. 819920230 as contained in the Planning Board's Resolution mailed January 23, 1993 that are not modified herein, remain in full force and effect. M-NCPPC Staff ("Staff") recommends approval with conditions of the limited amendment to the Site Plan for Forest Conservation Plan purposes subject to the following conditions:

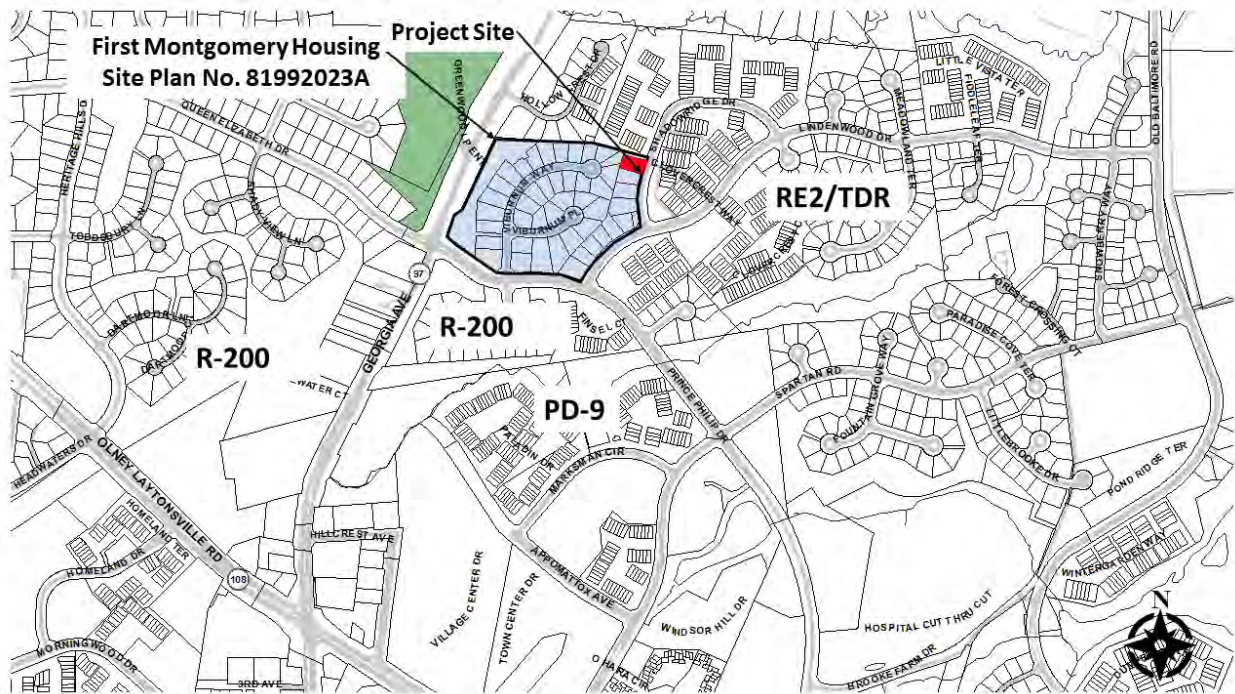
1. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must abandon the entirety of the original Category II Conservation Easement recorded among the County Land Records in Liber 10728 at Folio 510 and identified on Plat 19170 on Lot 44. The abandonment document must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed after the recordation of the new easement.
2. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a new Category II Conservation Easement reflecting the easement area that is not authorized to be removed. The new easement agreement must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed and reflected on the record plat.
3. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Site Plan, the Applicant must submit a complete record plat application that delineates the revised conservation easement and references the Liber/Folio of the recorded deed for the revised easement. The entirety of the existing easement remains in full force and effect until the abandonment document and the revised easement have been approved, recorded and reflected on the record plat.
4. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the mitigation requirement of a 4:1 replacement rate for removing 583 square feet of Category II Conservation Easement by purchasing 2,332 square feet (4:1) of forest credit for planted forest or 4,664 square feet (8:1) of forest credit for existing forest in an off-site forest bank.
5. Prior to the start of any demolition, clearing or grading on the Property the Applicant must execute a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan.
6. Prior to the start of any demolition, clearing, or grading on the Property the Applicant must provide financial surety to the M-NCPPC Planning Department for the mitigation planting shown on the approved amended Final Forest Conservation Plan (FFCP).
7. The Applicant must install the mitigation plantings within the remaining Category II Conservation Easement within 6 months following the pre-construction meeting unless modified by the M-NCPPC Forest Conservation Inspector.
8. The Applicant must apply a natural earth-tone finish that blends into the landscaping to the required 6-foot wood privacy fence surrounding the pool and patio area so as to reduce the visual impact of the fence.
9. The Applicant must comply with all recommendation made by the consulting arborist in a letter dated December 12, 2017 unless modified by the M-NCPPC forest conservation inspector.

10. The Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
11. Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspector.

**SITE DESCRIPTION**

The subject property is located at 2801 Shadowridge Drive, Olney, MD, described as Lot 44, Block A, in the Ashley Hollow Subdivision on Plat No. 19170, Tax Map HT563 (Figure 1 and Attachment A), with a total lot area of 9,563 square feet (0.22 acres) (“Subject Property” or “Property”). The Property is zoned RE-2/TDR and located in the *Olney Master Plan* area.

The Property is situated near the center of Olney, approximately 2,300 feet north of the intersection of Georgia Avenue (MD 97) and Olney-Laytonville Road (MD 108). The subdivision in which the Property is located is bounded on the south by Prince Phillip Drive and on the west by MD 97. The Property is surrounded by similar one-family detached units and townhouses on the west side of Shadowridge Drive, and a townhome cluster confronting the Property on the east side of Shadowridge Drive. North and East of this site, the properties are zoned RE-2/TDR. The area immediately confronting this site across Prince Philip Drive is zoned R-200 and to the West across Georgia Avenue is zoned R-200 (Figure 1). The Property is a 9,563 square foot (0.22 acre) lot fronting onto Shadowridge Drive. The Property currently has a two-story single family residential structure.



**Figure 1 – Site Vicinity**

The Property contains approximately 2,648 square feet of Category II Conservation Easement (28% of the lot) at the rear of the property, which is contiguous to the adjacent Category II Easement in the rear of all the one-family detached residences fronting onto Shadowridge Dr. and Lindenwood Drive. The Property is also adjacent to a community walking path, located on an HOA Open Space Parcel C, which provides a pedestrian connection between the cul-de-sac at Viburnum Way and Shadowridge Drive.

### **PROJECT BACKGROUND**

The application was presented to the Planning Board on December 14, 2017 with a Staff recommendation of denial (Attachment A). The Planning Board chose to grant a deferral of the application with the Planning Board giving instructions for the Applicant to work with Staff on the following objectives:

1. Minimize the amount of Category II Conservation Easement to be removed and impacts to the remaining easement area,
2. Mitigate the conservation easement removal offsite at a 4:1 rate, and
3. Minimize impacts from potential increases in storm water runoff.

The Applicant worked with Staff resulting in a revised proposal that both the Applicant and Staff find reasonable and acceptable. The objectives above were addressed with the following modifications:

1. The Applicant agreed to move the pool as close to the house as possible, which reduced the amount of easement removal from 693 square feet down to a maximum of 583 square feet, and by proposing to implement additional tree save measures during construction as specified by the Applicant's arborist to reduce the impacts to the remaining trees (Attachment B).
2. As conditioned, the Applicant will compensate for the conservation easement removal by purchasing the appropriate credits in an off-site forest bank at a 4:1 rate.
3. The Applicant has also proposed to increase the amount and density of the proposed plantings including overstory trees to increase the amount of storm water take up by the plants thereby reducing the overall storm water runoff.
4. The Applicant has agreed to straighten the proposed easement line which will ease enforcement for inspectors.

### **PROJECT DESCRIPTION**

The Applicant proposes to remove 583 square feet of Category II Conservation Easement to create enough room to install an in-ground pool, patio, 6-foot privacy fence and a retaining wall. This revised proposal differs from the original that the Planning Board deferred on December 14, 2017 by moving the pool, patio and retaining wall out of the conservation easement as much as reasonably possible. In addition, the Applicant has moved the wooden privacy fence from the middle of the easement to the edge of the proposed easement boundary line closest to the home/pool and has offered to finish the fence in a natural earth-tone finish that blends into the landscaping to reduce the visibility of the fence.

To mitigate for the proposed removal of 583 square feet of the Category II Conservation Easement, the Applicant will compensate at an off-site forest bank at a 4:1 ratio. This will result in having to purchase mitigation credits equal to 2,332 square feet (4:1) of planted forest or 4,664 square feet (8:1) of existing forest from an approved forest mitigation bank.

In addition, the Applicant also proposes to revise the species mix of the planted material. Six new trees, (4 understory and 2 overstory), have been added to the planting schedule. To make planting room for these 6 new trees, 3 American Hollies and a few of the smaller shrubs had to be removed from the

previous list. In addition, the 6 trees will provide a more visually pleasant screen as opposed to the initial proposal of a row of American Hollies and thus providing both an immediate screen into Lot 44 and an eventual overstory tree cover. This planting modification will provide an increased level of shade along the community walking path, provide a diversity of plant selection for the local wildlife and will also increase the uptake of water during a storm event with the amount of groundcover, shrubs and increased number of trees.

The revised proposal, is shown in Attachment C and below in Figures 1 and 2.

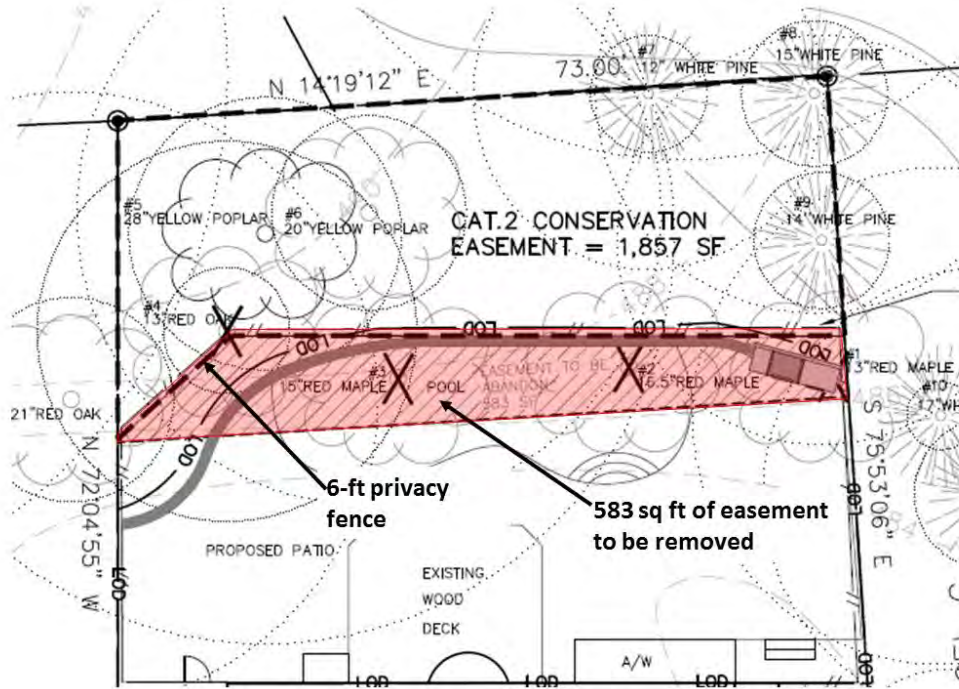
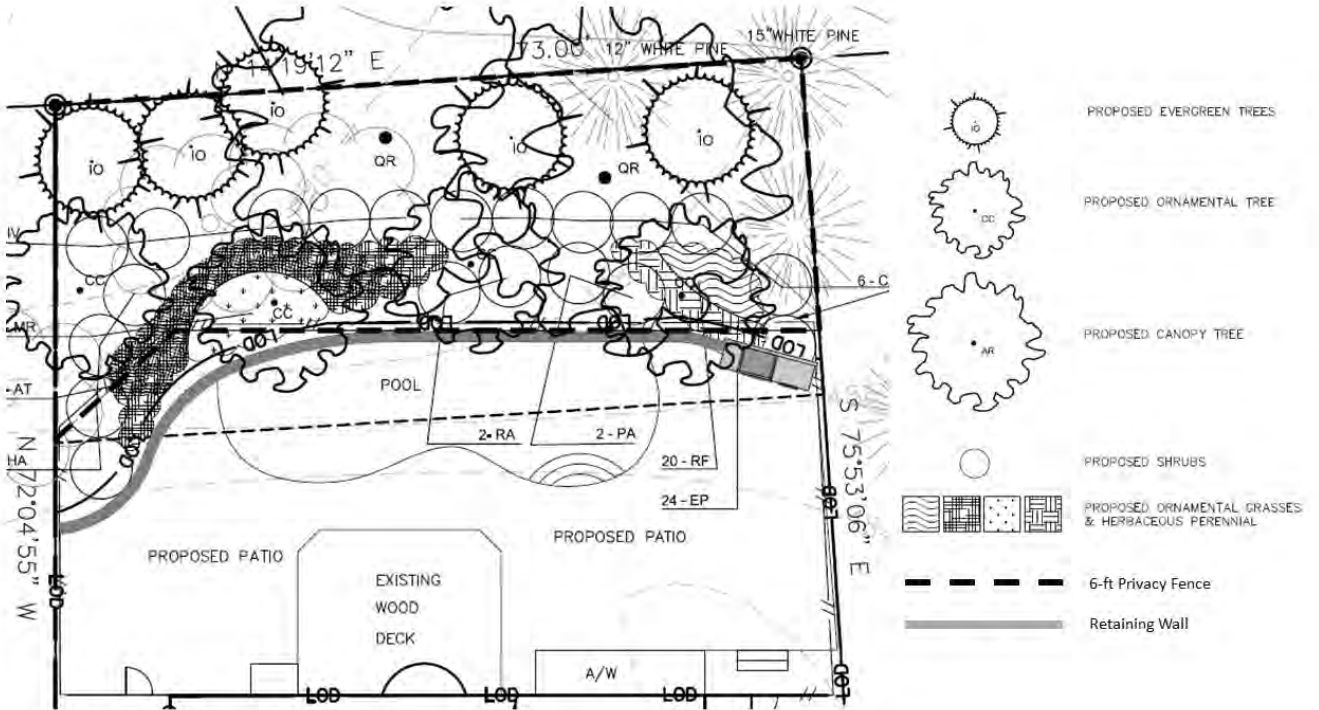


Figure 1 – Proposed easement removal on Lot 44



**Figure 2 – Proposed plantings within revised easement on Lot 44**

**ANALYSIS AND FINDINGS**

**PLANNING BOARD REVIEW AUTHORITY**

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FFCP. COMCOR 22A.00.01.13.A(2), the Forest Conservation Regulations, state:

*Major amendments which entail more than a total of 5,000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).*

The Applicant proposes to remove 583 square feet out of a total of 2,648 square feet of Category II Conservation Easement on the Property. Although this submittal is considered a minor amendment under Section 22A.00.01.13.A(1) of the Forest Conservation Regulations ("FCR"), it has been Planning Board practice to review all plans that remove or significantly change any conservation easement.



## **FOREST CONSERVATION PLAN**

Staff finds that the revised Site Plan Amendment for Forest Conservation Plan purposes meets all applicable requirements and intents of Chapter 22A regarding forest conservation. The FFCP requirements associated with the original site plan 819920230 have not been altered as a result of this application. The small reduction of the Category II Conservation Easement on Lot 44 which satisfied a portion of the requirements is being taken offsite at a 4:1 rate satisfying the FFCP requirements for the overall original development.

Staff also finds that the revised application addresses the Planning Board issues and concerns expressed during the December 14, 2017 hearing. The Applicant has proposed to move the pool and patio structure out of the conservation easement as much as possible, thereby reducing the overall impacts to the easement area and the associated vegetated cover. In addition, the plant species mix has been revised to include additional overstory trees which will provide more water uptake than the originally proposed shrubbery in response to storm events. Also, the Applicant has proposed to move the 6-foot wood privacy fence away from the rear property line to a location adjacent to the pool immediately beyond the retaining wall. The Applicant will finish the fence in a natural earth-tone finish that blends into the landscaping to reduce the overall visibility of the fence from outside of Lot 44.

## **CITIZEN CORRESPONDENCE AND ISSUES**

The Property was properly signed with notification of the upcoming Site Plan amendment prior to the May 11, 2017, submission. All adjoining and confronting property owners, civic associations, and other registered interested parties have been notified of the submitted application to amend the Category II Conservation Easement on Lot 44.

As of the date of this report, Staff has received no new correspondence by letter, email or phone of opposition or support to this revised application.

## **CONCLUSION**

At the December 14, 2017 Public Hearing, the Planning Board voted to defer this application with instructions that the Applicant mitigate for the removal of easement by taking the balance to an offsite forest bank at a Board approved 4:1 rate, the Applicant move the pool and patio out of the exiting easement as much as possible and that the Applicant provide additional plantings of trees within the remaining easement area.

The Plan has been revised as per directions from the Planning Board. The Applicant will mitigate for the removal of a portion of the Category II Conservation Easement by taking it to an offsite forest bank at a 4:1 rate protected by a Category I Conservation Easement. The Applicant was also able to relocate the pool and patio providing a 16% reduction in easement removal from the previous Planning Board hearing. The Applicant has provided a revised planting plan that increases the tree count and diversifies the species selection. In addition to these revisions, the Applicant has will also relocate the 6-foot wood privacy fence from near the rear property line and pulling it toward the house and pool, adjacent to the border of the revised conservation easement. The Applicant will also finish the fence in a natural earth-tone color that blends into the landscaping thereby reducing the visual impact of the fence. This addresses some of the neighbor's complaints about the proposed fence being a visual eyesore during the December 14, 2017 hearing.

The site plan amendment application meets all requirements established in the Forest Conservation Law (Chapter 22A) by taking the amount of easement removed, and that was used on the originally

approved FFCP to satisfy the FCP requirements, to an offsite forest bank. In addition, the Applicant has addressed all the Planning Board's concerns from the December 14, 2017 hearing. Staff recommends approval with the conditions as stated in the report.

**ATTACHMENTS**

- A. Original Staff Report dated November 30, 2017 (Denial)
- B. Arborist's recommendation letter dated December 12, 2017
- C. Revised Final Forest Conservation Plan



# ATTACHMENT A



MONTGOMERY COUNTY PLANNING DEPARTMENT  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item No.: 8  
Date: 12-14-17

Gilburt Residence, Site Plan Amendment for Forest Conservation Plan Purposes, 81992023A

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Completed: 11/30/17

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## Description

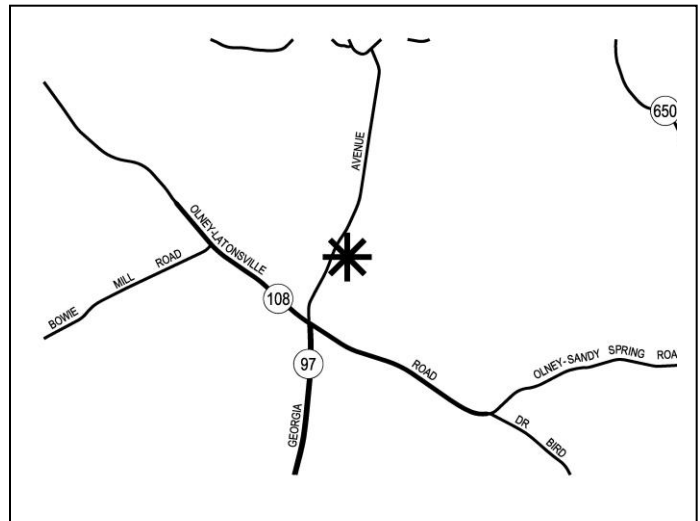
### **Gilburt Residence: Site Plan No. 81992023A**

Application to remove and relocate 693 square feet of Category II Conservation Easement; Located at 2801 Shadowridge Drive, Olney, MD; 0.22 acres; Zoned RE-2/TDR; Olney Master Plan.

