Removal of 50,458 square feet (1.16 acres) of Category I Conservation Easement.

Purchase of 100,916 square feet (2.32 acres) of credit at a Forest Mitigation Bank to compensate for the easement removal.

A Limited Amendment to Preliminary Plan 11999034A was denied by the Planning Board on October 21, 2010 because it did not meet all the necessary parameters for easement removal in terms of mitigation and easement locations.

A Limited Amendment to Preliminary Plan 11999034B was approved by the Planning Board on October 3, 2013, when the Applicant was permitted to relocate 0.15 acres of Category I Conservation Easement onsite and take 0.36 acres of Category I Conservation Easement offsite.

STAFF RECOMMENDATION: Approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan, subject to the following conditions:

1. The Applicant must submit a complete record plat application within thirty (30) days of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan.
Plan that removes the entire Category I Conservation Easement from the lot. The existing Conservation Easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records.

2. The Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank within thirty (30) days of the mailing of the Planning Board Resolution approving 11999034C. The Certificate of Compliance must provide 2.32 acres (100,916 square feet) of mitigation credit for the removal of 1.16 acres (50,458 square feet) of Category I Conservation Easement.

3. All other conditions of Preliminary Plan No. 119990340 and Forest Conservation Plan No. 119990340 that were not modified herein, as contained in the Planning Board’s Opinion dated February 4, 1999, remain in full force and effect.

4. The Applicant must comply with the Settlement Agreement made on March 3, 2014.

BACKGROUND
The Montgomery County Planning Board approved Preliminary Plan 119990340 “Alvermar Woods” on January 28, 1999, for 2 lots (Lots 16 and 17) on 4.17-acres of land in the RE-2 Zone. (Attachments A and B). The Property is generally located in the southwest corner of the intersection of River Road and Riverwood Drive (Figure 1).

Figure 1: Vicinity Map
That original Preliminary Plan of Subdivision was subject to the Forest Conservation Law (Chapter 22A of the County Code). Conservation Easements were placed on both lots to meet the requirements of the Law. The Forest Conservation Plan (“FCP”) for Preliminary Plan 119990340 shows 1.61 acres of existing forest on the 4.17 acre property, with 1.43 acres of forest retained, and 0.18 acres of forest cleared. Development of the two lots did not generate a planting requirement due to the amount of forest retained on the Property. The approved FCP shows 0.33 acres of retained forest in easement on Lot 16 and 1.13 acres on Lot 17.

Lot 17, consisting of 90,309 square feet or 2.07 acres, is located at 10410 Riverwood Drive in Potomac (“Property” or “Subject Property”) and is 390 feet south of River Road in the Potomac Subregion Master Plan area. The Property is relatively level and has no streams, wetlands, floodplains or buffers on site. The Property is located within the Potomac River Direct watershed, which has a Use I-P designation. The Countywide Stream Protection Strategy rates the water quality in this watershed as having fair quality. Figure 2 below shows in greater detail the Property and the Conservation Easements.
The Applicant has been issued numerous Notice of Violations (NOV) and Administrative Citations for unauthorized activities in the Category I Conservation Easement. NOVs were issued to the property owner on July 14, 2009 (Attachment C) and August 28, 2009, (Attachment D). In addition he was issued Administrative Citation #EPD0000004 on August 10, 2010, with a $500 fine (Attachment E). On July 26, 2012, the Applicant was issued Administrative Citation EPD0000086 for the removal of four additional trees within the Category I Conservation Easement (Attachment F). None of the citations were paid. In each case, the Applicant, through his attorney, contested the citations in writing and requested a hearing before the Planning Board, or the Board’s designee.

On December 11, 2009, the Applicant submitted Preliminary Plan Amendment 11999034A, which was denied by the Planning Board on October 21, 2010 (Attachment G). On July 31, 2012, the Applicant submitted Preliminary Plan Amendment 11999034B. The Planning Board approved Preliminary Plan Amendment 11999034B on October 3, 2013 (Attachment H), with the following conditions:

1. The Applicant must submit a complete record plat application within ninety (90) days of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan that delineates the revised Category I conservation easement. The existing conservation easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records by the Applicant.

2. The record plat must reference the standard Category I conservation easement as recorded at liber 13178, folio 412 in the Land Records for Montgomery County, Maryland over the areas identified to remain, as shown on the amended final forest conservation plan.

3. The Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank within the same watershed within ninety (90) days of the mailing of the Planning Board Resolution approving 11999034A. The Certificate of Compliance must provide 0.72 acres (31,363.2 square feet) of mitigation credit for the removal of 0.36 acres (15,681.6 square feet) of Category I conservation easement taken offsite.