**Applicant:** Mr. Anthony Gilburt

**Acceptance Date:** May 11, 2017

**Review Basis:** Chapters 59 and 22A



## Summary

- Staff Recommendation: **DENIAL**
- Applicant requests to remove and relocate approximately 693 square feet of Category II Conservation Easement on Lot 44, Block A, Ashley Hollow Subdivision for the purposes of creating buildable area for a swimming pool in rear yard.
- Application raises serious concerns with 1) negative visual impacts, 2) replacement plantings, 3) overall impacts to remaining vegetation, 4) easement enforcement and 5) setting a precedent for easement removal.
- Staff has received two letters in support, and one letter and three emails in opposition to this Application.

## SECTION 1 – RECOMMENDATIONS AND CONDITIONS

**SITE PLAN NO. 81992023A:** Staff recommends denial of the limited amendment to the Site Plan for Forest Conservation Plan purposes.

## SECTION 2 – SITE LOCATION AND DESCRIPTION

### Site Location

The subject property is located at 2801 Shadowridge Drive, Olney, MD, described as Lot 44, Block A, in the Ashley Hollow Subdivision on Plat No. 19170, Tax Map HT563 (Figure 1 and Attachment A), with a total lot area of 9,563 square feet (0.22 acres) ("Subject Property" or "Property"). The Property is zoned RE-2/TDR and located in the *Olney Master Plan* area.

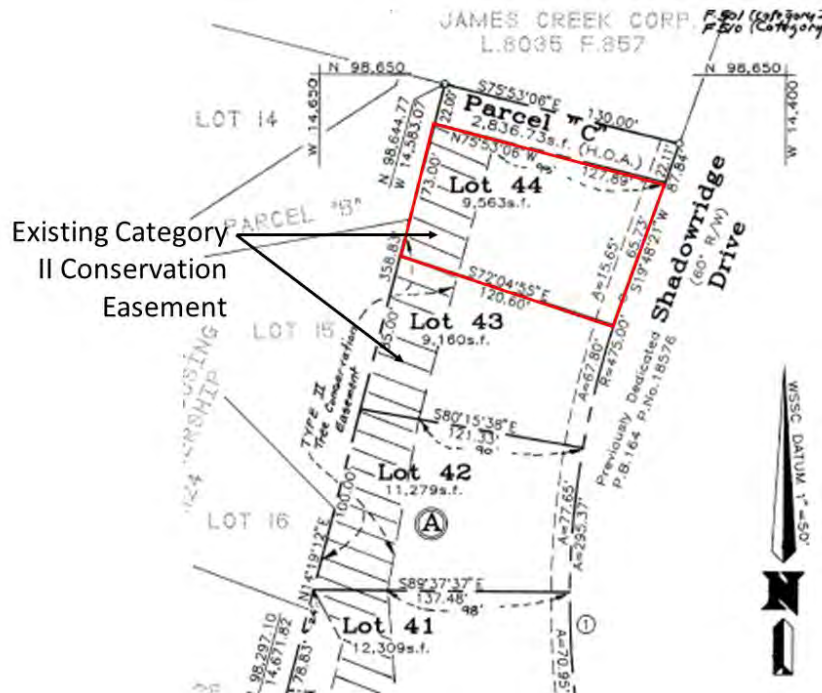


Figure 1 – Record Plat No. 19170

### Site Vicinity

The Property is situated near the center of Olney, approximately 2,300 feet north of the intersection of Georgia Avenue (MD 97) and Olney-Laytonsville Road (MD 108). The subdivision in which the Property is located is bounded on the south by Prince Phillip Drive and on the west by MD 97. The Property is surrounded by similar one-family detached and townhouse residential lots on the west side of Shadowridge Drive, and a townhome cluster confronting the Property on the east side of Shadowridge Drive. (Figure 2). North and East of this site the properties are zoned RE-2/TDR, the area immediately confronting this site across Prince Philip Drive is zoned R-200 and to the West across Georgia Avenue is zoned R-200.

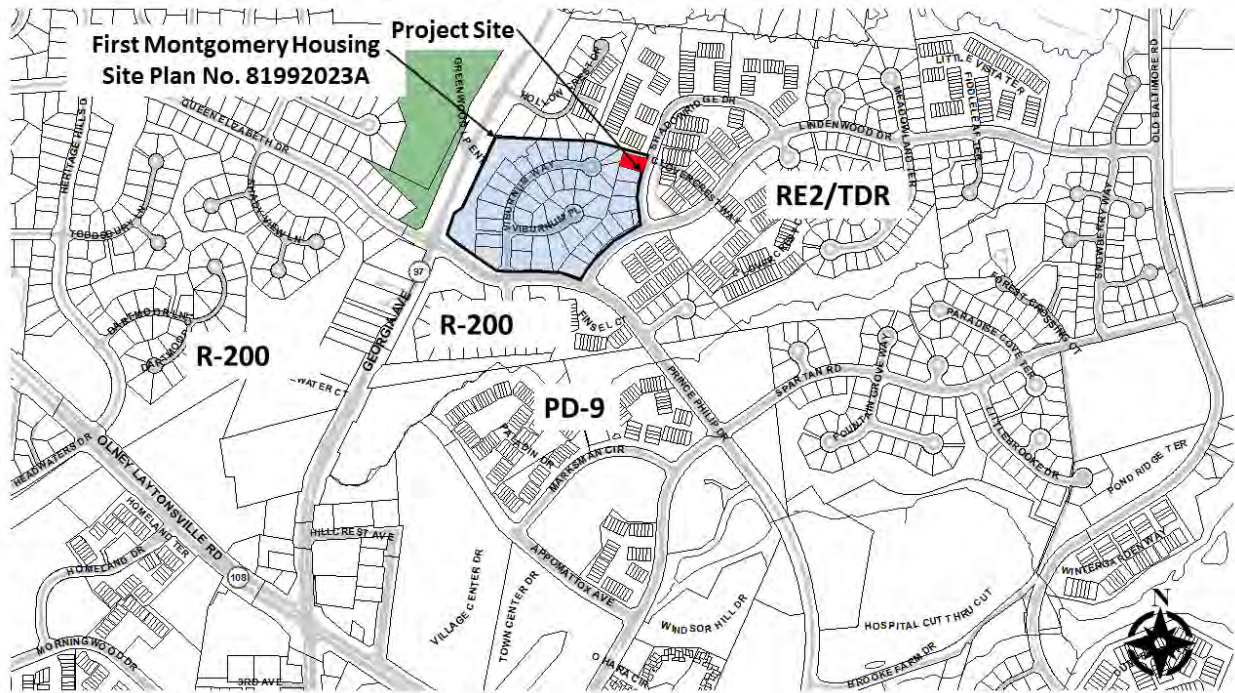


Figure 2 – Site Vicinity



## Site Description

The Property is a 9,563 square foot (0.22 acre) lot fronting onto Shadowridge Drive. The Property currently has a two-story single family residential structure.

The Property contains approximately 2,648 square feet of Category II Conservation Easement (28% of the lot) to the rear of the house, which is contiguous to the adjacent Category II Easement in the rear of all the one-family detached residences fronting onto Shadowridge Dr. and Lindenwood Dr. (Figures 3 and 4). The Property is also adjacent to a community walking path, located on an HOA Open Space Parcel C, which provides a pedestrian connection between the cul-de-sac at Viburnum Way and Shadowridge Drive.



*Figure 3 – Aerial Photograph of Neighborhood*

The existing Category II Conservation Easement (shown in light orange above in Figure 3) is approximately 33 feet wide and runs from Lot 44 (Property) south along the rear of the neighboring properties to Lot 41 where the easement begins to widen out to approximately 45 feet. The Category II Conservation Easement then continues along the rear of Lot 41 and turns to the southwest to the rear of the Lot 35 and varies in width from 35 feet to 65 feet. Within this area, the Category II easement abuts two Category I Conservation Easements (shown in green above in Figure 3).

The length of this easement from Lot 44 to Lot 41 is, for the most part, a homogeneous mix in species, size and conditions since all of the vegetation in this area was protected at the same time. It appears that within Lots 35 to 39, additional plantings were installed as part of the approved Final Forest Conservation Plan (FFCP) and the vegetation is somewhat denser on these lots.

Within the Category II Easement on Lot 44 there are nine deciduous and evergreen trees ranging from 13" to 28" diameter breast height ("DBH"). These trees were shown to have been existing on the FFCP at

the time of approval in 1993, although smaller in size at that time. These trees have had 24 years of protected growth in original and undisturbed soils since the time of FFCP approval in 1993. Therefore, their root systems are well established and the trees exhibit good to excellent health.



*Figure 4 – Aerial Photograph of Lot 44*

## SECTION 3 – APPLICATION AND PROPOSAL

### Previous Approvals

#### Site Plan 819920230

The Montgomery County Planning Board approved Site Plan No. 819920230 “First Montgomery Housing” by written Planning Board Opinion issued on January 22, 1993 (“Opinion”) (Attachment B) which included the Subject Property. As part of that Site Plan approval, the FFCP was required to be reviewed and approved by the Planning Staff.

The FFCP was approved by Staff on April 2, 1993 (Attachment C). Based on the Forest Conservation Plan Worksheet on the FFCP, the overall development had a total reforestation requirement of 2.37 acres. This requirement was met with 0.09 acres of Landscape Credit for street trees, 0.46 acres of On-Site Landscaping, 0.43 acres of On-Site Reforestation and taking the remaining 1.39 acres to an off-site forest bank. The Landscape Credit for street trees was granted for the trees planted in the rights-of-ways along Viburnum Way and Viburnum Place as allowed under Forest Conservation Law. The On-Site Landscaping credit is for those areas of existing vegetation that the FFCP proposed to save, but was not defined as forest and the On-Site Reforestation is for areas that were replanted as per the FFCP. The approved FFCP shows Category I Conservation Easements protecting 3.30 acres of existing forest on the site. The Category II Conservation Easements on the development, including that on Lot 44, were placed to

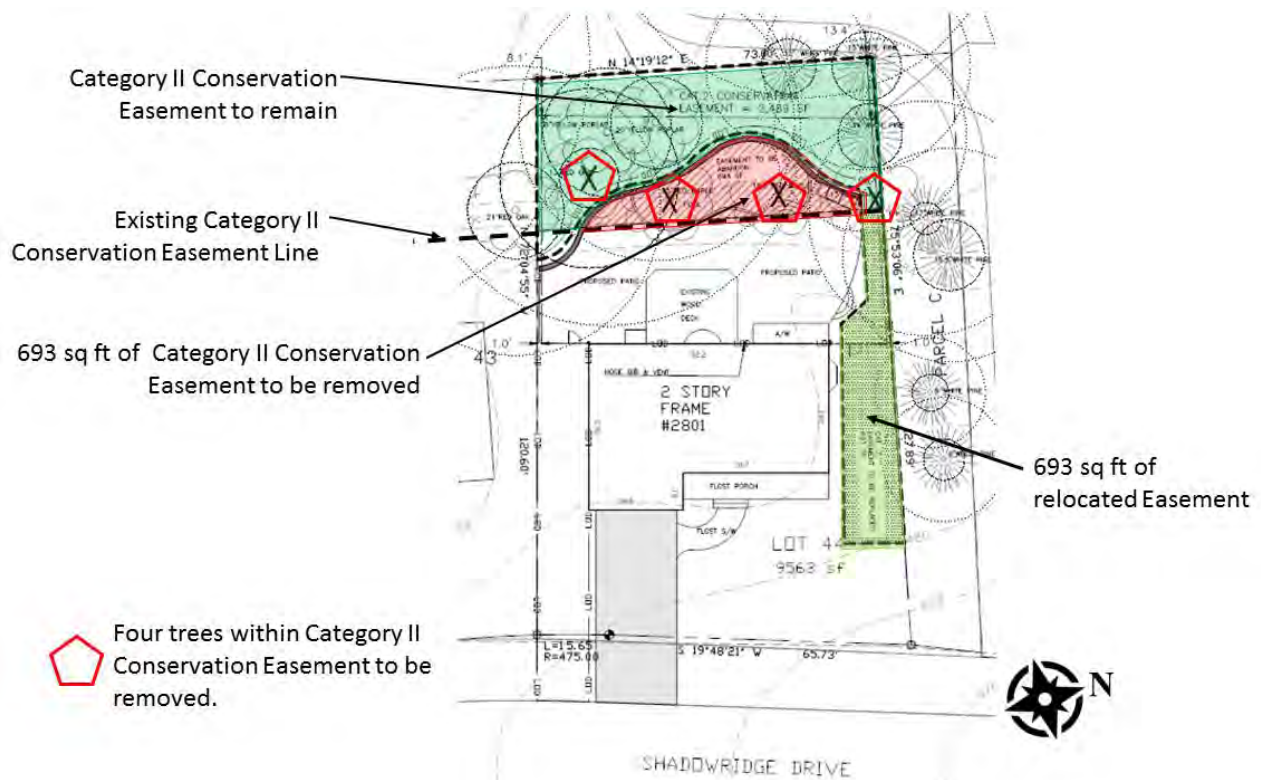


protect the 0.46 acres of On-Site Landscaping and the 0.43 acres of On-Site Reforestation plantings at the rear of Lots 35 to 40.

**Current Application**

Site Plan 81992023A

The Application is being reviewed as an Amendment to the Site Plan for Forest Conservation Plan purposes under Plan No. 81992023A (Attachment D). This Application requests to remove and relocate approximately 693 square feet of a total of 2,648 square feet (26%) of the existing Category II Conservation Easement on Lot 44 to create an area behind the existing home that is large enough for the Applicant to install an in-ground pool and patio.



**Figure 5 – Proposed Category II Easement relocation on Lot 44**

The Applicant proposes to relocate the 693 square feet of easement to the northern sideyard adjacent to the existing house. The relocated strip of Category II Conservation Easement will vary in width from 4-½ feet, where the proposed easement meets the existing easement in the backyard, and then expanding out to 12 feet along the northern side of the house. There is no removal of or impact to trees with a trunk diameter 30-inches and greater (Specimen Trees), which would require an approval of a tree variance from the Planning Board. However, four mature trees ranging from 13” to 16.5” DBH are proposed to be removed. Additionally, four larger trees within the easement and three larger off-site trees all ranging from 14” to 28” DBH will be impacted by this construction (Figure 10). Two of the off-site trees are within the HOA Open Space (Parcel C) and one is on the neighbor’s property in the

Category II Conservation Easement and adjacent to Lot 44. To compensate for the tree removal, the Applicant proposes to install plantings within the amended Category II Easement along the rear property line and along the north side of the house proposed to replacement for the removal of overstory trees and to screen this lot from the surrounding residential properties (Attachment D).

## **SECTION 4 – ANALYSIS AND FINDINGS**

### **PLANNING BOARD REVIEW AUTHORITY**

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FFCP. COMCOR 22A.00.01.13.A(2), the Forest Conservation Regulations, state:

Major amendments which entail more than a total of 5,000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).

The Applicant proposes to remove/relocate 693 square feet out of a total of 2,648 square feet (28 percent) of a Category II Conservation Easement on the Property. Although this submittal is considered a minor amendment under Section 22A.00.01.13.A of the Forest Conservation Regulations, it has been Planning Board practice to review all plans that remove or significantly change any conservation easement.

### **FOREST CONSERVATION PLAN**

The Site Plan Amendment does not meet all applicable requirements and intent of Chapter 22A regarding forest conservation. Specifically, Staff finds that it does not meet the intent of the approved Category II Conservation Easement that was placed along the rear of Lots 35 through 44, Block A (Figures 3 and 4). The intents and goals of this easement are specified in the Conservation Easement Agreement located at Liber 10728/Folio 510 dated 10/13/1992 in the Montgomery County Office of Land Records (Attachment E), which states, *“WHEREAS the purpose includes the preservation of trees and the natural beauty of the property subject to the easement for purposes of screening the approved new development from the sight of adjacent and abutting property owners...”* The intent of the easement is to protect existing screening vegetation and the landscape plantings shown at the rear of these lots.

The Applicant argues that at the time of the Planning Board’s original action on January 22, 1993 this particular Category II Conservation Easement was not shown on the approved Site Plan or on the FFCP demonstrating that this easement is invalid and recorded in error. However, the easement appears on the recorded Record Plat No. 19170 filed with the Office of Land Records on October 26, 1993 (Attachment A) along with a recorded Conservation Easement Agreement dated October 13, 1992 (Attachment E), and therefore, Staff contends that it is fully enforceable. In addition, when an analysis is made between the FFCP requirements mandated on the approved FFCP and the total area of Category II Conservation Easement on this development, it becomes clear that this type of easement was put in place to protect existing and planted vegetation to meet forest conservation worksheet calculations.

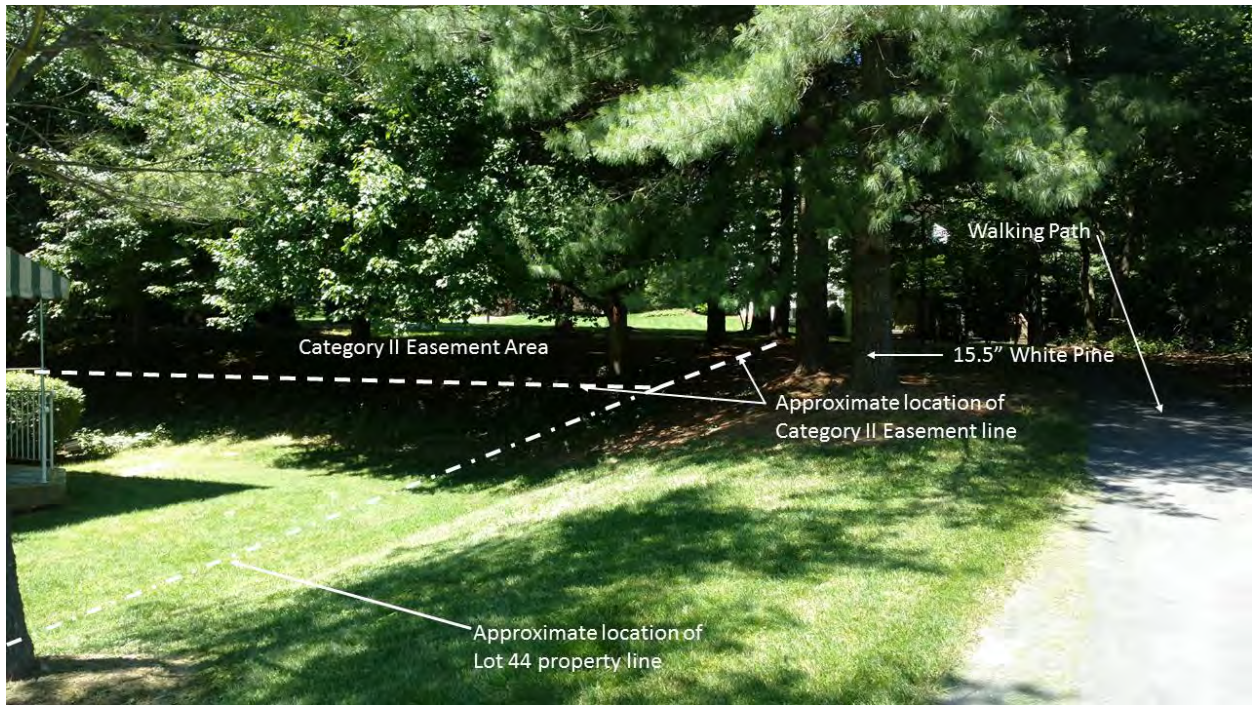




***Figure 6 – View down easement with residence on left***

Staff finds that the original intent of the Category II easement is being fulfilled with the existing vegetation and mature trees that have been allowed to grow over the past 24 years in the rear of lots 35-44. This finding has been further validated during a site visit on 6/9/2017. Staff found that all the trees on Lot 44 seem to be in good to excellent condition with no visible signs of decay or infestation.