4. The Applicant must delineate the revised Category I conservation easement boundary on the property with permanent easement markers and appropriate signage as required by 11999034A no later than ninety (90) days from the recordation of the record plat and the new conservation easement.

5. All other conditions of Preliminary Plan No. 119990340 and Forest Conservation Plan No. 119990340 that were not modified herein, as contained in the Planning Board’s Opinion dated February 4, 1999, remain in full force and effect.

On October 18, 2013, the Inspector issued Administrative Citation #EPD000201, with a $1,000 fine, to Mr. Kazemi, the Applicant, for the mowing and cutting of over 19,000 square feet of herbaceous and woody native plants within the Category I Conservation Easement (Attachment I). The areas cut were outside of the Conservation Easement area that the Planning Board had just allowed to be removed.

The Subject Property remains in violation because the Applicant, and current property owner, failed to satisfy the conditions of approval for Preliminary Plan 11999034B. The Property still has a shed,
driveway, and pathway remaining within the Category I Conservation Easement and the Applicant mows the Category I Conservation Easement even though they were authorized to remove the easement from these areas. The Applicant has failed to submit a record plat to change the easements.

Planning Enforcement staff scheduled a violation hearing with a Hearing Examiner. The hearing was scheduled for March 3, 2014. Prior to the enforcement hearing, the Enforcement staff and the property owner agreed on a settlement negating the immediate need for a violation hearing. The settlement set in place the process for the Applicant to submit a new limited amendment to the Preliminary Plan to resolve all outstanding issues with the Property. The Settlement does not impact the Planning Boards’ regulatory authority in any way and is subject to the Planning Boards’ approval of this amendment. The signed settlement is included in Attachment J. A new Preliminary Plan Amendment was accepted on April 1, 2014.

**DISCUSSION OF CURRENT AMENDMENT**

**Applicant’s Proposal**
On April 1, 2014, the Applicant submitted an application to amend Preliminary Plan and Forest Conservation Plan #1199401C (“Application” or “Amendment”) to remove all 1.13 acres of Category I Conservation Easement from the Subject Property. On June 24, 2014, the Applicant submitted a revised Preliminary Plan and Forest Conservation Plan to reflect an anticipated land exchange between the Applicant and the Owner of Lot 16 (Attachment K). The land exchange will remove additional conservation easement and increase the total easement removal to 1.16 acres. The Applicant proposes to mitigate for the easement removal by acquiring 2.32 acres of credit in a forest mitigation bank. The Applicant’s proposal is consistent with the Settlement.

**Planning Board Review Authority**
The Forest Conservation Law requires Planning Board action on certain types of modifications to an approved FCP. COMCOR 22A.00.01.13 A (2), the Forest Conservation Regulations, state:

*Major amendments which entail more than a total of 5000 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 1.16 acres (50,458 square feet) of Category I Conservation Easement from the Subject Property. When the original Forest Conservation Plan was approved the area consisted of existing forest which was credited as forest retention. The Applicant has removed all understory and some trees from the Conservation Easement, leaving it in a condition that no longer qualifies as forest, however, the Application must be reviewed by the Planning Board because the application will result in permanent loss of more than 5000 square feet of forest. The Planning Board’s policy also requires that all easement removals are approved by the Planning Board.
Analysis and Findings
The Alvermar Woods Subdivision property originally had 1.61 acres of forest. The original approved FCP showed that 0.18 acres of forest was to be removed and that 1.43 acres of forest would be retained. Pursuant to COMCOR 22a-12(h)(2), a Category I Conservation Easement was placed on the forest as a long-term protection measure to protect the existing forest and ensure that it remained a naturally regenerating forest. The FCP shows 1.16 acres (50,458 square feet) of Category I Conservation Easement remaining on the Property. The Conservation Easement is shown on record plat 21237 (Attachment K) and the terms of the easement are referenced in the Land Records at Liber 13178 folio 412. The record plat was signed by Kambiz and Azar Kazemi on April 29, 1999; the Applicants for Preliminary Plan 11999034C. The approved FCP shows that the Category I Conservation Easements on the plat contained existing forest when the plat was recorded. At this time, no areas left onsite meet the definition of forest as defined in Section 22A-3 of the Montgomery County Code, which states,

“Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide*. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest includes:

(1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and
(2) forest areas that have been cut but not cleared.”

(*Note: The definition of forest was changed in 2001, the minimum width was increased from 35 feet to 50 feet.)

The settlement agreement indicates that Planning staff would support the removal of the entire 49,262 square feet of Category I Conservation Easement from the Property, with appropriate mitigation. The revision to the amendment increases the amount of conservation to be removed to 50,458 square feet. Staff supports this request since the property owner has a history of repeatedly violating the terms of the easement and non-compliance with the conditions of approval of Preliminary Plan 11999034B.

The mitigation ratio identified in the settlement agreement is consistent with the mitigation required of other Property owners who were granted the ability to remove Conservation Easements off site by the Planning Board. What is different, in this case, is that the Applicant must submit a record plat and a certificate of compliance to use an offsite forest mitigation bank within 30 days of the mailing date of the resolution. The Agreement also gives the Applicant the ability to meet the offsite mitigation requirements at any forest mitigation bank in the County. In the past, the Applicant has had difficulty in obtaining mitigation credits in a forest bank in the same watershed. In addition, the Applicant must pay a penalty of $10,000 within 30 days of the mailing date of the resolution. If the Applicant fails to complete any of the terms on time the Agreement will be negated and result in a violation hearing.
Staff supports the removal of the onsite easements and the proposed mitigation as a means to resolve the outstanding encroachment issues, which brings the Subject Property into compliance.

NOTIFICATION and OUTREACH
The Subject Property was signed off the upcoming Preliminary Plan Limited Amendment submission and the Applicant sent written notice of the application to all adjoining and confronting property owners, civic associations, and other registered interested parties. These individuals will also be notified of the public hearing on the Application. As of the date of this report, Staff has not received any calls or correspondence in regards to this Application.

Any comments received hereafter will be forwarded to the Board.

CONCLUSION
Staff recommends that the Planning Board approve this limited Preliminary Plan amendment to revise the forest conservation plan with the conditions specified above.
ATTACHMENTS

A. Original Preliminary Plan No. 119990340
B. Original Opinion for Preliminary Plan No. 119990340
C. Notice of Violation (NOV) - July 14, 2009
D. Letter and Corrective Action Order – August 28, 2009
E. Notice of Violation (NOV) – August 10, 2010
F. Notice of Violation (NOV) – July 26, 2012
G. Opinion for Preliminary Plan Amendment No. 11999034A (Denied)
H. Opinion for Preliminary Plan Amendment No. 11999034B (Approved)
I. Notice of Violation (NOV) – October 3, 2013
J. March 3, 2014 Settlement
K. Proposed Plan Preliminary Plan Amendment No. 11999034C
L. Plat 21237
MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Holmes with a vote of 4-0;
Comms. Bryant, Holmes, Hussmann and
Perdue voting in favor. Comm. Richards
temporarily absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-99034
NAME OF PLAN: ALVERMAR WOODS, LOTS 16 & 17B

On 10-19-98, KAMBIZ KAZEMI submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2 zone. The application proposed to create 2 lots on 4.17 acres of land. The application was designated Preliminary Plan 1-99034. On 01-28-99, Preliminary Plan 1-99034 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 upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-99034 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-99034, subject to the following conditions:

(1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plats or MCDPS issuance of sediment and erosion control permit, as appropriate.

(2) Prior to MCPB release of building permit, applicant to coordinate with the technical staff in providing noise mitigation measures for the proposed dwelling on Lot 16.

(3) Prior to recording of plat(s), applicant to coordinate with the owner/developer of Preliminary Plan 1-98080 for the purpose of establishing an access easement to Riverwood Drive (private right of way) and the possible establishment of grading/construction easements along River Road (MD190).

(4) Record plat to reference all common ingress/egress easements.

(5) Dedication of River Road (MD190) as shown on plan.

(6) Other necessary easements.

(7) This preliminary plan will remain valid until March 4, 2001 (37 months from date of mailing, which is February 4, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.
NOTICE OF VIOLATION

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

On, 07/14/09, the recipient of this NOTICE, Kambiz A. Kalem. who represents the property owner, Kambiz A. Kalem. is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 10410 Riverwood Drive Potomac MD 20854.

<table>
<thead>
<tr>
<th>Plan No.</th>
<th>119990340</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explanation: Maintenance of structural improvements, impeding natural plant regeneration and drainage, and cutting of grass within a category I conservation easement.</td>
<td></td>
</tr>
</tbody>
</table>

VIOLATION:

- Failure to hold a required pre-construction meeting.
- Failure to have tree protection measures inspected prior to starting work.
- Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
- Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector.
- Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
- Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
- Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.

Other violations of the category I conservation easement agreement:

Failure to comply with this NOV by 08/15/09 may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at 301-495-4540 when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:

- Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting.
- Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
- Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-495-4540.
- Cease all cutting, clearing, or grading and/or land disturbing activity. Approval from Forest Conservation Inspector is required to resume work.
- Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.

Other: Schedule a meeting with this inspector by 08/15/09 to discuss necessary steps to bring compliance into regulation.