Staff finds that the mature vegetation within this portion of the easement provides significant public benefits. First, the vegetation provides an excellent visual barrier and separation between Lot 44 and the adjoining HOA open space with residential lots beyond. Second, the existing vegetation provides a wonderful source of needed shade along this portion of the walking path that provides a cool area during the warmer summer months (Figures 6 and 7). Third, the mature stand of Tulip Poplar and White Pines provides a community benefit as both a food source, shelter and transitway for various indigenous species of suburban wildlife.



***Figure 7 – View of easement area and mature trees with residence on far left***

Staff finds that the Applicant’s proposal will have lasting impacts on the integrity and appearance of the recorded Category II Conservation Easement. The Amendment proposes to remove four of the nine trees in the Conservation Easement consisting of a 13” DBH Red Oak, a 15” DBH Red Maple, a 16.5” DBH Red Maple and a 13” DBH Red Maple. The removal of these four trees would severely impact the integrity of the visual screen, tree canopy coverage and the shade provided to the neighborhood open area. In addition to the removal of these four trees, the installation of the pool and patio will impact seven other large trees within the easement including two 28” Tulip Poplars 28” and 20” DBH, one 21” Red Oak and four White Pines ranging from 12” to 17” DBH. Each of these trees will have construction impacts to their respective critical root zones (CRZ) ranging from 4% up to 30% (Table 1). These impacts will have a detrimental effect on these tree’s overall health since The Maryland Extension Service lists both tree species of Tulip Polar and the White Pine as being very sensitive to construction impacts (University of Maryland Extension), n.d. 28 Nov. 2017.

Staff does not support the Applicant’s proposal to remove 693 square feet of Category II Conservation Easement for the following reasons: 1) the physical shape, width and location of the new proposed easement does not address the intent of this Category II Conservation Easement, 2) the proposed landscaping within the new easement is not suitable for this location, 3) long term impacts to remaining vegetation, 4) potential future easement enforcement actions by M-NCPPC and 5) concerns with establishing a precedent for additional conservation easement removal within this development. These reasons are discussed below in detail.

- 1) The Applicant proposes to remove 693 square feet of the existing 33-foot-wide easement and four mature trees. Staff finds this will have significant impact on the visual quality of this portion of the easement. To compensate for this removal of easement, the Applicant is proposing to add a thin strip of Category II Conservation easement between the house and the north property line. The width of this proposed strip varies from 4 ½ feet adjacent to the north side of the pool



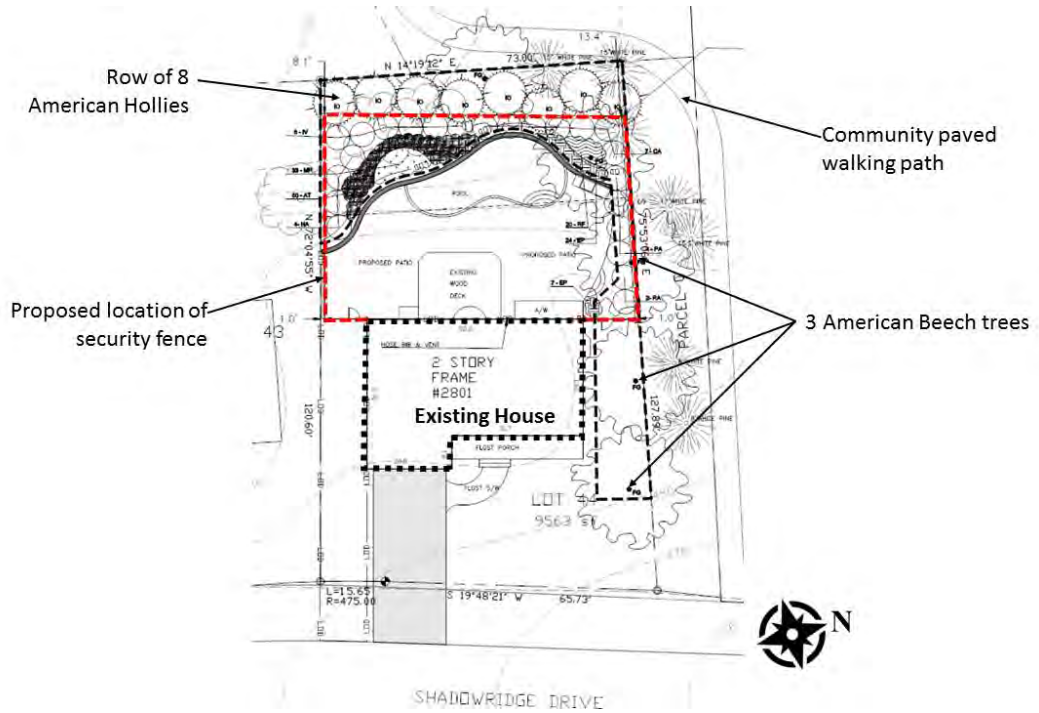
to approximately 12 feet toward the front of the property. Given its thin width, this proposed easement will not be able to function as protection for screening vegetation nor is the width adequate to support enough vegetation to provide an adequate visual screen as the original easement currently accomplishes. In addition, this segment of easement will consume the entire side yard of this house and a small portion of the front yard. The location of this easement will limit access to the rear yard and likely cause enforcement issues in the future. Also, a new Category II Conservation Easement that meets M-NCPPC's current standards will need to be recorded in this location. One of the terms of M-NCPPC's Category II Conservation Easement Agreement is to limit plant installations to MD native plants only. The location of this easement will imply to any property owner that this area is an extension of the owner's yard and as such, turf will most likely be installed for there is insufficient space to plant a tree and allow for natural canopy spread. However, turf grasses are not native to MD and per the terms of the easement agreement will not be allowed to be installed and if installed, must be removed. This will result in this area becoming a community eyesore.



**Figure 8 – View toward rear of Lot 44 from HOA open space showing wall of screening vegetation in distance at end of path**

- 2) In addition to the shape and location of the proposed easement, Staff believes that the proposed landscaping (Figure 9 and Attachment D) within this easement area is not suitable for this location. Staff would discourage any trees from being planted this close to the house. The Applicant proposes to install three overstory shade trees in this area that is very tight and adjacent to the house. Within the thin strip of easement on the north side of the house, the Applicant proposes to install three of the five American Beech (*Fagus grandifolia*) trees. These three trees are located between 12-feet to 18-feet from the wall of the house. The average mature canopy spread of an American Beech tree is 40-feet to 60-feet. This proximity can only lead to structural problems with the existing house from the roots and branches of the trees. As

a result, these trees will be subject to constant pruning and maintenance to prevent damage to the house and roof, to which the Applicant must receive permission to trim before conducting those actions. This constant maintenance can have a negative impact on the overall health of these tree. As a result, Staff would recommend that the easement not be moved to this location, thereby, forcing trees be installed in this area, which would be of insufficient size to support the natural growth and spread of a tree canopy. Also, the Applicant proposes to replace the removal of the four large trees with much smaller immature trees that will take decades to provide the benefit that the current trees provide.



**Figure 9 – Proposed Category II Landscaping**

- 3) The Applicant is proposing to remove 693 square feet of the existing easement and encroaching 18-feet into a 33-foot wide easement (Figure 11). This would have impacts on seven of the remaining mature trees within this easement (Figure 10 and Table 1). The existing vegetation has been in place before the first development proposal for this site in 1993 and these trees have had 24 years of protected growth within original undisturbed soils. The easement begins approximately at mid-slope in Figure 6 and rises about 3 feet to a relatively flat area at the top of the slope. The easement area starts about at mid-slope, continues up to the flat area and then back to the walking path.

To install the pool and patio, a cut will have to be made into the slope approximately 18 feet into the existing easement and a retaining wall installed within the critical root zones (CRZ) of five of the seven large trees (Figure 10). Incursions into a tree’s CRZ is typically handled by performing a root pruning operation along the limit of disturbance (LOD) within the CRZ. Following construction, the root structure will typically regenerate and over time re-establish the root structure to as much of the original CRZ as possible. However, in this case, the installation of the retaining wall prevents any new root growth for occurring along the line of

the wall. This will prevent five of the seven trees (trees #1 to #5 in Figure 10) from regenerating this portion of their root structure, thereby reducing overall nutrient uptake and stability for the trees. Given these permanent impacts to the trees root structures, the long term impacts to the seven trees is greater than what appears on the FFCP. The disturbance of this soil along with the installation of the retaining wall will most likely result in a long term deteriorating health condition possibly to the point of having to remove the remaining trees.

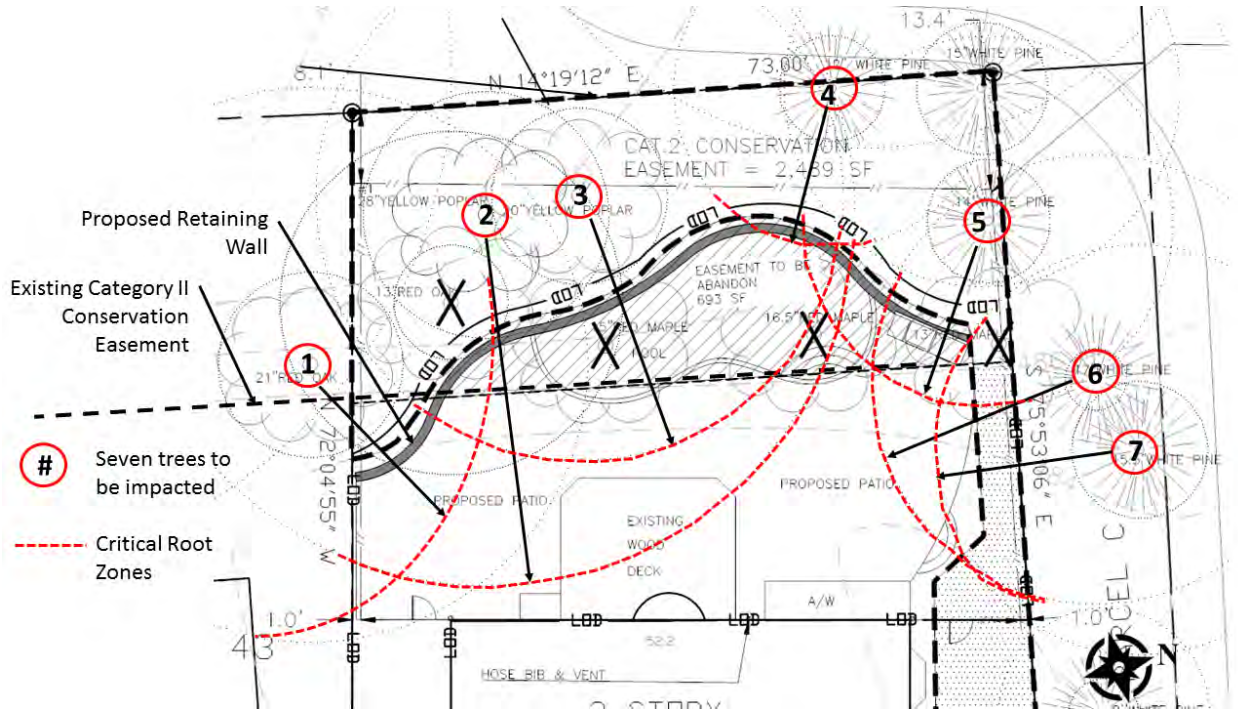


Figure 10 – Proposed Impacts to remaining trees

Tree #	Tree size & type	Total area of CRZ	Area of impacts to CRZ	Percent impact to CRZ
1*	21" Red Oak	3,117.2 sq ft	664.7 sq ft	21
2	28" Tulip Poplar	5,541.6 sq ft	1,548.6 sq ft	28
3	20" Tulip Poplar	2,827.4 sq ft	844.2 sq ft	30
4	12" White Pine	1,017.8 sq ft	45.6 sq ft	4
5	14" White Pine	1,385.4 sq ft	273.0 sq ft	20
6*	17" White Pine	2,042.8 sq ft	440.5 sq ft	22
7*	15 ½" White Pine	1,698.2 sq ft	235.5 sq ft	14

\*Off-Site Trees

Table 1 - percentage impacts to remaining trees

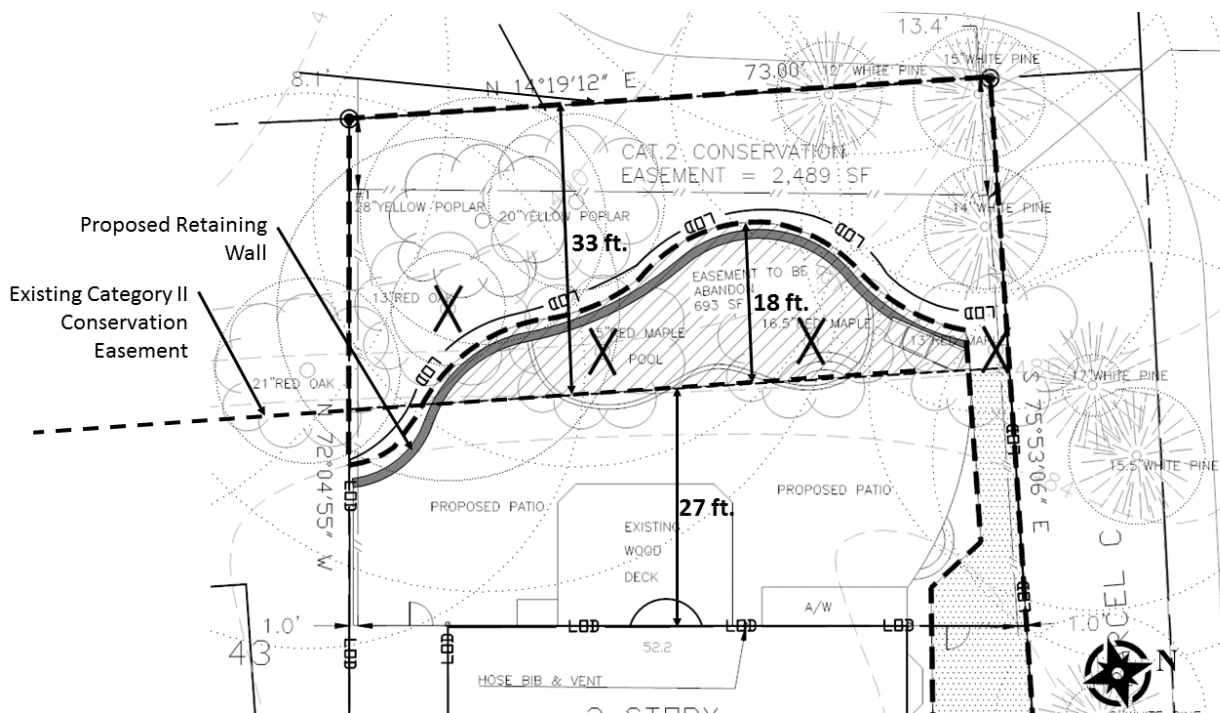
- 4) Staff finds that given the location of the proposed Category II Conservation Easement there will be constant easement enforcement issues with any property owner of Lot 44. This area of easement relocation can be seen as a logical extension to the owner’s front and side yards. This could lead to constant unintentional violations of the terms of the easement. Also, it is likely



that M-NCPPC will receive constant requests to trim the proposed trees and the existing mature trees in order to prevent damage to the house structure and prevent tree litter from falling into the pool.

- 5) If this application is approved, there are precedent concerns for the removal of additional Category II Easement in this development by other residents. The entire Category II Easement along the rear of lots 35 to 44 is in good condition and removal of this easement may lead to potential removal of other parts of this well functioning easement. There are no unique characteristics or health, safety and welfare issues with this easement on Lot 44 that would justify the removal only on Lot 44 and not on every other lot that has a Category II Easement in this subdivision. As a result, additional requests to remove Category II Conservation Easement within this development, especially Lots 35 through 43, would have to be granted. If further removal does occur this would result in the overall deterioration of the goals and intents of this easement.

Throughout the review process, Staff has attempted to work with the Applicant to balance their desires for a pool and M-NCPPC’s goal of minimizing or eliminating impacts to the Category II Conservation Easement. To date, the Applicant has been reluctant to make any substantive alterations to the originally proposed design for the pool and patio (Attachment F). After creating some rough to scale sketches, Staff believes that a pool of similar configuration with associated structures can be installed on the Subject Property without the removal of easement or any vegetation within the easement area (Figure 11). This would simply involve pulling the pool, patio and retaining wall closer to the house and outside of the easement. This may require a redesign or removal of the existing decking structure. Another option would be to redesign the shape of the pool and structures to keep them out of the easement.



**Figure 11 - Rear Yard Measurements**

In conclusion, Staff finds that the proposed amendment would violate the goals and intents of the existing Category II Conservation Easement. The current easement is of significant community benefit providing both mature visual screening into and out of Lot 44 along with beneficial shading for the public walking path. Given the above issues and concerns with this Application, removal and relocation of the current Category II Conservation Easement would severely degrade the overall visual and aesthetic community quality of this area, may result in further damage to the remaining trees, may result in potential future enforcement actions and may provide the basis of future requests to remove conservation easements in this development.

## **SECTION 5 – CITIZEN CORRESPONDENCE AND ISSUES**

The Property was properly signed with notification of the upcoming Site Plan amendment prior to the May 11, 2017, submission. All adjoining and confronting property owners, civic associations, and other registered interested parties have been notified of the submitted application to amend the Category II Conservation Easement on Lot 44.

As of the date of this report, Staff has received two letters supporting the application, and one letter and three emails opposing this application (Attachment G). The supporting correspondence both state that these citizens believe that this Application will result in an improved community image and should be allowed to move forward. The opposition correspondence believes that the removal of a portion of the easement along with the removal of the four large trees will adversely affect the visual quality of the neighborhood by the removal of a significant amount of screening and shade. The opposition also has concerns about the aesthetics of the 6-foot high wooden fence when no other similar structure exists in this area. Finally, the opposition also believes that as a result of removing these trees that surface drainage and runoff may become an issue.

## **SECTION 6 – CONCLUSION**

The proposed amendment meets all requirements established in Chapter 22A, Forest Conservation Law. Therefore, denial of the Application with the conditions specified herein is recommended.

Staff finds that the current Category II Conservation Easement provides many positive benefits to the community as a whole and is of high value to the community. The Amendment would have a negative impact on both the functioning and visual appeal of this easement and thereby have a negative impact on the surrounding neighborhood by eliminating this amenity that the neighborhood has come to appreciate and depend on. In addition, the Amendment does not meet the intent of the existing Category II Conservation Easement. Staff does not support the removal and proposed incursions into the Category II Conservation easement nor the relocation of this easement on Lot 44.

Staff finds that the amended Category II Conservation Easement, as proposed by the Applicant, will not compensate for, nor replace the functionality of the current easement. The proposed landscaping will only lead to maintenance issues with the house and the overall health of the trees. The proposed easement will be problematic from an enforcement standpoint and may result in conflicts in the future



between the Planning Department and any property owner of Lot 44. Finally, the existing easement is of immense community benefit that would be irreplaceable if altered or removed.

Staff recommends that the Planning Board deny this Site Plan Amendment for forest conservation plan purposes for the reasons stated within this staff report.