MNCPPC Inspector

Printed Name: Stephen Peck

Signature: [Signature]

Date: 07/14/09

RECEIVED BY:

Printed Name: [Printed Name]

Signature: [Signature]

Date: [Date]
Attachment D

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

August 28, 2009

Kambiz & A. Kazemi
10410 Riverwood Drive
Potomac MD 20854

Dear Mr. Kazemi:

Thank you for meeting with me at your property last month. At our meeting on July 29th I described the forest conservation easement violations. I determined that portions of a tennis court, a shed and driveways are within a recorded category 1 conservation easement. These structures are prohibited within the conservation easement areas. In addition much of the category 1 conservation easement is being mowed, also a violation of the conservation easement agreement. This prevents the growth of natural regenerating trees and shrubs. In our field meeting, I stated you would be mailed a notice of hearing for the forest conservation easement violations. Since our field meeting, I have had discussions with my supervisor, Mark Pfefferle and our legal staff.

The required remediation action for the conservation easement violations is the submittal, approval, and implementation of a “limited amendment to the preliminary plan “Alvermar Woods 119990340”. This remedial action is also described on the attached notice of violation.

Please note that this limited amendment to the preliminary plan will require Montgomery County Planning Board approval and will include penalties for the forest conservation easement violations. The penalty will include mitigation planting for any conservation easement area approved for removal. Further, this limited amendment is only to remedy forest conservation easement violations on your property. Mr. Mirzaie, owner of 10420 Riverwood Drive, has agreed to a remediation plan to restore the conservation easements on his property.

You will be given 90 days or December 1, 2009 to submit the limited amendment to the preliminary plan to Environmental Planning Staff. At least, the plan will have to propose how areas incompatible with category 1 conservation easement will be mitigated either onsite or offsite. Areas of the conservation easement that can be restored will need to be restored with detailed plans. I would recommend meeting with Environmental Planning Review Staff once you have decided on a consultant.

Let me know if you have any questions. Please review the attached notice of violation. I can be reached at 301-495-4564 or stephen.peck@mnccpc-mc.org.

Sincerely,

Stephen Peck
Forest Conservation Inspector
Montgomery County Environmental Planning

Attachments: Notice of Violation
Attachment E

Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission

vs.

Name: Mrs. Kandi

Company/Position: Property Owner
Address: 10410 Silverwood Drive, Potomac, MD 20854
Phone Number: 
Fax Number: 
Email: 

Location and Description of Violation:
Address/Location of site:
categorized conservation easement area—10410 Silverwood Drive

Pursuant to the M-NCPPC’s authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on 08/10/2010 (date) at the stated site location did commit the following:

plowed and cut grass and natural vegetation within the categorized conservation easement after receiving a Notice of Violation for this prohibited action.

In violation of:
☐ Montgomery County Code, Chapter 22A
☐ Approval of Interim Compliance Plan No. 19990340
☐ Other: 

Civil Fine and Compliance:
1. (a) ☐ You shall pay a fine of $ 500.00 by 08/26/2010 (date) and complete the remedial action listed below
   (b) ☐ You shall pay a daily fine of $ if the original fine has not been paid by (date). The daily fine shall accrue (until the original fine is paid.
2. ☐ You shall pay a daily fine of $ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the Information Counter of M-NCPPC’s Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board’s designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation.

Remedial Action:
1. ☐ I) comply with the conditions of the legally binding conservation easement agreement by stop mowing and cutting natural vegetation from the categorized conservation easement area
   b) attend a meeting with M-NCPPC staff and implement agreed upon compliance plan or interim compliance plan
   by: 08/26/2010 (date)
   If remedial action is not completed by (date), you shall pay a daily fine of $ 25.00 a day until work is completed.

2. ☐ You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant’s Signature
Refused to sign

Date

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector’s Signature
Stephen Leck

Date 08/10/2010

Print Name: Stephen Leck
Phone Number: 301-495-2454
Attachment F

Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission
vs.

Name: Kambiz Kazemi

Company/Position: 
Address: 10410 Riverwood Dr.
Phone Number: 301-495-4712

Location and Description of Violation:
Address/location of site: 10410 Riverwood Dr.

Pursuant of the M-NCPPC’s authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on 7/14/2012 (date) at the stated site location did commit the following:

REMOVED APPROXIMATELY 4 TREES FROM A CATEGORY II FEE WITHOUT APPROVAL.

In violation of:

X Montgomery County Code, Chapter 22A

Approval of ___________ Plan No. ___________

Civil Fine and Compliance:
1. (X) You shall pay a fine of $10,000.00 by 8/19/2012 (date) and complete the remedial action listed below.
2. ( ) You shall pay a daily fine of $500.00 per tree if the original fine has not been paid by 8/19/2012 (date). The daily fine shall accrue (until the original fine is paid).

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC’s Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board’s designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 203, Silver Spring, MD 20910, within 15 days of the citation.

Remedial Action:

X NONE

by __________________________ (date)
If remedial action is not completed by __________________________ (date), you shall pay a daily fine of __________________________ a day until work is completed.

2. (X) You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant’s Signature __________________________ Date: 7/14/2012

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector’s Signature __________________________ Date: 7/24/2012

Print Name: Doug Johnsen Phone Number: 301-495-4712
MCPB No. 10-148
Preliminary Plan No. 11999034A
Alvermar Woods, Lot 17
Date of Hearing: October 21, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on January 28, 1999, the Planning Board approved Preliminary Plan No. 119990340 designated as Alvermar Woods ("Approved Preliminary Plan") filed by Kambiz Kazemi, ("Applicant"), which created two lots on 4.17 acres of land located on the southwest corner of the intersection of River Road and Riverview Drive ("Property" or "Subject Property"), in the Potomac Subregion master plan area ("Master Plan"); and

WHEREAS, the Approved Preliminary Plan was conditioned upon compliance with conditions of approval of the preliminary forest conservation plan; and

WHEREAS, as shown on Plat No. 21237 filed in compliance with the Approved Preliminary Plan, Applicant granted Category I forest conservation easements ("Cat I Easements") over portions of the Property to the Maryland-National Capital Park and Planning Commission ("MNCPPC"); and

WHEREAS, Notices of Violation were issued by MNCPPC to the Applicant on July 14, 2009, and August 28, 2009, for encroachments and mowing within the Cat I Easements in violation of those Cat I Easements; and

WHEREAS, Applicant was directed to i) restore certain areas of the Property covered by the Cat I Easements, and ii) submit a limited amendment to the Approved Preliminary Plan for the purpose of amending the approved forest conservation plan by proposing that the Board release those areas of the Property determined to be incompatible with a Cat I Easement and suggesting mitigation for such release; and

WHEREAS, on December 16, 2008, in response to the Notices of Violation, Applicant, filed a limited amendment application to amend the previous conditions of

Approved as to Legal Sufficiency:

MNCPPC Legal Department
5787 Georgia Avenue, Suite 200
1201 Rockville Pike
Rockville, Maryland 20850
Chairman's Office: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

100% recycled paper
approval of the Approved Preliminary Plan for the purpose of amending the forest conservation plan and Cat I Easements; and

WHEREAS, Applicant’s preliminary plan amendment application was designated Preliminary Plan No. 11999034A, Alvermar Woods – Lot #17 ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 13, 2010, setting forth its analysis and recommendation to deny the Application ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on October 21, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 21, 2010, the Planning Board denied the Application on motion of Commissioner Alford; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alford, Carrier, and Wells-Harley, voting in favor of denial, with Commissioners Dreyfuss and Presley absent.

THEREFORE BE IT RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates into this Resolution, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. The Application neither satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A, nor the Planning Board’s longstanding policy for minimum mitigation for the release of property from an existing Category I Forest Conservation Easement.

Applicant requested that the Planning Board approve i) the removal of a portion of the Easements (approximately 0.08 acre or 3,500 square feet) where a shed and driveway have been constructed, and ii) replacement of the remaining portion (approximately 1.05 acre or 45,738 square foot) of the Cat I Easements with Category II forest conservation easements. The purpose of a Category I forest conservation easement is to protect naturally regenerating forest by requiring long-term protective measures through strict prohibitions against activities such as the erection or placement of any building or structural improvements on or above ground, and mowing or removal of understory plants. The purpose of a Category II conservation easement is to protect trees and the
canopy created by large tree growth. Much more liberal use of the property
encumbered by a Category II easement is allowed, and such an easement is
considered more in the nature of landscape than protection of forest.

Applicant’s proposal and supporting argument at the Hearing was based largely
on its allegation that the Category I Easements were not appropriate for the
Property as imposed as conditions of the Approved Preliminary Plan. Applicant
suggested i) that there was no forest to protect at the time the Cat I Easements
were placed, ii) that as a result, no additional afforestation was required, and iii)
that both the Planning Board’s mitigation policy at a ratio of 2:1 for release of the
Cat I Easements, and §22A-12(e)(2)(B) of the Forest Conservation Law, which
requires forest cover protection through forest banks at twice the planting
requirement, are unconstitutional in their proportionality as a remedy. The
Planning Board did not accept Applicant’s arguments and found:

a) that the Cat I Easements were accepted by the Applicant in 1999 when
Applicant submitted the Plat in compliance with the Approved Preliminary
Plan, and this Application was neither the appropriate time nor venue to
challenge what the Applicant accepted more than 10 years ago; and
b) that the 0.49 acres of offsite afforestation proffered in exchange for
release of the Cat I Easements, even in addition to an exchange for
Category II easements, were insufficient to meet required mitigation either
under the Board’s policy, or in accordance with §22A-12(e)(2)(B); and

c) that the Planning Board need not address Applicant’s constitutional
challenge.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion
of the Board in this matter, and the date of this Resolution is __________ (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an
administrative appeal must initiate such an appeal within thirty days of the date of this
Resolution, consistent with the procedural rules for the judicial review of administrative
Agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