**ATTACHMENTS**

- A. Approved Plat No. 19170
- B. Original Planning Board Opinion dated 1/22/1993
- C. Original FFCP dated 4/2/1993
- D. Amended FFCP dated 10/18/2017
- E. Existing Category II Conservation Easement Agreement
- F. Attorney Response Letter dated 10/25/2017
- G. Citizen Correspondence

# PLAT NO. 19170 Surveyor's Certificate

I hereby certify that the plan shown hereon is correct; that it is a subdivision of a part of the property acquired by First Montgomery Housing Limited Partnership, a Maryland limited partnership,

January 8, 1988, from Francis O. Day III and Stanley S. Halle, by deed dated County, Maryland in Liber 8111 at Folio 124; that iron pipes shown thus -○-, will be placed as indicated, at the approved finished grade, in accordance with the Montgomery County Code, Section 50-24 (e); that the total area included in this plan of subdivision is 57,315.34 square feet or 1.3158 acres of land, of which none is to be dedicated to public

3/19/93  
DATE

JACK KONTGIAS  
REGISTERED LAND SURVEYOR  
MD REG. NUMBER 10663

## Owner's Dedication

We, First Montgomery Housing Limited Partnership, a Maryland limited partnership, Bush Construction Corporation, Managing General Partner, by Eugene C. Cook, Vice President, owner of the property shown hereon and described in the "SURVEYOR'S CERTIFICATE", hereby adopt this plan of subdivision, establish the minimum building restriction lines, and grant to Montgomery County, Maryland slope easements twenty-five (25) feet wide across all Lots and Parcels, adjacent, contiguous and parallel to all street right of way lines, as required by Montgomery County Ordinance Number 4-115. Said slope easements shall be extinguished at such time as the public improvements, on the abutting street rights of way, have been completed and accepted for maintenance by Montgomery County, Maryland.

Further, We grant to the Washington Suburban Sanitary Commission (W.S.S.C.) such exclusive rights as necessary for the construction, reconstruction, operation, maintenance and repair of the sanitary sewers and/or water mains and appurtenances within the water and/or sanitary sewer rights of way/easements shown hereon, if any, subject to and together with the conditions contained in a right of way document from the grantor (s) their successors and assigns to the W.S.S.C. and to be recorded hereafter.

Further, We grant to the Potomac Electric Power Company and to the Chesapeake and Potomac Telephone Company of Maryland and to Washington Gas Light Company, and to their respective successors and assigns, an easement, in, on and over the land hereon, and described as Ten (10) foot wide Public Utility Easement, designated as "10' P.U.E.", with the said terms and provisions of such grant being those set forth in a certain document entitled "DECLARATION OF TERMS AND PROVISIONS FOR PUBLIC UTILITY EASEMENTS", and recorded among the Land Records of Montgomery County, Maryland in Liber 3834 at Folio 457, said terms and provisions being incorporated herein by this reference.

Further, We dedicate the street and street widening strips as shown hereon to public use.

There are no suits or actions at law, leases, liens, mortgages or trusts affecting the property shown hereon, except for certain deeds of trust and the parties in interest thereto have below indicated their assent.

DATE May 12, 1993

FIRST MONTGOMERY HOUSING  
LIMITED PARTNERSHIP BY  
BUSH CONSTRUCTION CORPORATION,  
MANAGING GENERAL PARTNER

ATTEST Marc B. Sharp  
MARC B. SHARP  
ASSISTANT SECRETARY

BY: Eugene C. Cook  
EUGENE C. COOK  
VICE PRESIDENT

We hereby assent to and join in this plan of subdivision.

DATE 5-18-93

NATIONSBANK OF VIRGINIA, N.A.

Wilson P. Hyde  
WILSON P. HYDE  
TRUSTEE

Christine M. Everly  
CHRISTINE M. EVERLY  
TRUSTEE

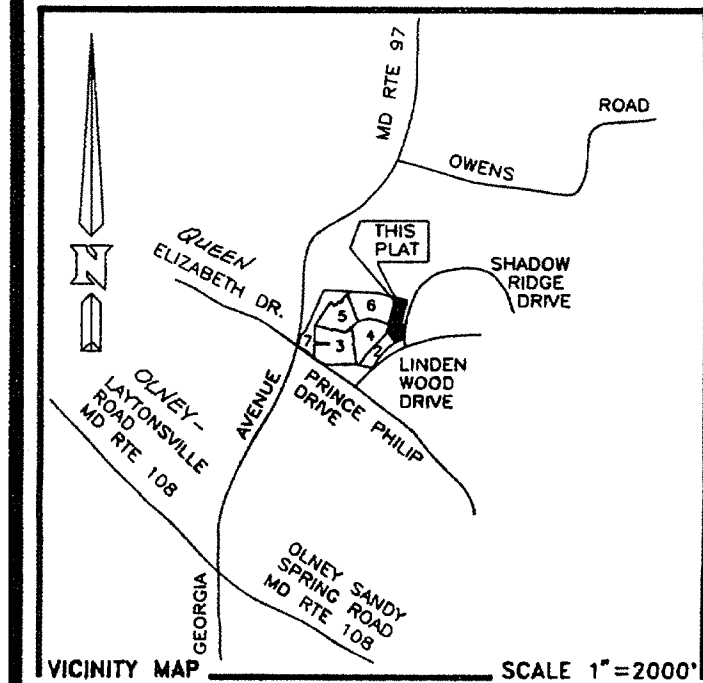
### NOTES CONT.

- All terms, conditions, agreements, limitations, and requirements associated with any preliminary plan, site plan, project plan or other plan, allowing development of this property, approved by THE MONTGOMERY COUNTY PLANNING BOARD are intended to survive and not be extinguished by the recording of this plat, unless expressly contemplated by the plan as approved. The official public files for any such plan are maintained by the PLANNING BOARD and available for public review during normal business hours.
- Development zoned RE-2/TDR4 and is using the standards of the R-90 zone (cluster).

FILED

OCT 26 1993

Lots 40 thru 44 and  
Parcels "C" and "D", Block "A"  
**Ashley Hollow**  
Olney (8th) Election District  
Montgomery County, Maryland  
Scale 1" = 50' February, 1993

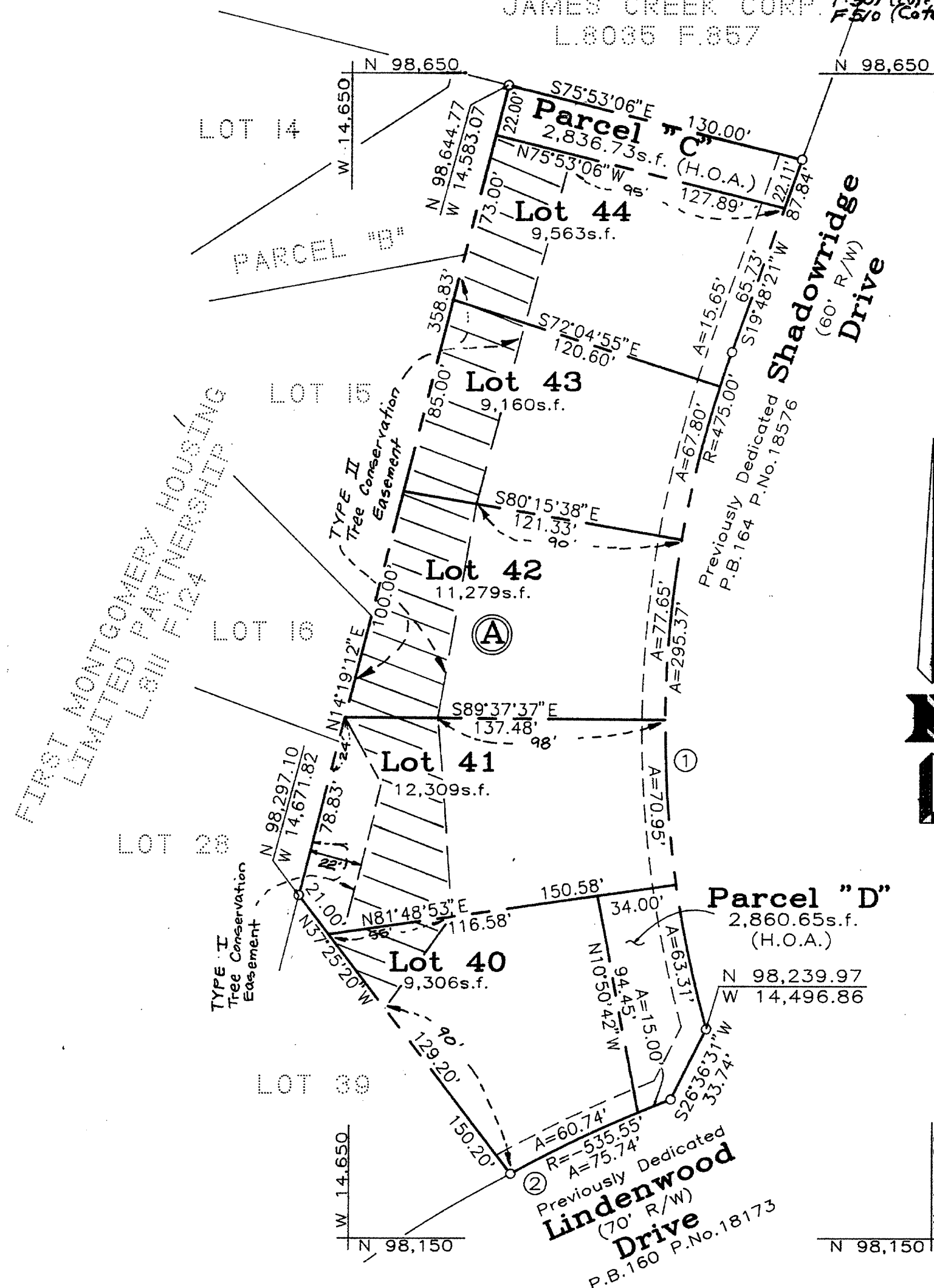


No.	Radius	Arc	Delta	Tangent	Bearing	Chord
1	475.00'	295.37'	35°37'42"	152.64'	S01°59'30"W	290.64'
2	535.55'	75.74'	08°06'12"	37.93'	S64°59'17"W	75.68'

### Notes

- (H.O.A.) Designates those parcels to be dedicated to the Homeowners Association.
- The 4 TDR's required by this plat were established by a document recorded among the Land Records of Montgomery County, Maryland in Liber 11374 at Folio 487 and conveyed to First Montgomery Housing Limited Partnership by Liber 11374 at Folio 504, having serial Numbers 12-4114 THRU 12-4117.
- Development of this site is subject to THE FOREST CONSERVATION LAW OF 1992. \*
- Development subject to a site plan enforcement agreement with the MONTGOMERY COUNTY PLANNING BOARD.
- This plat is subject to the terms and conditions of a Declaration of Covenants for Open Space recorded in Liber 11687 at Folio 607. (NOTES CONT.)

3(cont.) Conservation easements shown hereon subject to L. 10728 P. 90 (Category I) and L. 10728 P. 510 (Category II).  
JAMES CREEK CORP. F. 510 (Category II).  
L. 8035 F. 857



23104192041892023 2TDR4011396  
For public water and sewer systems only.

P.I.A. No. # 95-065

The approval of this plat is predicated upon the adequacy and availability of public water and sewer.

MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
MONTGOMERY COUNTY PLANNING BOARD  
Approved JUNE 3, 1993  
James Barron CHAIRMAN  
Raymond C. Kustin ASS. SECRETARY-TREASURER  
MNCP&PC Record File No. 591-4

DEPARTMENT OF TRANSPORTATION  
MONTGOMERY COUNTY, MARYLAND  
Approved SEPTEMBER 3, 1993  
Robert R. Mumpster DIRECTOR OR DESIGNEE

DEPARTMENT OF ENVIRONMENTAL RESOURCES  
MONTGOMERY COUNTY, MARYLAND  
Approved SEPTEMBER 10, 1993  
Stan King DIRECTOR OR DESIGNEE

5 Lots  
2 Parcels  
RECORDED: \_\_\_\_\_  
PLAT BOOK: \_\_\_\_\_  
PLAT NO: \_\_\_\_\_

**MONTGOMERY KONTGIAS ENTERPRISES**  
TRADE NAME  
2900 LINDEN LANE • SUITE 200 • SILVER SPRING, MD 20910 • 301/386-5886

SHEET  
1 of 7  
FMPLAT1.DWG  
DANF ACAD  
92P-008-326

MBA 551 1349-6189-1

591-4

Maryland State Archives  
1993/10/26 Printed 05/11/2017  
12-49 6129 5  
MONTGOMERY COUNTY CIRCUIT COURT (Subdivision Plats, MO) Plat 19170-19176, MSA



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

SITE PLAN REVIEW #8-92023

DATE MAILED: January 22, 1993

PROJECT: FIRST MONTGOMERY HOUSING

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*Action: Approval subject to conditions. Motion was made by Commissioner Floreen, seconded by Commissioner Baptiste, with a vote of 5-0, Commissioners Aron, Baptiste, Bauman, Floreen, and Richardson voting for.*

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On August 11, 1992, First Montgomery Housing Limited Partnership submitted an application for the approval of a site plan for property in the RE-2/TDR-4 zone. The application was designated Site Plan Review #8-92023.

On January 14, 1993, Site Plan Review #8-92023 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report with modifications to the conditions hereby adopted by the Montgomery County Planning Board, and which is make a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.
3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8-92023 as follows:

44 dwellings - one-family detached, including 37 TDR's

subject to the following conditions:

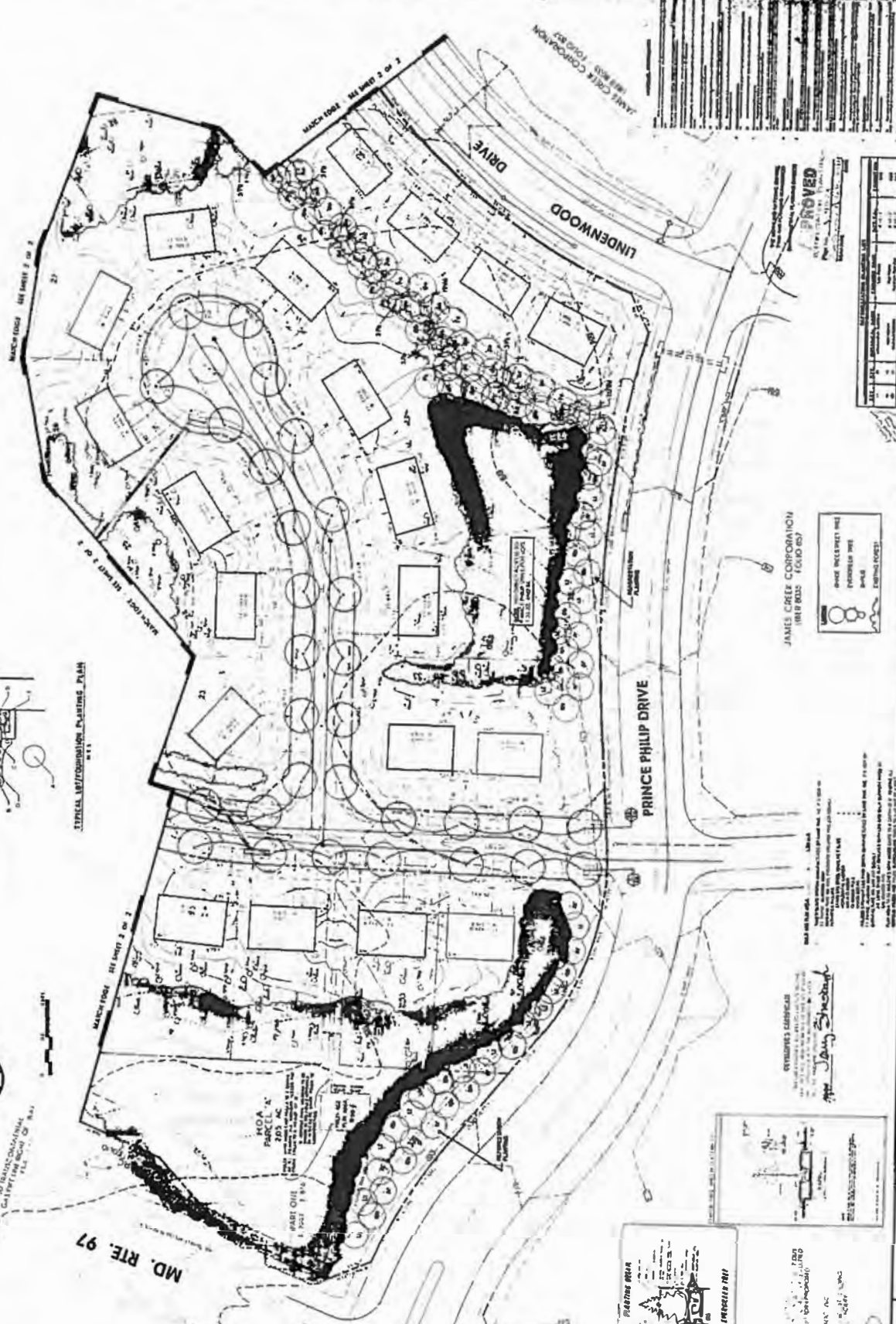
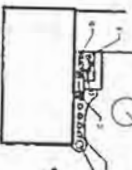
1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review prior to approval of the initial building permit.

2. The following information must be clearly shown on the signature set of site and landscape plans and must be incorporated into the sediment and erosion control plan:
  - a. Limit of disturbance line
  - b. Methods of tree protection
  - c. The development program inspection schedule
  - d. Clearing and grading schedule
  - e. Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development
  - f. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading
3. The five-foot wide asphalt trails shall be constructed to the standards of the Parks Department. The trail located between Lots 2 and 3 must be constructed prior to the acceptance of any occupancy permits.
4. Final forest conservation plan must be reviewed and approved by staff prior to the signature set of plans and recordation of plats. Plan must include revisions per the January 8, 1993, Environmental Planning staff recommendations, noted on the marked up drawing.
5. Forest conservation and planting areas shall be placed in Category I Conservation Easements. Easement agreements should include provisions for the multi-age play area and the stormwater management facilities. Transcontinental Gas Pipeline right-of-way should be excluded from the easement.
6. Prior to recordation of plats, applicant must provide the location of off-site forest planting areas and legal documentation which exhibits the right of access and long-term protection of these areas.
7. Final sediment and erosion control plans to be reviewed and approved by staff prior to submission to MCDEP. Tree protection areas as shown on the final forest conservation plan must be incorporated into the sediment control plan. Sediment trap on lots 6, 7, and 8 should be relocated away from the tree save line.
8. Stormwater management structures are not permitted on private lots. Lots 8, 9, and 40, adjacent to the trench locations must be recorded to exclude the stormwater easement area.
9. No clearing or grading prior to Planning Department approval of signature set of plans.
10. Compliance with the five conditions as stated in Montgomery County's DOT letter dated January 12, 1993.





- GENERAL NOTES**
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
  2. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
  3. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
  4. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.



LANDSCAPE PLAN

MD. RTE. 97

GEORGIA AVENUE

LINDENWOOD DRIVE

PRINCE PHILIP DRIVE



- GENERAL NOTES**
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
  2. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
  3. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
  4. ALL DISTANCES ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.