*   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *   *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by
The Montgomery County Planning Board of The Maryland-National Capital Park and
Planning Commission on motion of Vice Chair Wells-Harley, seconded by
Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, May 12, 2011, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board
<table>
<thead>
<tr>
<th>No.</th>
<th>Name &amp; Phone Number</th>
<th>Email</th>
<th>Organization &amp; Address</th>
<th>Time</th>
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<tbody>
<tr>
<td>1.</td>
<td>Kambiz Kazemi</td>
<td></td>
<td>10410 Riverwood Drive</td>
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<td></td>
<td>Applicant</td>
<td></td>
<td>Potomac, MD 20854</td>
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<td>2.</td>
<td>Michele Rosenfeld</td>
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<td>11913 Ambleside Drive</td>
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<td>Applicant</td>
<td></td>
<td>Potomac, MD 20854-2107</td>
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<td>3.</td>
<td>Jim Bash</td>
<td></td>
<td>Land Planning &amp; Design</td>
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<td>5300 Westview Drive</td>
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<td>John M. Martin, III</td>
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<td>O'Connell &amp; Lawrence,</td>
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<td>PE Applicant</td>
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<td>Olney, MD 20832</td>
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<td>5.</td>
<td>Mehdi Mirzaie</td>
<td>301-520-2178</td>
<td>10420 Riverwood Drive</td>
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<td>Potomac, MD 20854</td>
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TOTAL 3
Attachment G

Mr. Richard Brush, Manager
MCDPS-Water Res. Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Hadi Masouri
MCDP-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Ms. Gail Lucas, Manager
MCDPS-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Greg Leck
100 Edison Park Dr, 4th Fl
Gaithersburg, MD 20878

Mr. Joseph Y. Cheung, Manager
MCDPS-Right of Way Permitting and Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Greg Nichols, Manager
MCDPS-Land Development
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Michael Reahl, Manager
MCDPS-Sediment/Stormwater Inspection and Enforcement
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Ehsan Motazed
MCDPS-Site Plan Enforcement Mgr.
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Jay Beatty, Manager
MCDPS-Well and Septic
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Leroy Anderson, Manager
MCDPS-Right of Way Development Inspection and Enforcement
255 Rockville Pike, MD 20850

Ms. Susan Scalf-Demby, Manager
MCDPS-Zoning
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Christopher Anderson, MPDU Mgr.
DHCA County Office Bldg,
255 Rockville Pike
Rockville, MD 20850
RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, the Planning Board, by Opinion dated February 4, 1999, approved Preliminary Plan No. 119990340, creating two lots on 4.17 acres of land in the RE-2 zone, located at the southwest corner of the intersection of River Road and Riverwood Drive, in the Potomac Policy Area, Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on December 16, 2008, Kambiz Kazemi ("Applicant"), filed an application for approval of an amendment to the previously approved preliminary plan to remove onsite Category I conservation easement from Lot 17, Alvermar Woods known as 10410 Riverwood Drive ("Subject Property"), one of the lots created by Preliminary Plan No. 119990340 and mitigate offsite outside the watershed, which was designated Preliminary Plan No. 11999034A; and

WHEREAS, on July 28, 2011, the Planning Board denied Preliminary Plan No. 11999034A (MCPB No. 10-148); and

WHEREAS, on July 31, 2011, the Applicant filed another application for approval of an amendment to the previously approved preliminary plan to remove onsite Category I conservation easement from the Subject Property, and mitigate some onsite and some offsite within the same watershed, which was designated Preliminary Plan No. 11999034B, Alvermar Woods, Lot 17 ("Preliminary Plan", "Amendment" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 20, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and
WHEREAS, on October 3, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 11999034B to remove onsite Category I conservation easement, and mitigate some onsite and some offsite within the same watershed, subject to the following conditions:

1. The Applicant must submit a complete record plat application within ninety (90) days of the mailing of the Planning Board Resolution approving Preliminary Plan No. 11999034B that delineates the revised Category I conservation easement. The existing conservation easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records by the Applicant.

2. The record plat must reference the standard Category I conservation easement as recorded at liber 13178, folio 412 in the Land Records for Montgomery County, Maryland over the new onsite areas and the areas identified to remain, all as shown on the amended final forest conservation plan.

3. Within ninety (90) days of the mailing of the Planning Board Resolution approving 11999034B, the Applicant must submit a Certificate of Compliance to use an MCPC approved offsite forest mitigation bank within the same watershed as the Subject Property. The Certificate of Compliance must provide 0.72 acres (31,363.2 square feet) of mitigation credit for the removal of 0.36 acres (15,681.6 square feet) of Category I conservation easement taken offsite.

4. No later than ninety (90) days from the recordation of the record plat and the new conservation easement, the Applicant must delineate the revised Category I conservation easement boundary on the Subject Property with permanent easement markers and appropriate signage as required by the forest conservation plan.

BE IT FURTHER RESOLVED, that all other conditions of Preliminary Plan No. 119990340 and Forest Conservation Plan No. 119990340 that were not modified herein, remain valid, unchanged and in full force and effect.

---

1 For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.
BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is \[\text{OCT} \ 1, \ 6 \ 2013\] (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * * * * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor, and Commissioner Anderson absent, at its regular meeting held on Thursday, October 3, 2013, in Silver Spring, Maryland.

[Signature]
Françoise M. Carrier, Chair
Montgomery County Planning Board
Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission

VS.

Kambiz Kazemi

Citation No. EPD 000201
Issued with FAQs

Name:

Company/Position: Property Owner

Address: 10410 Riverwood Drive Potomac, MD 20854

Phone Number: 301-973-4545

Location and Description of Violation:

Address/location of site:

10410 Riverwood Drive Category 1 Conservation Easement

Pursuant of the M-NCPPC’s authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on 10/17/2013 (date) at the stated site location did commit the following:

Mowed and cut native herbaceous plants and woody native shrubs within Category 1 Conservation Easement. Over 1,000 square feet of Category 1 Conservation Easement cut. (Repeat violation)

In violation of:

Montgomery County Code, Chapter 22A

Approval or Final Forest Plan No. 11990340

☐ Other:

Civil Fine and Compliance:

1. ☐ You shall pay a fine of $1,000.00 paid by 11/04/13 (date) and complete the remedial action listed below.

☐ You shall pay a daily fine of $50.00 (the original fine has not been paid) by 11/04/13 (date). The daily fine shall accrue (until the original fine is paid).

2. ☐ You shall pay a daily fine of $50.00 until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC’s Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board’s designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation.

Remedial Action:

☐ Restore Category 1 Conservation easement by implementing following restoration plan. Meet with M-NCPPC inspector for pre-planting meeting and plant (12) 3 gallon spirea bushes, (6) 1 inch caliper paw paw plants, (9) 3 gallon native viburnum plants, (3) 1 inch caliper redbud trees, (3) 1 inch caliper black gum trees and (3) 2 inch caliper American beech trees. All plants require 4 foot high 14 gauge welded wire deer protection.

If remedial action is not completed by 11/30/2013 (date), you shall pay a daily fine of $50.00 a day until work is completed.

☐ You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:

I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant’s Signature

Date

Sent certified mail and first class mail

Affirmation:

I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

October 18, 2013

Inspector’s Signature

Date

Print Name: Stephen Peck

Phone Number: 301-495-4564
1. Why is there a forest conservation easement on my property?
   When your lot was created in order to build your house, the developer was required by law to
   preserve a certain amount of property for forest conservation. The developer chose to place a
   forest conservation easement over a portion of the subdivision that included your lot. The
   location of your house on the lot was determined by the builder after the subdivision was
   created with the easements already in place.

2. I have an easement on my property; can I remove it?
   In some, but not all cases the Planning Board may let you remove and replace the easement,
   but it is a costly process. You should expect to survey or replat your property, survey the
   replacement property, and plant trees and bushes in a much larger area determined
   appropriate to replace the easement. If you are interested in learning if this is an option for
   your property, please request a meeting with M-NCPPC staff.

3. I received a Notice of Violation. What do I do?
   The Notice of Violation lists the corrective actions that need to be completed to bring your
   property into compliance by a certain date. If you have questions or concerns about the
   corrective actions, you can set up a meeting with M-NCPPC staff before the compliance date.

4. What happens if I don’t agree or comply with the Notice of Violation?
   You may set up a meeting with M-NCPPC Staff to discuss the Notice of Violation. The staff will
   work with you to identify possible solutions to bring your property into compliance. However,
   you can also request a hearing on the matter, and a Notice of Hearing will be issued. Please
   read FAQ #9. If you ignore the Notice of Violation, the inspector may issue an Administrative
   Citation to you with a fine of up to $1,000 for each violation and a date by which the fine needs
   to be paid and the corrective actions completed. You can avoid a fine by bringing your
   property into compliance.