JAMES CREEK CORPORATION  
1818 BBS ROAD  
FARMERSVILLE, MD 21031

PROVED

NO.	DESCRIPTION	DATE
1	AS SHOWN	10/1/88
2	AS SHOWN	10/1/88
3	AS SHOWN	10/1/88
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LANDSCAPE PLAN  
FIRST MONTGOMERY HOUSING  
1818 BBS ROAD  
FARMERSVILLE, MD 21031  
MONTGOMERY COUNTY, MARYLAND



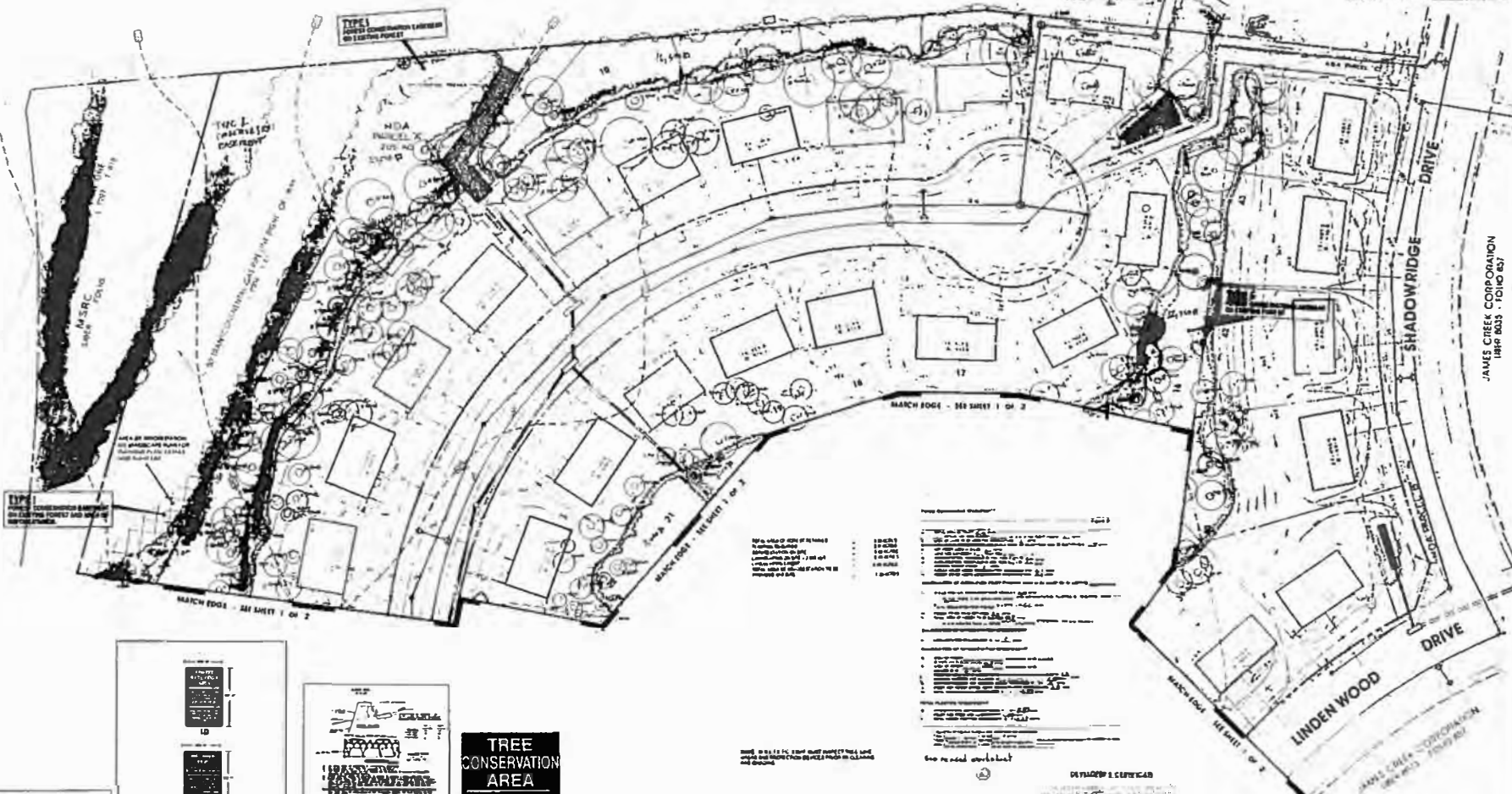
Montgomery Housing Enterprises  
1818 BBS ROAD  
FARMERSVILLE, MD 21031  
MONTGOMERY COUNTY, MARYLAND

GEORGIA AVENUE MD. RTE. 97



JOSEPH RICHARDS 3rd, et al  
1849 0130 1040 707

JAMES CREEK CORPORATION  
1849 0033 1040 657



117' TREE PROTECTION BARRIERS TO PROTECT FOREST AND WETLANDS

AREA OF INTEREST FOR WETLANDS AND FOREST

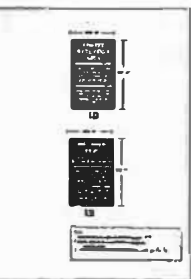
1. 100' BUFFER ZONE  
2. 50' BUFFER ZONE  
3. 25' BUFFER ZONE  
4. 10' BUFFER ZONE  
5. 5' BUFFER ZONE  
6. 2' BUFFER ZONE  
7. 1' BUFFER ZONE  
8. 0.5' BUFFER ZONE  
9. 0.25' BUFFER ZONE  
10. 0.125' BUFFER ZONE

- 1. ALL TREE PROTECTION BARRIERS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:
a. BARRIERS SHALL BE 18" HIGH AND 4" THICK.
b. BARRIERS SHALL BE SPACED AT 6" ON CENTER.
c. BARRIERS SHALL BE INSTALLED AT THE EXTERIOR EDGE OF THE BUFFER ZONE.
d. BARRIERS SHALL BE INSTALLED AT THE EXTERIOR EDGE OF THE BUFFER ZONE.
e. BARRIERS SHALL BE INSTALLED AT THE EXTERIOR EDGE OF THE BUFFER ZONE.

117' BUFFER ZONE TO PROTECT FOREST AND WETLANDS

LANDSCAPE ARCHITECT'S CERTIFICATE  
I HEREBY CERTIFY THAT THE PLANS AND SPECIFICATIONS SUBMITTED TO ME FOR REVIEW AND APPROVAL ARE COMPLETE AND CORRECT AND THAT I AM A LICENSED LANDSCAPE ARCHITECT IN THE STATE OF MARYLAND.

DATE: 10/1/01  
BY: [Signature]



TREE CONSERVATION AREA  
NO CONSTRUCTION OR OTHER ACTS  
PROHIBITED

NO.	DATE	REVISIONS
1	10/1/01	ISSUED FOR PERMIT



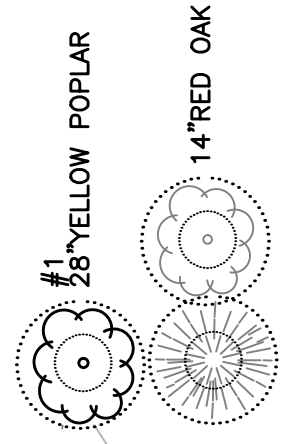
FOREST CONSERVATION PLAN  
FIRST MONTGOMERY HOUSING  
1040 707  
MONTGOMERY COUNTY, MARYLAND

DATE	10/1/01
BY	[Signature]
SCALE	AS SHOWN

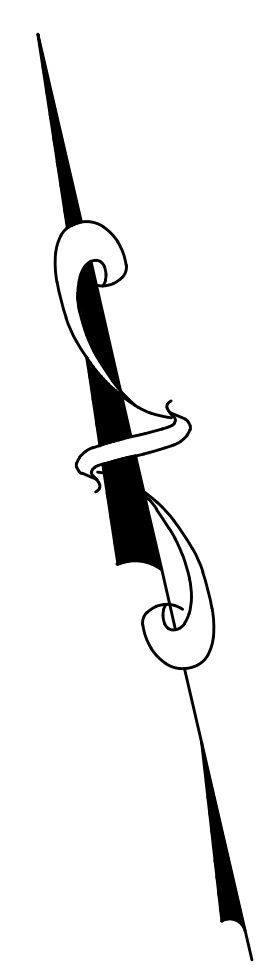
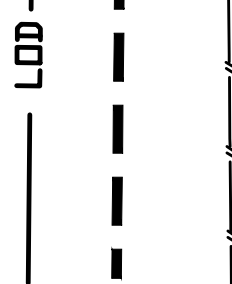
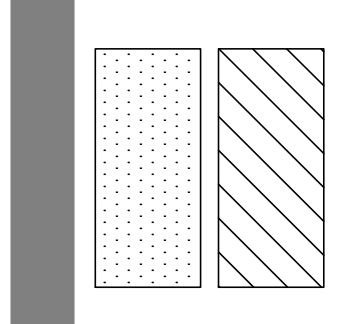


**LEGEND**

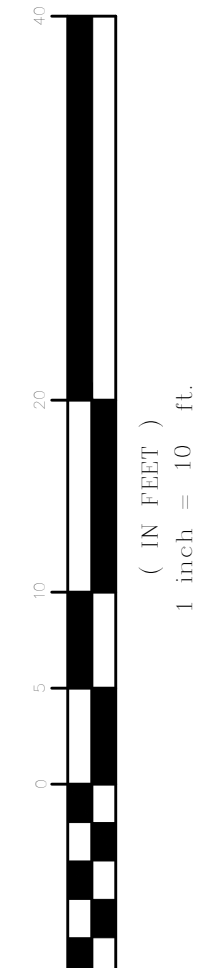
- PROPERTY BOUNDARY
- EXISTING CONTOUR LINE
- EXISTING SIGNIFICANT TREE ≥24" AND <30" DBH WITH CRITICAL ROOT ZONE AND STRUCTURAL ROOT ZONE
- EXISTING TREE <24" DBH WITH CRITICAL ROOT ZONE AND STRUCTURAL ROOT ZONE
- EXISTING CATEGORY 2 CONSERVATION EASEMENT
- TREE TO BE REMOVED
- PROPOSED STONE RETAINING WALL
- EASEMENT TO BE RELOCATED
- EASEMENT TO BE ABANDONED
- PROPOSED LIMITS OF DISTURBANCE
- PROPOSED CAT.2 CONSERVATION EASEMENT
- PROPOSED WOOD PRIVACY FENCE



X



GRAPHIC SCALE



MNCPPC# 81992023A

<p><b>AMENDED FINAL FOREST CONSERVATION PLAN</b></p>	
<p><b>FIRST MONTGOMERY HOUSING GILBERT RESIDENCE 2801 SHADOWRIDGE DR</b></p>	
<p>PREPARED FOR <b>MR. AVI GILBERT</b> 2801 SHADOWRIDGE DR OLNEY, MD 20832</p>	<p><b>NORTON LAND DESIGN</b> LANDSCAPE ARCHITECTURE + ENVIRONMENTAL PLANNING ELI COTT CITY, MD 21042 5746 DORSEY HALL DRIVE, 2ND FLOOR BALT. 443.542.8199 DC 240.242.2329 WWW.NORTONLANDDESIGN.COM</p>
<p>WATER CLASS: N/P WATERSHED: HAWLINGS FEMA FLOODPLAIN MAP: 24031C0218D</p>	<p>DATE: 10-10-17 SCALE: AS SHOWN SHEET NO.: L-1.1</p>

**DEVELOPER'S CERTIFICATE**

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan, including all financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: **TONY GILBERT**  
 Firm's Company Name: **TONY GILBERT**  
 Contract Person or Owner: **TONY GILBERT**  
 Address: **2801 SHADOWRIDGE DRIVE, OLNEY MD 20832**  
 Phone and Email: **301-774-4850, AVI@GILBERT.NET**  
 Signature: *[Signature]*

**CERTIFICATION OF QUALIFIED PROFESSIONAL**

I, **TONY GILBERT**, being duly sworn, hereby certify that I am a duly Licensed Professional Engineer with Maryland State, MNCPPC and Montgomery County Forest Conservation Laws.

DATE: 10-10-17  
 SIGNATURE: *[Signature]*  
 MONTGOMERY COUNTY, MARYLAND  
 QUALIFIED PROFESSIONAL



**Significant Specimen Tree Summary 24" +**

Tree Species	Scientific Name	Common Name	D.B.H. (inches)	Critical Root Zone (BF)	Percent of CRZ Impacted (SF)	Tree Condition	Comments	Status
1	LIRIODENDRON TULIPERA	YELLOW POPLAR	28	5541	28%	GOOD		TO BE SAVED
2	ACER RUBRUM	RED MAPLE	38		0%	FAIR		TO BE SAVED
3	LIRIODENDRON TULIPERA	YELLOW POPLAR	29		0%	GOOD		TO BE SAVED
4	LIRIODENDRON TULIPERA	YELLOW POPLAR	31		0%	GOOD		TO BE SAVED
5	LIRIODENDRON TULIPERA	YELLOW POPLAR	28		0%	GOOD		TO BE SAVED

**\* BOLD TYPE DENOTES SPECIMEN TREES**

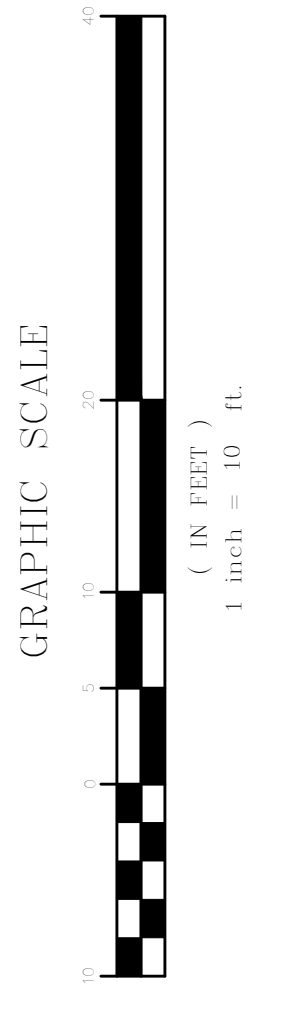
Condition Scoring System	Excellent
No Apparent Problems	Good
Minor Problems	Fair
Major Problems	Poor

SITE VISITS CONDUCTED ON MARCH 28, 2017 AND APRIL 19, 2017 VERIFYING SIZE OF TREES SHOWN ON PLAN.



**LEGEND**

- PROPERTY BOUNDARY
- EXISTING CONTOUR LINE
- PROPOSED EVERGREEN TREES
- PROPOSED CANOPY TREES
- PROPOSED SHRUBS
- PROPOSED ORNAMENTAL GRASSES & HERBACEOUS PERENNIAL
- EXISTING TREE TO REMAIN
- STONE RETAINING WALL
- PROPOSED LIMITS OF DISTURBANCE
- PROPOSED CAT.2 CONSERVATION EASEMENT
- PROPOSED WOOD PRIVACY FENCE
- EXISTING CATEGORY 2 CONSERVATION EASEMENT



MNCPPC# 81992023A

<p><b>AMENDED FINAL FOREST CONSERVATION PLAN</b></p>	
<p><b>PROJECT</b>                  FIRST MONTGOMERY HOUSING                  GILBERT RESIDENCE                  2801 SHADOWRIDGE DR</p>	
<p><b>PREPARED FOR</b>                  MR. AVI GILBERT                  2801 SHADOWRIDGE DR                  OLNEY, MD 20832</p>	
<p><b>NORTON LAND DESIGN</b>                  LANDSCAPE ARCHITECTURE + ENVIRONMENTAL PLANNING                  5746 DORSEY HALL DRIVE, 2ND FLOOR                  ELICOTT CITY, MD 21042                  WWW.NORTONLANDDESIGN.COM</p>	
<p><b>REVISIONS</b></p>	<p>DATE: AUG 2017                  DRAWN BY: 17-031                  SHEET NO.: L-1.2</p>
<p>WATER CLASS: N/P                  WATERSHED: HAWKINGS                  FEMA FLOODPLAIN MAP: 24031C0218D</p>	<p>200 SHEET: 225NWO3                  SCALE: 1" = 40' (SEE PLAN)                  SHEET NO.: L-5.6</p>
<p>PROJECT: HT563                  DATE: 10-10-17</p>	<p>DATE: 10-10-17                  DATE: 10-10-17</p>

SHADOWRIDGE DRIVE

**SITE LANDSCAPE PLANTING SCHEDULE**

KEY	BOTANICAL NAME	COMMON NAME	SIZE	FORM	SPACING	QUANTITY	COMMENTS
<b>TREES</b>							
IO	ILEX OPACA	AMERICAN HOLLY	10"-12"	B&B	SHOWN	8	
FG	FAGUS GRANDIFOLIA	AMERICAN BEECH	3" CAL.	B&B	SHOWN	5	
<b>SHRUBS</b>							
HA	HYDRANGEA ARBORESCENS	SMOOTH HYDRANGEA	18"-24"	#3	SHOWN	4	
IV	ILEX VERTICILLATA	WINTERBERRY HOLLY	18"-24"	#3	SHOWN	6	
CA	CLETHRA ALNIFOLIA	SUMMERSWEET CLETHRA	2'-3'	#3	SHOWN	7	
RA	RHUS AROMATICA	FRAGRANT SUMAC	2'-3'	B&B	SHOWN	2	
PA	VIBURNUM DENTATUM	ARROWOOD VIBURNUM	18"-24"	B&B	SHOWN	4	
<b>ORNAMENTAL GRASS, AND HERBACEOUS PERENNIAL</b>							
AT	ASCLEPIAS TUBEROSA	BUTTERFLY WEED	QUART	CONT.	18 O.C.	80	
EP	ECHINACEA PURPUREA	EASTERN PURPLE CONEFLOWER	QUART	CONT.	18 O.C.	31	
RF	RUBROCKIA FULGIDA	ORANGE CONEFLOWER	QUART	CONT.	18 O.C.	20	
MR	MULLENBERGIA REVERCHONII	RUBY MUHLY	QUART	CONT.	18 O.C.	33	

**CERTIFICATION OF QUALIFIED PROFESSIONAL**  
 I, MICHAEL C. NORTON, LICENSED PROFESSIONAL LANDSCAPE ARCHITECT, CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A MEMBER IN GOOD STANDING WITH MARYLAND STATE, MNCPPC AND MONTGOMERY COUNTY FOREST CONSERVATION LAWS.

DATE: 10-10-17  
 MICHAEL C. NORTON  
 LICENSE NO. 1908.01  
 QUALIFIED PROFESSIONAL

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*[Handwritten signature]*

CONSERVATION EASEMENT AGREEMENT

Category II

DEFINITIONS

**Grantor:** Fee simple owner of real property subject to a:

- (i) Plan approval conditioned on compliance with a  
or
- (ii) Plan approval conditioned on compliance with a  
conservation agreement (issued pursuant to  
Chapters 50 or 59, Montgomery County Code).

**Grantee:** Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

**Planning Board:** Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission.

**Planning Director:** Director of the Montgomery County Planning Department of The Maryland-National Capital Park and Planning Commission, Montgomery County, or Director's designee.

**Plan:** Sediment control permit approved pursuant to Montgomery County Code Chapter 19, preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development or special exception application submitted pursuant to Montgomery County Code Chapter 59; mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

**Forest Conservation Plan:** Forest Conservation Plan approved by

FILED  
BETTIE A. SKELTON  
CLERK OF THE COURT  
MONTGOMERY COUNTY, MD

92 OCT 13 A 8:43.8

NO FEE - MCFPC

the Montgomery County Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code ("FCP").

**Exhibit A:**

- (i) FCP approved as a condition of receiving Plan approval;  
or
- (ii) Approved and signed Plan referencing this Easement Agreement.

**WITNESSETH**

This Agreement reflects a grant of easement by Grantor to Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority Grantor's Plan conditioned upon a requirement that development occur in strict accordance with a FCP approved by the Planning Board after full review of the Plan pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

the Planning Board approved Grantor's Plan conditioned upon subjecting the property to be developed ("Property"), or a portion of the Property, to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations) and/or Chapter 59 (Zoning Ordinance) for the purposes set forth below running in favor of Grantee; and

WHEREAS, the location of this easement ("Easement") is as shown on Exhibit A (incorporated by reference into the terms of this Agreement); and

WHEREAS the purpose includes preservation of trees and the natural beauty of the property subject to the easement for purposes of screening the approved new development from the sight of adjacent and abutting property owners to ensure maximum compatibility between the existing and proposed new developments; and

WHEREAS the purpose includes prevention of any destruction, construction or alteration that will tend to mar or detract from such natural beauty; and

WHEREAS, the parties intend for the conditions and covenants contained in this agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the parties intend that a servitude be placed upon the Property which establishes perpetual control over the Easement in the Planning Board.

NOW, THEREFORE, the Grantor has executed this Agreement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed by Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Commission, in perpetuity, an Easement on the Property of the size and location described in Exhibit A, and further described on the applicable record plat(s)

of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.

2. No tree with a diameter greater than six inches (at a height of four feet from the ground) or more than thirty feet in height (measured from the ground) ("Trees") may be cut down, removed or destroyed without prior written consent from the Planning Board staff. Diseased or hazardous Trees or Tree limbs may be removed to prevent personal injury or property damage after a minimum of ten business days' notice to the Planning Board, unless such notice is not practical in an emergency situation.

3. Understory plant materials including, but not limited to brush, shrubs, saplings, seedlings, undergrowth and vines may be cut down, removed or destroyed without prior written consent of the Planning Director, provided their removal does not damage, injure or kill Trees or create erosion or slope stability problems.

4. Fences are permitted within the Easement provided their construction and maintenance can be executed in compliance with the restrictions of this agreement.

5. Mowing may occur, provided it does not damage, injure or kill Trees. Grantor may supplement existing or replace dead Trees or undergrowth with new plantings provided that new plantings are characteristic of trees or undergrowth materials native to Maryland.

6. The following activities may not occur without prior written consent from the Planning Director:

- a. Construction (including roadways, private drives, paths and trails), excavation, grading or retaining walls.
- b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
- c. Activities which in any way could alter or interfere with soil or slope stability or drainage (including alteration of stream channels, stream currents or stream flow).

The Planning Director may approve these activities upon a finding that the proposed activity will not interfere with the purposes stated above, and in particular with tree preservation; screening existing and proposed developmental from adjacent and abutting landowners; and preservation of open space. This approval exception shall be narrowly interpreted, and the Director is under no obligation to authorize any of these activities when approval is requested.



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7. Timber cutting or any other industrial or commercial activities shall not occur.

8. No posting of any advertising, including signs or billboards, shall occur.

9. No dumping of unsightly or offensive man-made materials, including construction materials and debris. No dumping of ashes, sawdust or grass clippings shall occur except in a properly located, designed and maintained compost pile. Upon prior written approval of the Planning Director, suitable heavy fill may be placed to control and prevent erosion that would conflict with the purposes of this easement provided that the fill is covered by arable soil or humus and properly stabilized.

10. The Easement shall not be used as a site for any major public utility installations such as, but not limited to, electric generating plants, electric transmission lines, gas generating plants, gas storage tanks, radio or microwave relay stations, and telephone exchanges except upon prior written from the Planning Director. Nothing in this paragraph prevents the construction or maintenance of (on, over or under the property) facilities normally needed to serve a residential neighborhood and which have been approved by the appropriate reviewing agencies. These facilities should be located to prevent or minimize any loss of trees.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or to minimize damage to the



forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the Easement.

12. Grantor authorizes Planning Board representatives to enter the Property and Easement at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or Easement for any purpose. The Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by the applicable community or homeowner association covenants and by-laws.

13. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, including the right to recover damages in an amount sufficient to restore the Property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the

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Planning Board successful seeks judicial relief.

14. Grantor agrees to make specific reference to this Easement in a separate paragraph of any sales contract, mortgage, subsequent deed, lease or other legal instrument by which any possessory or equitable interest is conveyed.

15. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this agreement.

16 All written notices required by this Agreement shall be sent to the Planning Director, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

TO HAVE AND TO HOLD unto the Commission, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor and shall constitute a covenant real running with the title of the Property.

cmro:categ2.eas

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**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**OFFICE OF  
THE GENERAL COUNSEL**

**(301) 495-4646  
FAX (301) 495-2173**

**October 8, 1992**

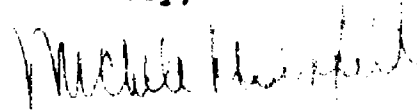
Clerk of the Circuit Court  
Judicial Center  
50 Courthouse Square  
Rockville, Maryland 20850

Dear Clerk:

Please record among the Land Records of Montgomery County, Maryland the attached conservation easements on behalf of the Maryland-National Capital Park and Planning Commission. The Commission is a state-created agency authorized to buy, sell and otherwise dispose of real property interests pursuant to Article 28 of the Annotated Code of Maryland and therefore is exempt from transfer and recording fees.

Your cooperation in this regard is appreciated.

Sincerely,



**Michele Rosenfeld  
Associate General Counsel**

MMR:ejc  
Enclosure

c:consease.ltr

# McMillan Metro, P.C.

ATTORNEYS AT LAW

October 25, 2017

**VIA REGULAR MAIL**  
**VIA ELECTRONIC MAIL:**

Mr. Douglas Johnsen  
Planning Area Three Division  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**Stephen J. Orens**  
Of Counsel

Direct: 240-778-2324  
sorens@mcmillanmetro.com

Maryland Bar  
District of Columbia Bar

Re: Gilburt Residence - Forest Conservation Plan Amendment  
Plan No. 819920230A

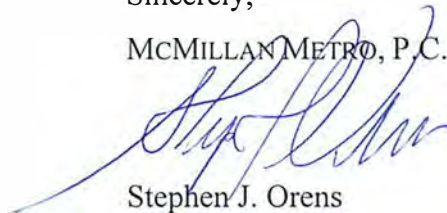
Dear Mr. Johnson:

Please consider this correspondence as our response to the eplans comment requesting submission of an alternative plan depicting the pool relocated outside of the alleged easement depicted on the recorded plat.

If staff is requesting that we provide a drawing illustrating that the relocation of the pool outside of the alleged easement area is not physically possible, and that such relocation will not result in the preservation of the four undersized trees, please so inform us. However, if the request for an alternative plan was intended for some other purpose, please be advised that we decline to submit an alternative plan at this time and request that the plan submitted be reviewed as required by the Planning Board's Rules of Procedure, and scheduled for Planning Board action at the earliest available date.

Sincerely,

MCMILLAN METRO, P.C.



Stephen J. Orens

SJO/onk

cc: Gwen Wright, Planning Director  
Richard A. Weaver, Chief, Planning Area Three Division  
Mr. Avi Gilburt, Esquire  
Michael A. Norton, ASLA  
Peter E. Ciferri, Esquire





SHADOWRIDGE DRIVE  
Olney, Md

September 6, 2017

RECEIVED

SEP 12 2017

OFFICE OF THE CHAIRMAN  
THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

The Honorable Casey Anderson, Chair  
The Honorable Gerald R. Cichy, Commissioner  
The Honorable Norman Dreyfuss, Commissioner  
The Honorable Natali Fani-Gonzalez, Commissioner  
The Honorable Tina Patterson, Commissioner  
The Montgomery County Planning Board  
The Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

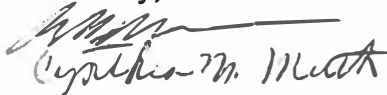
Re: Gilbert Residence Plan Amendment

Dear Chair Anderson and Commissioners:

We are Avi Gilbert's immediate neighbors on Shadowridge Drive. We support Mr. Gilbert's request to redefine the boundaries of the easement that has prevented him from using and enjoying his back yard. Mr. Gilbert has shared with us the plans to plant 9 trees to replace four trees that have to be removed in order for him to have the use of his back yard and install a modest sized swimming pool for his family. We appreciate the extensive landscaping proposed by Mr. Gilbert and in our opinion the plan will enhance the appearance of our community.

We urge approval of the proposed amendment. Thank you for considering our opinions. If you have any further questions, please contact us at the address or phone number below.

Sincerely,



Robert B. and Cynthia M. Muth  
2803 Shadowridge Drive  
Olney, MD, 20832

301 570-9267

18511 Viburnum Way  
Olney, Md. 20832

Date: September 8, 2017

The Honorable Casey Anderson, Chair  
The Honorable Gerald R. Cichy, Commissioner  
The Honorable Norman Dreyfuss, Commissioner  
The Honorable Natali Fani-Gonzalez, Commissioner  
The Honorable Tina Patterson, Commissioner  
The Montgomery County Planning Board  
The Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

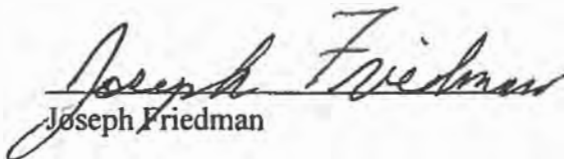
Re: Gilbert Residence Plan Amendment

Dear Chair Anderson and Commissioners:

I am Avi Gilbert's neighbor in the James Creek Subdivision living in close proximity to his residence. I support Mr. Gilbert's request to redefine the boundaries of the easement which will enable Mr. Gilbert and his family to use and enjoy his back yard. I am aware of his plans to plant nine trees to replace four trees that have to be removed in order for him to have the use of his back yard and to install a modest sized swimming pool for his family. I appreciate the extensive landscaping proposed by Mr. Gilbert, and in my opinion the plan will enhance the appearance of our community and neighborhood.

I urge approval of the proposed amendment. Thank you for considering my opinion.

Best Regards,

  
Joseph Friedman

May 30, 2017

Lucy P. Wilson  
18526 Viburnum Way  
Olney, Maryland 20832



MNCPPC  
Development Application and Regulatory Coordination Division  
8787 Georgia Avenue  
Silver Spring Maryland 20910-3760

Re: Plan Number 81992023A  
2801 Shadowridge Drive Olney Maryland

Below please find my comments relating to the Minor Amendment of Approved Plan which includes the removal of several mature trees, both deciduous and evergreen, located in a Category Two Conservation Easement. My understanding is that the owner/applicant is requesting approval from MNCPPC to remove mature trees exists in the Category Two Easement area located along the rear of his property and add trees to the side of this property and in another location of his rear yard that will be inside a 6' privacy fence that he is considering installing on his property line.

As you know, the property is subject to a Category Two Conservation Easement. The location of this easement, and the trees that are included in this area, was relied upon by myself and others as an area that would enjoy certain protection from removal of trees. The property line of the subject property is approximately 1' from a walking path that runs along the rear and side of the property. I have included pictures so that the proximity of the path to the conservation easement is more apparent.

The removal of the trees, relocation of the conservation easement, and proposed fence along the property line is being proposed in order to accommodate a swimming pool, surrounding hardscape, and retaining wall to be installed on the property. Due to the topography and small size of the lot, a hillside needs to be excavated, a retaining wall erected, and the property owner has communicated that the new landscaping/trees will be installed along the inside portion of the proposed fence and along the side of the property due to lack of space.

My concern and objection is that the removal of trees within the conservation easement will have a negative impact on the community as a whole and that the proposed resolution of adding trees inside the fence is not a reasonable or equitable alternative. The current view, openness and the canopy that the trees currently provide will be eliminated and replaced with a 6' privacy fence. This proposed solution does not adequately address the adverse impact.

I expressed my concern to Mr. Gilbert and suggested that the fence should be moved closer to his property at least a foot or two off the property line so that mature trees and landscaping can be planted along the outside of the fence. I understand that this would result in reducing the footprint of his pool and hardscape however it is my opinion that this would be more of a reasonable solution to address the removal of trees from the rear yard. Additional landscape along the side yard provides landscape

screening to the neighboring subdivision but not our own community. Further, the removal of mature trees should be carefully evaluated in order that the absolute minimum number of trees be removed.

I have attached several pictures for your review. The pictures are reflective of the size and height of the trees, and how removal of all the proposed trees would dramatically alter the area and existing conservation easement.

I respectfully request the careful consideration of the planning board and hope that a solution that addresses these concerns can be attained.

Sincerely,

A handwritten signature in cursive script that reads "Lucy P. Wilson". The signature is written in black ink and is positioned below the word "Sincerely,".

Lucy P. Wilson















**From:** Sue Bray  
**To:** [Johnsen, Douglas; MCP-Chair](#)  
**Subject:** Comments RE: Site Plan 81992023A  
**Date:** Tuesday, June 20, 2017 11:47:58 AM

---

Dear Montgomery County Planning Board,

I am writing to voice my concern regarding the proposed amendments to the Gilbert Residence, Site Plan No: 81992023A. As a nearby neighbor, I am concerned about the impact of amending the Forest Conservation Easement on the Gilbert lot. In reviewing the plan, as well as visiting the site, I worry that this change is not only quite drastic, but will forever impact the landscape and ecosystem in the area.

The trees in the easement on the Gilbert lot are well established. In cutting them down, it will be impossible to recreate their benefits to the environment. During the warm months, I frequent the path that borders the Forest Conservation Easement on a regular basis. The area is well visited by, and supports, quite a vast amount of wildlife (squirrels, chipmunks, deer, birds, rabbits, and foxes, to name a few). Without this Forest Conservation Easement, the ecosystem developed in our area will suffer.

While the trees in the easement support wildlife, they also aid in filtering rainwater and minimizing runoff. By cutting down the trees and cutting into the earthen hill (to create a retaining wall), there will be a major impact to storm water management. Rainwater flows down Viburnum Way and into the storm drain in the cul-de-sac. However with heavy rains, a great deal of water ends up bypassing the storm drain and flowing into the Conservation Easement. There, nature does it's thing and allows the water to filter through the ground to be absorbed. Without the trees to anchor what little dirt that will remain after construction, I fear there will be significant erosion and/or flooding of homes at the bottom of the hill.

It is my personal belief that having all of the Forest Conservation Easements that are within the area are important for the aesthetic look of the neighborhood, as well as for the structure and support of the ecosystem. The easements were created by the Montgomery County Planning Department for a variety of reasons, none of which have disappeared. Green space is important, especially with the increased development in the area.

"I speak for the trees, for the trees have no tongues."

-- Dr. Seuss, The Lorax

I urge you to vote against allowing the amendment to the Forest Conservation Easement at the Gilbert Residence, Site Plan No: 81992023A.

Sincerely,

Susanne Bray  
18517 Viburnum Way  
Olney, MD 20832

**From:** Amy Blachere  
**To:** [Johnsen, Douglas](#)  
**Subject:** Opposition to the Tree Conservation Easement  
**Date:** Tuesday, August 22, 2017 9:40:27 PM

---

Mr. Johnsen,

My husband and I live in Ashley Hollow HOA with our family. Our address is 18516 Viburnum Way.

We are in opposition to the request to alter the Category II Conservation Easement at the rear of the Gilbert's property.

We do not want to lose the green space and trees in that area. Also, we have concerns regarding how the storm water would drain, and the likelihood of erosion in that area.

Please do not approve this request to alter the easement.

Sincerely,

Amy & John Blachere  
301-260-8385

**From:** mcolliton@aol.com  
**To:** [Johnsen, Douglas](#)  
**Subject:** Gilburg Residence at 2801 Shadowridge Dr.; Plan No. 81992023A  
**Date:** Wednesday, August 23, 2017 4:32:49 PM

---

Dear Mr. Johnsen,

We live at 18518 Viburnum Way, Olney, MD. This is in the Ashley Hollow subdivision, where the Gilburg home is located. We would like to express our opposition to the proposed changes to the Conservation Easement and slope of the rear hill to accommodate a pool. The removal of so many trees is a drastic alteration and defeats the purpose of the Conservation Easement. To modify the hill, as needed for the pool, will affect the drainage for the community. Please place this email in the record for the plan and notify us, by email, if a hearing is scheduled to consider the plan.

Thank you for your consideration.

J. Michael Colliton  
Karen R. Brandt  
18518 Viburnum Way  
Olney, MD 20832

# ATTACHMENT B



December 12, 2017

The Honorable Casey Anderson, Chair  
The Honorable Norman Dreyfuss, Vice Chair  
The Honorable Gerald R. Cichy, Commissioner  
The Honorable Natali Fani-Gonzalez, Commissioner  
The Honorable Tina E. Patterson, Commissioner  
The Montgomery County Planning Board  
The Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Forest Conservation Plan Amendment No. 81992023A  
Ashley Hollow – Lot 44 - Site Plan No.819920230  
Preliminary Plan No. 119920400  
WSSI# MD1561.01

Dear Mr. Chair and Commissioners:

## Overview

Mr. Avi Gilburd is proposing to install landscape improvements, including the construction of a patio and in-ground pool, on his property located at 2801 Shadowridge Drive in Olney, Maryland. A portion of this property, which coincides with some of the proposed improvements, is identified on Plat 19170 as encumbered by a Category II Conservation Easement. There are fourteen trees located in the vicinity of the proposed landscape improvements - nine of these trees are located in the rear yard of at 2801 Shadowridge Drive, and five trees are located on adjacent properties. If approved as proposed, the landscape improvements would require the removal of four trees.

Wetland Studies and Solutions, Inc. (WSSI) was requested to inventory and assess the condition of the fourteen trees to determine their potential for survival should this project move forward. Further, WSSI was tasked to provide a plan of preservation to protect the remaining trees during and after construction.

## Methods

Our analysis included both a review of the Amended Forest Conservation Plan, dated November 2017, prepared by Norton Land Design (FCP Plan), and a site inspection. The FCP Plan shows the proposed landscape features including a low retaining wall, pool, patio, Limits of Disturbance (LOD) for construction and access, and proposed mitigation planting. The FCP

Plan identifies four trees to be removed – three trees within the LOD (#6, #7, #8), and one tree outside the LOD (#9).

On October 14, 2017, I visited the property and inventoried and visually assessed all fourteen trees. No aerial or subsurface inspection was performed at that time, aside from probing of decay at the lower trunk on one tree (Tree #7). All data collected for the trees can be found in the table labeled “TPAK” or Tree Protection Action Key. Representative photos were taken including photos of the defects.

Based the FCP Plan review and subsequent site inspection, WSSI developed an action plan identifying the trees to be removed, and the on-site trees to be retained and protected. These recommendations were provided to Norton for inclusion in the FCP.

### **Findings and Recommendations**

Based on my site visit I determined that given the current health and vigor of the five on-site trees proposed for retention, that they will continue to survive and provide benefits to the site and the neighborhood environment, if the recommended protection and stress reduction measures were implemented.

It is also my opinion that three of the four trees, Trees #6, #7, and #8, proposed to be removed would require removal regardless of whether the proposed improvements are implemented as depicted on the FCP Plan, or if they were located elsewhere in the rear yard of the property.

Our root zone analysis of the three trees identified as Trees #6, #7, and #8 revealed exposed roots within the structural root zones of all three trees that extend beyond the easement boundaries depicted on Plat 19170. Some roots are exposed up to or near the foundation of the existing house. It is my opinion that construction activities anywhere in the rear yard would cause a very high level of stress leading to the eventual decline in health of all three of those trees.

My inspection of Tree #7 also revealed a four-inch-wide area of trunk decay at four feet in height with an open wound and exposed roots on the slope area that extend to the foundation of the house. Preservation of Tree #7 is unlikely if improvements are located in the rear yard due to these conditions allowing questionable structural integrity in the future.

Tree #9 is also designated for removal because the proposed LOD is within the Structural Root Zone of Tree #9, thus making it both unstable structurally, as well as causing a very high level of stress leading to its eventual decline in health. In the event of construction activities as proposed by the Amended Forest Conservation Plan, Tree #9 would become unstable structurally.