5. I received an Administrative Citation. What do I do?
   The Administrative Citation lists the corrective actions that need to be completed to bring the
   property into compliance by a certain date. It will also include a fine of up to $1,000 that must
   be paid by the date on the Citation. Additional fines may accrue if the deadline is not met. You
   may also request a hearing within 15 days of the date the Citation was issued. See FAQ #8.

6. If I pay the Citation, is there anything else I need to do?
   Yes. You must also bring your property into compliance by performing the corrective actions
   listed on the Citation. If you have any questions about what needs to be done, please contact
   the inspector.
<table>
<thead>
<tr>
<th>SENDER: COMPLETE THIS SECTION</th>
<th>COMPLETE THIS SECTION ON DELIVERY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</td>
<td>A. Signature</td>
</tr>
<tr>
<td>Print your name and address on the reverse so that we can return the card to you.</td>
<td>X</td>
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<tr>
<td>Attach this card to the back of the mailpiece, or on the front if space permits.</td>
<td>B. Received by (Printed Name)</td>
</tr>
<tr>
<td>1. Article Addressed to:</td>
<td>D. Is delivery address different from Item 1?</td>
</tr>
<tr>
<td>Kambiz Kazemi</td>
<td>If YES, enter delivery address below:</td>
</tr>
<tr>
<td>10410 Riverwood Drive</td>
<td></td>
</tr>
<tr>
<td>Potomac, MD 20854</td>
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| 2. Article Number | 7012 0470 0001 0597 7039 |
| (Transfer from service label) | Domestic Return Receipt |

PS Form 3811, February 2004
Attachment I

* Sender: Please print your name, address, and ZIP+4 in this box *

Stephen Peck
M-NCPPC Montgomery County Planning
8787 Georgia Ave
Silver Spring, MD 20910
Attachment J

This Agreement is made on March 3, 2014 between Kambiz and Azar Kazemi ("Kazemi") and the Maryland-National Capital Park and Planning Commission Montgomery County Planning Department Enforcement Staff ("Staff") regarding all alleged violations on 10410 Riverwood Drive, Potomac, MD 20854 ("Property") as noted in the Notice of Hearing dated January 24, 2014 to Kazemi. Staff agrees to dismiss the hearing scheduled for March 3, 2014 without prejudice to refile subject to the following terms:

1. Kazemi must submit a limited preliminary plan amendment application ("Amendment") to remove the entirety of the Category I Conservation Easement from the Property. The Amendment must be submitted and accepted by Staff by Wednesday April 2, 2014.
2. Removal of the 49,262 square foot Category I Conservation Easement must be mitigated for in an offsite forest conservation bank at a 2:1 ratio.
3. Staff agrees to allow mitigation to occur at any forest conservation bank in Montgomery County.
4. Staff agrees to recommend approval of the Amendment to the Planning Board.
5. Kazemi must receive Planning Board approval of the Amendment by July 17, 2014.
6. Kazemi must submit a record plat reflecting the Planning Board’s approval within 30 days after the mailing date of the Planning Board’s Resolution.
7. Kazemi must submit an executed Certificate of Compliance for the offsite forest conservation bank within 30 days of the mailing date of the Planning Board’s Resolution.
8. Kazemi must pay an Administrative Civil Penalty of $10,000 by check made payable to MNCPPC within 30 days of the mailing date of the Planning Board’s Resolution.

Staff agrees that completion of the above terms on time will remedy and settle all alleged violations as indicated in the Notice of Hearing dated January 24, 2014. Any failure on the part of Kazemi to complete the above terms on time will negate this agreement and result in an enforcement hearing.

Agreed to by:

Kambiz Kazemi 3/8/14

Azar Kazemi 3-8-2014

Mark Pfefferle 3-12-14
Chief DARC
Maryland-National Capital Park and Planning Commission

STATE OF MARYLAND

*
I HEREBY CERTIFY that on this 8th day of MARCH, 2017, before me, a Notary Public in and for the State and County aforesaid, personally appeared KAMBIZ KAZEMI and AZAR KAZEMI, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my and official seal.

[Signature]
NOTARY PUBLIC

[Notary Seal]
Commission Expires: 10/1/2016

STATE OF MARYLAND
COUNTY OF Montgomery

* to wit:
Attachment J

STATE OF MARYLAND
COUNTY OF Montgomery

I HEREBY CERTIFY that on this 13th day of March, 2014, before me, a Notary Public in and for the State and County aforesaid, personally appeared Mark Hoffmeier, City PCEO, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my and official seal.

[NOTARIAL SEAL]

Commission Expires: November 20, 2017