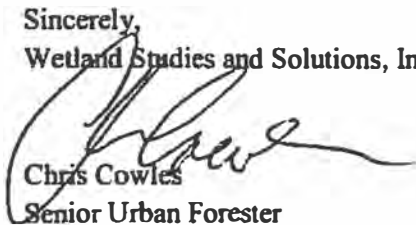
For the trees proposed for retention, I recommend the following steps be taken to ensure their survival.

- Tree Protection Measures for the trees proposed for retention include:
  - Root pruning at the LOD;
  - installation of welded wire temporary protection fences; and,
  - Protective signage.
  
- Tree Stress Reduction Measures recommended for the retained trees are as follows:
  - Wood chip mulch strip a minimum of ten (10) feet width and three (3) inch depth outside the LOD to enhance the root environment and help manage soil moisture;
  - Root biostimulent soil injection for designated trees;
  - Supplemental watering during the growing season following construction starting to include 5-10 gallons per diameter inch of trunk within 15' radius of the tree; and,
  - Tree Growth Regulator (Paclobutrazol) soil injection to promote root enhancement and re-growth for designated trees.

### **Conclusion**

In summary, it is our opinion that given the current health and vigor of the trees proposed for retention, and the recommended protection and stress reduction measures, that the retained trees will continue to survive and provide benefits to the site and the neighborhood environment.

Sincerely,  
Wetland Studies and Solutions, Inc.



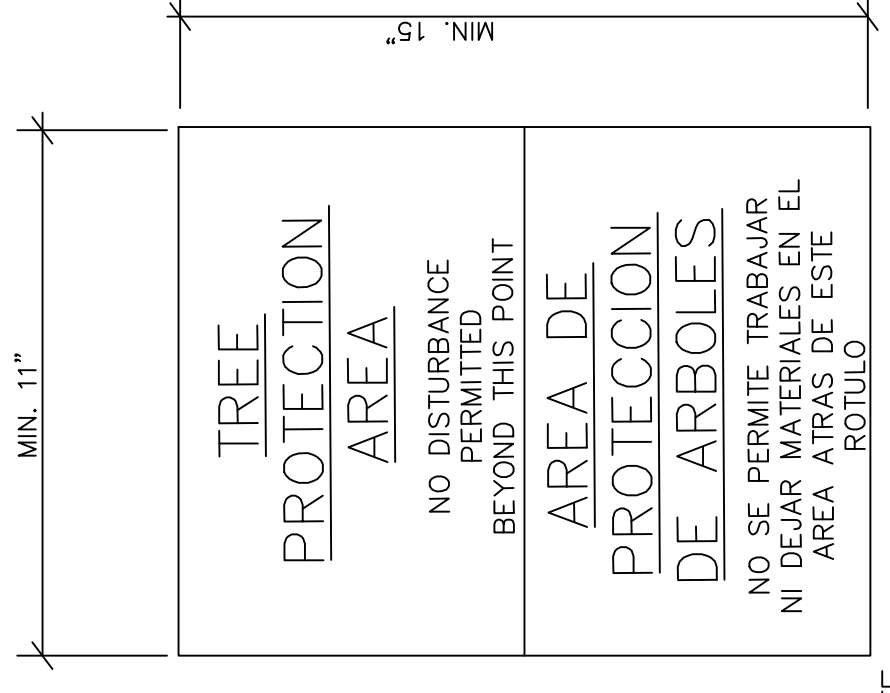
Chris Cowles

Senior Urban Forester  
ISA Certified Arborist, MA-0553A, MD LTE #621



# ATTACHMENT C

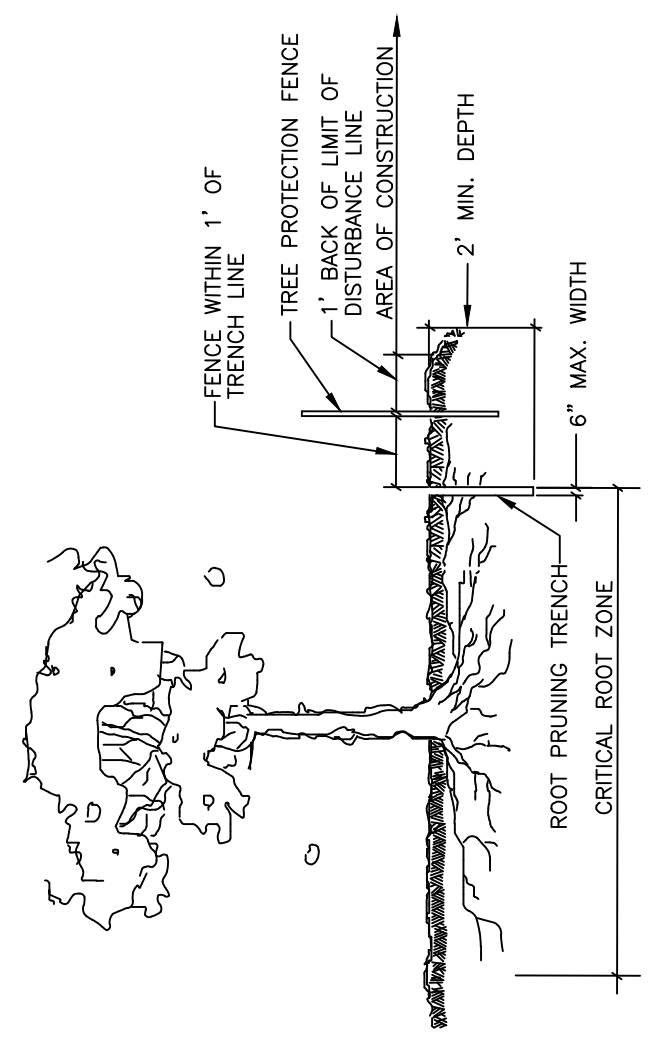
## FOREST RETENTION AREA SIGNAGE



- NOTE: FOR FOREST RETENTION AREA SIGNAGE FOR THIS PROJECT, THE FOLLOWING SHALL APPLY:
1. ATTACHMENT OF SIGNS TO TREES IS PROHIBITED.
  2. SIGNS SHOULD BE PROPERLY MAINTAINED.
  3. AVOID INJURY TO ROOTS WHEN PLACING POSTS FOR THE SIGNS.

## STRESS REDUCTION MEASURE

### ROOT PRUNING

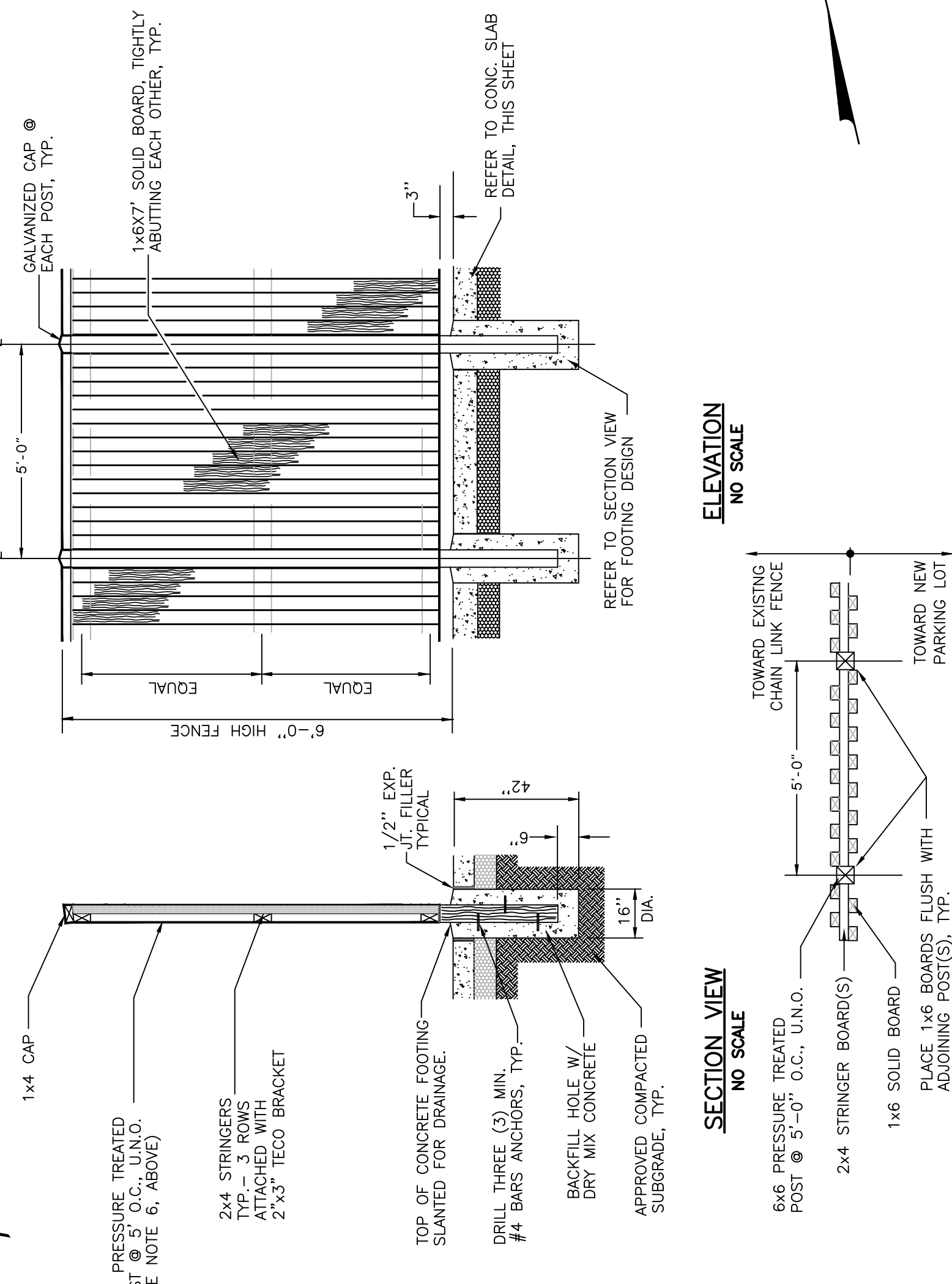


- NOTE:
1. Retention Areas will be set as part of the review process.
  2. Retention Areas shall be established and flagged prior to trenching.
  3. Exact location of trench should be identified.
  4. Roots should be cleanly cut using vibratory knife of other acceptable method.
  5. Trench should be immediately backfilled with soil removed or other high organic soil.

### WOOD FENCE NOTES:

1. ALL DIMENSIONS SHOWN ARE BASED ON APPROXIMATE TYPICAL CONDITIONS. PRESSURE TREATED FOR GROUND CONTACT USE: LP-22, 0.40 LB/CF RETENTION ALL DIMENSIONS SHOWN ARE BASED ON APPROXIMATE TYPICAL CONDITIONS. ALL DIMENSIONS SHOWN ARE BASED ON APPROXIMATE TYPICAL CONDITIONS. ALL DIMENSIONS SHOWN ARE BASED ON APPROXIMATE TYPICAL CONDITIONS.
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10. ALL DIMENSIONS SHOWN ARE BASED ON APPROXIMATE TYPICAL CONDITIONS.

## 6-ft. HIGH BOARD ON BOARD FENCE



### ELEVATION NO SCALE

### PLAN VIEW NO SCALE

### SECTION VIEW NO SCALE

### ELEVATION NO SCALE

### PLAN VIEW NO SCALE

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### ELEVATION NO SCALE

### LEGEND

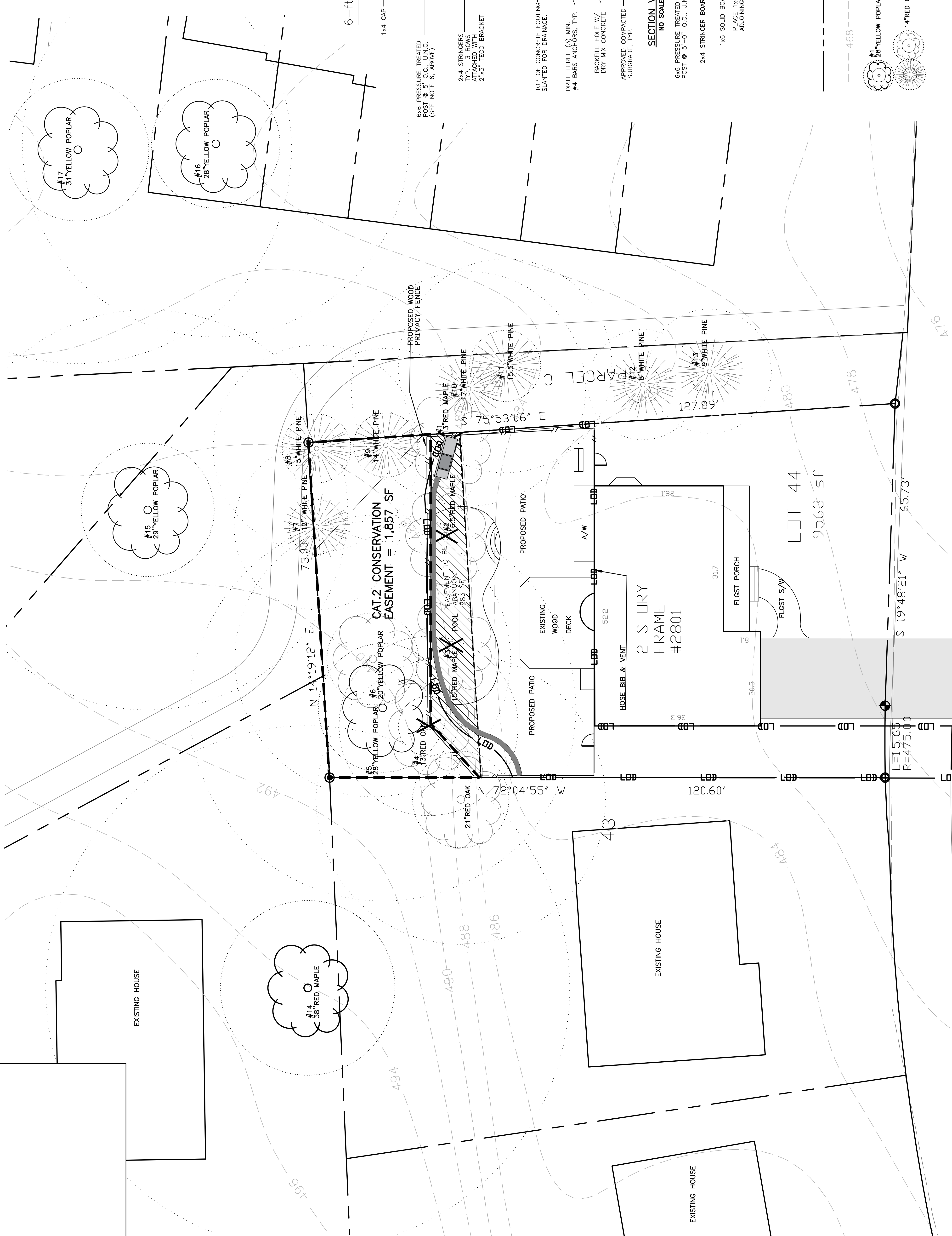
- 468 --- EXISTING CONTOUR LINE
- --- PROPERTY BOUNDARY
- --- EXISTING SIGNIFICANT TREE ≥24" AND <30" DBH WITH CRITICAL ROOT ZONE AND STRUCTURAL ROOT ZONE
- --- EXISTING TREE <24" DBH WITH CRITICAL ROOT ZONE AND STRUCTURAL ROOT ZONE
- --- EXISTING CATEGORY 2 CONSERVATION EASEMENT
- --- TREE TO BE REMOVED
- --- PROPOSED STONE RETAINING WALL
- --- EASEMENT TO BE ABANDONED
- --- PROPOSED LIMITS OF DISTURBANCE
- --- TREE PROTECTION FENCE AND ROOT PRUNE ALONG LOD AT SLOPE
- --- PROPOSED CAT.2 CONSERVATION EASEMENT
- --- PROPOSED WOOD PRIVACY FENCE

**DEVELOPER'S CERTIFICATE**

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan, including but not limited to, the following: forest planting, maintenance, and all other applicable agreements.

Developer's Name: TONY GILBERT  
 Contract Person or Owner: TONY GILBERT  
 Address: 2801 SHADOWRIDGE DRIVE  
 Phone and Email: 301-774-8850 / TONGILBERT@GMAIL.COM

Signature: *Tony Gilbert*  
 Date: 1-5-18



Tree #	Common Name	Botanical Name	Condition Rating %	ISCRZ	CRZ	Removal By	Removal Reason	Comments	Additional Notes	Condition Notes
1	maple, red	Acer rubrum	72	Good	7.0	21	X	Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
2	maple, red	Acer rubrum	63	Fair	6.0	23	X	Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
3	maple, red	Acer rubrum	75	Good	8.0	24	X	Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
4	oak, northern	Quercus spha	69	Fair	7.0	20	X	Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
5	poplar, lobl	Liquidambar	75	Good	10.0	42		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
6	poplar, lobl	Liquidambar	75	Good	9.0	30		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
7	pine, white	Pinus strobus	61	Fair	6.0	26		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
8	pine, white	Pinus strobus	59	Fair	6.0	24		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
9	pine, white	Pinus strobus	63	Fair	6.0	23		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
10	pine, white	Pinus strobus	63	Fair	6.0	27		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
11	pine, white	Pinus strobus	75	Good	8.0	24		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
12	pine, white	Pinus strobus	75	Good	5.0	12		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem
13	pine, white	Pinus strobus	75	Good	5.0	14		Remove for restoration	Full Crown, One Stem	Full Crown, One Stem

MNCPPC# 81992023A

**AMENDED FINAL FOREST CONSERVATION PLAN**

**FIRST MONTGOMERY HOUSING GILBERT RESIDENCE**  
 2801 SHADOWRIDGE DR  
 OLNEY, MD 20832

PREPARED FOR: MR. AVI GILBERT  
 2801 SHADOWRIDGE DR  
 OLNEY, MD 20832

**NORTON LAND DESIGN**  
 LANDSCAPE ARCHITECTURE + ENVIRONMENTAL PLANNING  
 ELI COTT, MD 21042  
 5146 DORSEY HALL DRIVE, 2ND FLOOR  
 BALTIMORE, MD 21206  
 WWW.NORTONLANDDESIGN.COM

REVISIONS: 12.20.17 PER MNCPPC STAFF

DATE: AUG 2017  
 SCALE: 1" = 10' - 0"

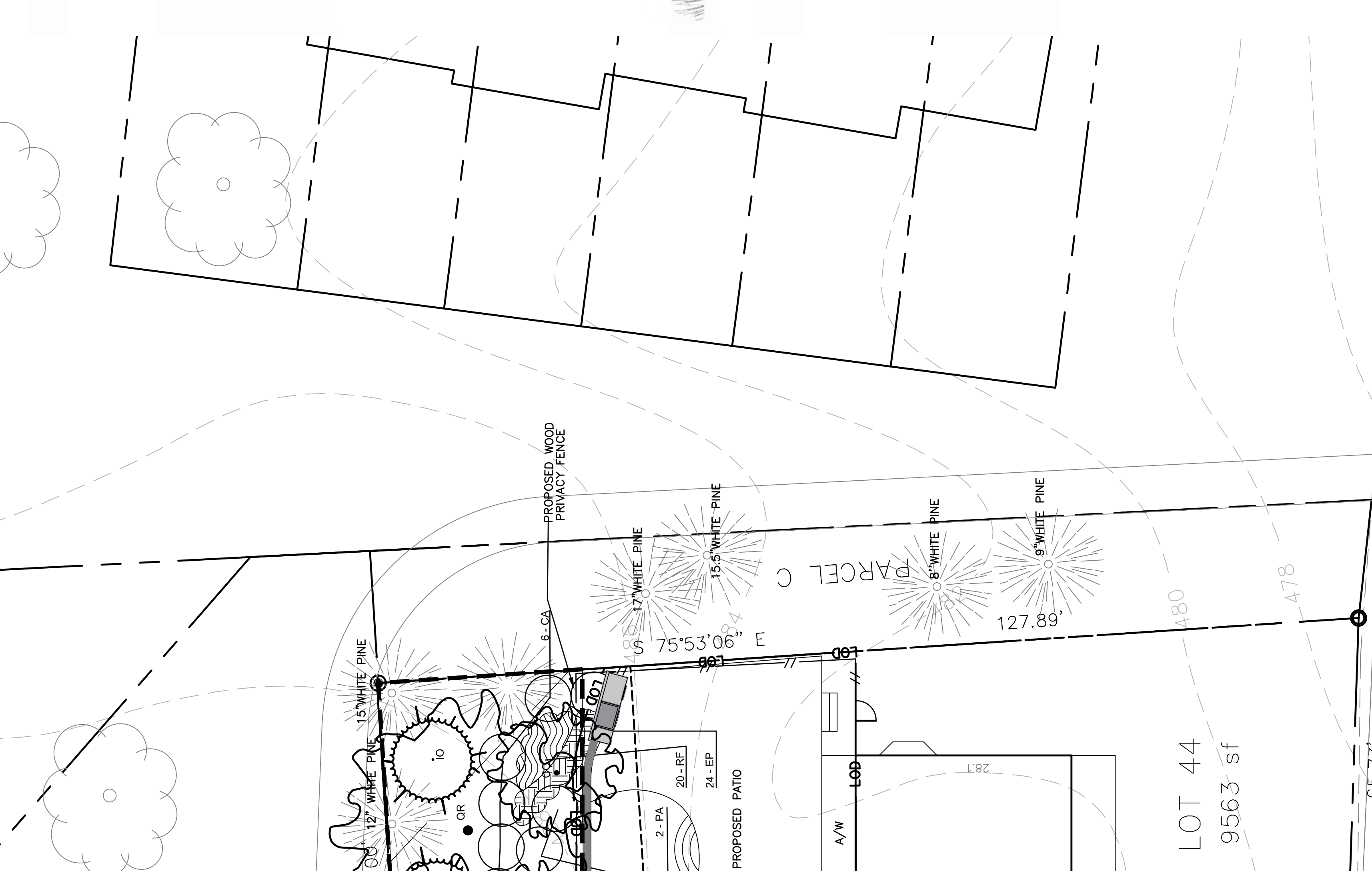
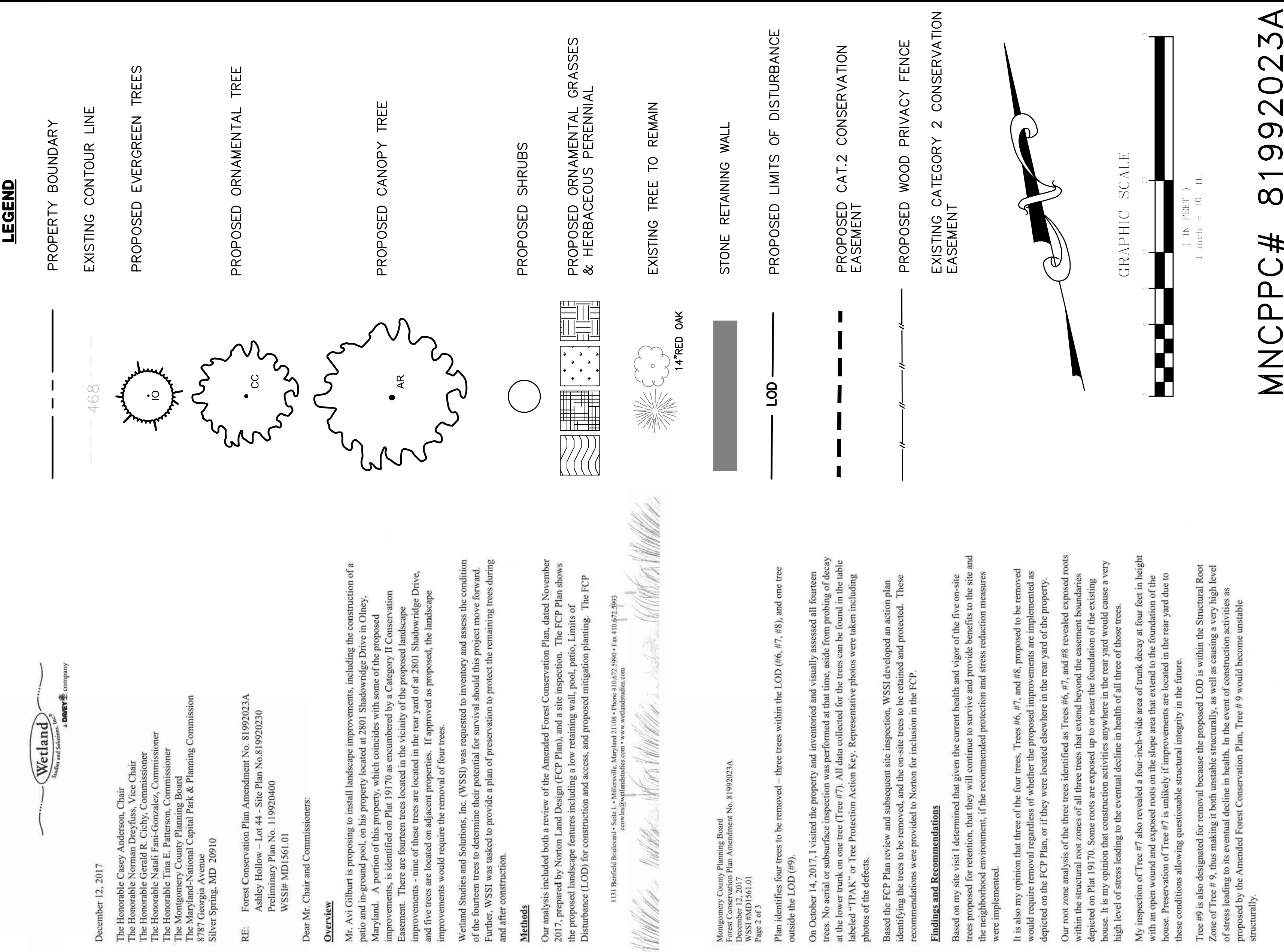
PROJECT: HAWKINGS  
 MAP: 2403102180  
 SHEET: 225NWO3  
 SHEET NO.: L-1.1

**CERTIFICATION OF QUALIFIED PROFESSIONAL**

I, *Tommy Gilbert*, a duly licensed Professional Engineer with Maryland State, MNCPPC and Montgomery County Forest Conservation Laws.

Signature: *Tommy Gilbert*  
 Date: 1-5-18





**LEGEND**

- PROPERTY BOUNDARY
- EXISTING CONTOUR LINE
- PROPOSED EVERGREEN TREES
- PROPOSED ORNAMENTAL TREE
- PROPOSED CANOPY TREE
- PROPOSED SHRUBS
- PROPOSED ORNAMENTAL GRASSES & HERBACEOUS PERENNIAL
- EXISTING TREE TO REMAIN
- STONE RETAINING WALL
- PROPOSED LIMITS OF DISTURBANCE
- PROPOSED CAT.2 CONSERVATION EASEMENT
- PROPOSED WOOD PRIVACY FENCE
- EXISTING CATEGORY 2 CONSERVATION EASEMENT

**MNCPPC# 81992023A**

**AMENDED FINAL FOREST CONSERVATION PLAN**

**FIRST MONTGOMERY HOUSING GILBERT RESIDENCE 2801 SHADOWRIDGE DR**

**MR. AVI GILBERT 2801 SHADOWRIDGE DR OLNEY, MD 20832**

**NORTON LAND DESIGN LANDSCAPE ARCHITECTURE + ENVIRONMENTAL PLANNING**

**RESOURCES: 12.20.17 PER MNCPPC STAFF, 1.3.18 PER MNCPPC STAFF**

**WATER CLASS: N/P**

**WATERSHED: HAWKINGS**

**ELWA FLOODPLAIN MAP: 24031C0216D**

**PRELIMINARY POTOMAC RIVER**

**200 SHEET: 225NWO3**

**SCALE: AS SHOWN**

**DATE: AUG 2017**

**PROJ. NO: 17-031**

**SHEET NO: L-1.2**

December 12, 2017

The Honorable Casey Anderson, Chair  
The Honorable Norman Dryffuss, Vice Chair  
The Honorable Gerald R. Cichy, Commissioner  
The Honorable Tim E. Patterson, Commissioner  
The Montgomery County Planning Board  
The Maryland-National Capital Park & Planning Commission  
Silver Spring, MD 20910

RE: Forest Conservation Plan Amendment No. 81992023A  
Ashley Hollow - Lot 44 - Site Plan No.819920230  
Preliminary Plan No. 119920400  
WSP# MD1561.01

**OBJECTIVES**

Mr. Avi Gilbert is proposing to install landscape improvements, including the construction of a patio and in-ground pool, on his property located at 2801 Shadowridge Drive in Olney, Maryland. A portion of this property, which coincides with some of the proposed improvements, is identified on Plan 19170 as encumbered by a Category II Conservation Easement. There are fourteen trees located in the vicinity of the proposed landscape improvements. The proposed landscape improvements include a pool, patio, deck, and five trees are located on adjacent properties. If approved as proposed, the landscape improvements would require the removal of four trees.

Wetland Studies and Solutions, Inc. (WSSSI) was requested to inventory and assess the condition of the fourteen trees to determine their potential for survival should this project move forward. Further, WSSSI was tasked to provide a plan of preservation to protect the remaining trees during and after construction.

**Methods**

Our analysis included both a review of the Amended Forest Conservation Plan, dated November 2017, prepared by Norton Land Design (FCP Plan), and a site inspection. The FCP Plan shows the proposed landscape features including a low retaining wall, pool, patio, Limits of Disturbance (LOD) for construction and access, and proposed mitigation planting. The FCP includes the following information:

11) Detailed landscape plan showing the proposed landscape improvements and the location of the trees to be removed.

Montgomery County Planning Board  
December 12, 2017  
WSSSI (MD1561.01)  
Page 4 of 7

Plan identifies four trees to be removed - three trees within the LOD (#6, #7, #8), and one tree outside the LOD (#9).

On October 14, 2017, I visited the property and inventoried and visually assessed all fourteen trees. No aerial or subsurface inspection was performed at that time, aside from probing of decay holes. Representative photographs were taken of each tree, including the trunk, canopy, and photos of the defects.

Based on the FCP Plan review and subsequent site inspection, WSSSI developed an action plan identifying the trees to be removed, and the on-site trees to be retained and protected. These recommendations were provided to Norton for inclusion in the FCP.

**Findings and Recommendations**

Based on my site visit, I determined that given the current health and vigor of the four trees to be removed, that the removal of these trees will not result in any adverse effects to the site and the neighborhood environment. If the recommended protection and stress reduction measures were implemented.

It is also my opinion that three of the four trees, Trees #6, #7, and #8, proposed to be removed would require removal regardless of whether the proposed improvements are implemented as depicted on the FCP Plan, or if they were located elsewhere in the rear yard of the property.

Our root zone analysis of the three trees identified as Trees #6, #7, and #8 revealed exposed roots within the structural root zones of all three trees that extend beyond the easement boundaries depicted on Plan 19170. Some roots are exposed up to or near the foundation of the existing house. It is my opinion that construction activities anywhere in the rear yard would cause a very high level of stress leading to the eventual decline in health of all three of these trees.

My inspection of Tree #7 also revealed a four-inch-wide area of trunk decay at four feet in height with an open wound and exposed wood. The decay area extends to the foundation of the house. Tree #9 is also designated for removal because the proposed LOD is within the Structural Root Zone of Tree #9, thus making it both unstable structurally, as well as causing a very high level of stress leading to its eventual decline in health. In the event of construction activities as proposed by the Amended Forest Conservation Plan, Tree #9 would become unstable structurally.

Montgomery County Planning Board  
December 12, 2017  
WSSSI (MD1561.01)  
Page 4 of 7

For the trees proposed for retention, I recommend the following steps to be taken to ensure their survival:

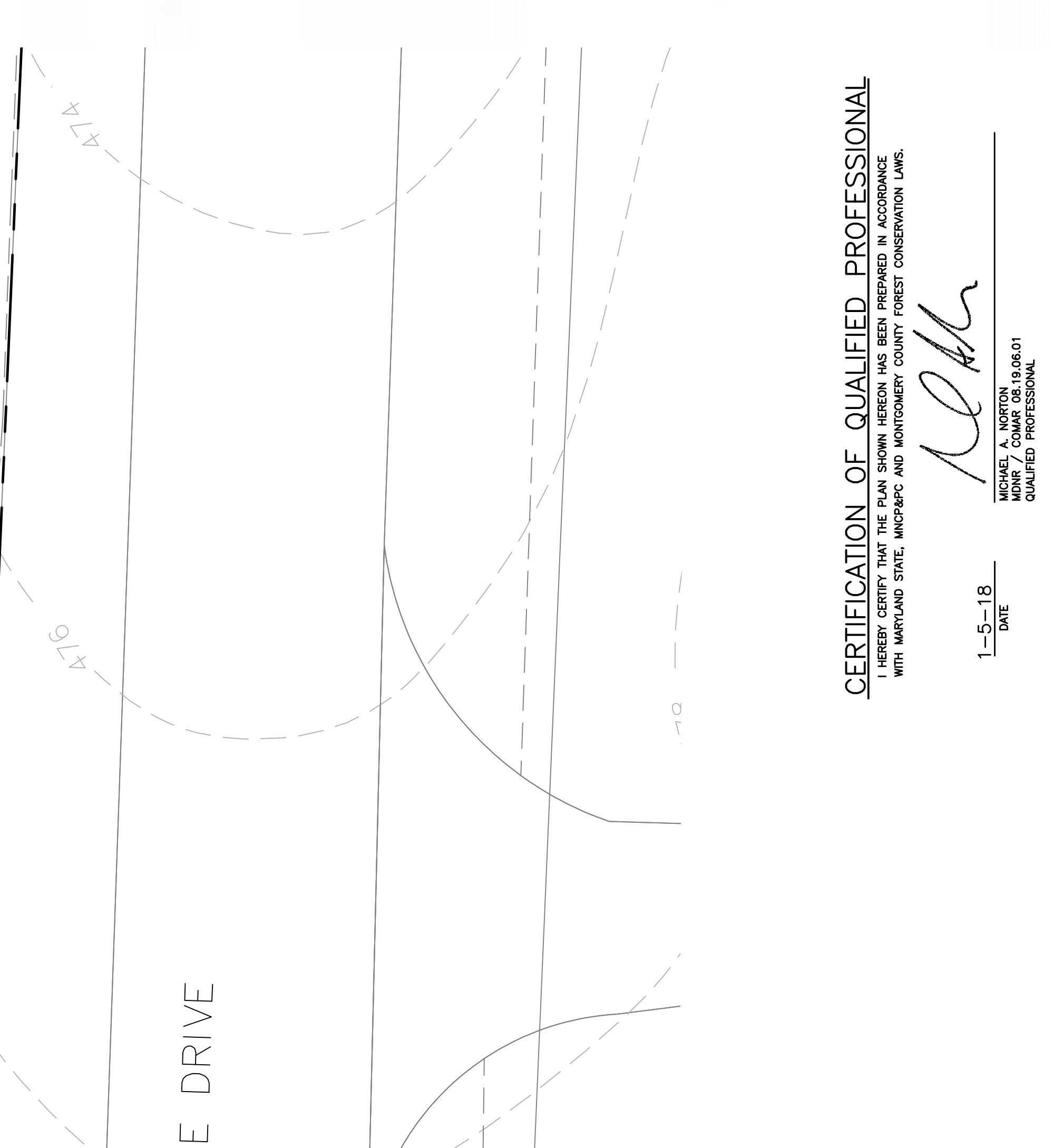
- Tree Protection Measures for the trees proposed for retention include:
  - Installation of red-dyed temporary protection fences, and
  - Protective signage.
- Tree Stress Reduction Measures recommended for the retained trees are as follows:
  - Wood chip mulch strips (minimum of 100 feet wide) and 2-3 inch depth outside the LOD to enhance the root environment and help manage soil moisture;
  - Root bioinoculation soil injection for designated trees;
  - Soil moisture monitoring (including construction starting to include 5-10 gallons per diameter inch of trunk within 15' radius of the tree); and,
  - Cross-Air Regulator (Pneubark) will injection to promote root enhancement and re-growth for designated trees.

**Conclusion**

In summary, it is my opinion that given the current health and vigor of the trees proposed for retention, and the recommended protection and stress reduction measures, that the retained trees will continue to survive and provide benefits to the site and the neighborhood environment.

Sincerely,  
Wetland Studies and Solutions, Inc.  
Chris Combs  
Senior Urban Forester  
ISA Certified Arborist, MA-0551A, MD LITE #621

6: Maryland Professional Services/Arborists/Foresters (04) (04/04/04) (04) (WSSSI) Planning File #819920230 (Page 12) (2/21/18)



**SITE LANDSCAPE PLANTING SCHEDULE**

KEY	BOTANICAL NAME	COMMON NAME	SIZE	FORM	SPACING	QUANTITY	COMMENTS
<b>TREES</b>							
IO	ILEX OPACA	AMERICAN HOLLY	10-12"	B&B	SHOWN	5	
CC	CERCIS CANADENSIS	EASTERN REDBUD	6-7"	B&B	SHOWN	4	
OR	QUERCUS RUBRA	RED OAK	2.5" CAL	B&B	SHOWN	2	
<b>SHRUBS</b>							
HA	HYDRANGEA ARBORESCENS	SMOOTH HYDRANGEA	18"-24"	#3	SHOWN	4	
IV	ILEX VERTICILLATA	WINTERBERRY HOLLY	18"-24"	#3	SHOWN	5	
CA	CLETHRA ALNIFOLIA	SUMMERSWEET CLETHRA	2-3"	#3	SHOWN	6	
RA	RHUS AROMATICA	FRAGRANT SUMAC	2-3"	B&B	SHOWN	2	
PA	VIBURNUM DENTATUM	ARROWOOD VIBURNUM	18"-24"	B&B	SHOWN	2	
<b>ORNAMENTAL GRASS, AND HERBACEOUS PERENNIAL</b>							
AT	ASCLEPIAS TUBEROSA	BUTTERFLY WEED	QUART	CONT.		18 O.C.	80
EP	ECHINACEA PURPUREA	EASTERN PURPLE CONEFLOWER	QUART	CONT.		18 O.C.	24
RF	RUDECKIA FULGIDA	ORANGE CONEFLOWER	QUART	CONT.		18 O.C.	20
MR	MULLENBERGIA REVERCHONII	RUBY MUHLY	QUART	CONT.		18 O.C.	33

**CERTIFICATION OF QUALIFIED PROFESSIONAL**

THE UNDERSIGNED, MICHAEL A. NORTON, IS A MEMBER OF THE NATIONAL ASSOCIATION OF PROFESSIONAL LANDSCAPE ARCHITECTS AND IS A LICENSED PROFESSIONAL LANDSCAPE ARCHITECT WITH MARYLAND STATE, MNCPPC AND MONTGOMERY COUNTY FOREST CONSERVATION LAW.

*Michael A. Norton*

MICHAEL A. NORTON 18.08.01  
QUALIFIED PROFESSIONAL

1-5-18  
DATE