

8701 Burning Tree Road, Preliminary Plan No. 120110200

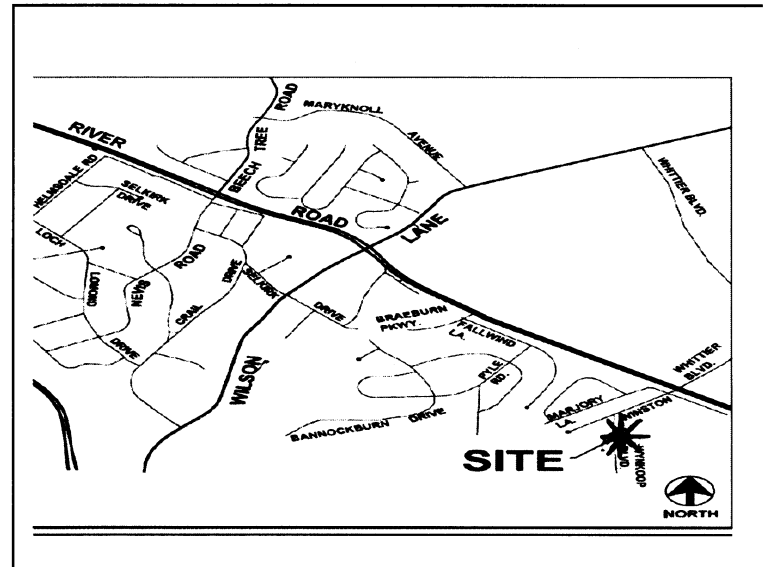
- Melissa Williams, Senior Planner, Melissa.williams@montgomeryplanning.org, 301-495-4642
- Robert Kronenberg, Acting Chief, Area 1, robert.kronenberg@montgomeryplanning.org, 301 495-2187
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Staff Report Date 8-31-2012

Description

- **Request** - to subdivide 1.45 acres into one lot in the R-200 zone
- **Address** - 8701 Burning Tree Road
- **Zoning/Master Plan/Size** - R-200 Zone, Bethesda/Chevy Chase Master Plan/1.45 acres
- **Applicant** - Keith Burgess
- **Application Filed** - April 13, 2011

Recommendation – Approval with Conditions



The Applicant requests approval of a Preliminary Plan, allowing for the development of a (1) one- family detached residence on one lot. The Property consolidates a portion of lot 1, Outlot B and the remaining portion (triangular shaped portion) of Lybrook Drive abandoned by County Resolution (16-1296). The appropriate re-subdivision criteria have been satisfied and are discussed in the report.

As part of the review of this preliminary plan, the Planning Board is also reviewing the Preliminary Forest Conservation Plan. The site is encumbered by environmental constraints including a stream buffer and 100-year floodplain creating a small buildable envelope for the proposed improvements. Under normal circumstances, Staff would not allow encroachment of the environmental buffers. However, this application is consolidating properties, removing an existing fire damaged residence located within the stream valley buffer and providing substantial mitigation for the proposed impacts. Strict adherence to the environmental guidelines under the subdivision process would allow only a small buildable area and yard space totaling approximately 6,700 square feet. Under these circumstances, Staff is agreeable to certain permanent encroachments into the stream valley buffer (SVB) thereby allowing a reasonable building envelope and yard space, given that the following items are included:

1. 2:1 offsite forest mitigation for areas of SVB not placed in easement.
 2. Eradication of existing invasive species such as bamboo.
 3. New native plantings associated with the stream channel.
 4. Onsite Category I easement within portions of the SVB.
 5. Forest conservation worksheet planting requirements are met onsite.
- The proposed improvements are situated in a manner that respects the environmental features as much as possible and mitigation for the impacts is accommodated with the proposal.

RECOMMENDATION: Approval subject to the following conditions:

1. This Preliminary Plan is limited to 1 lot for (1) one dwelling unit
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 29, 2011 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated April 4, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a (5) five-foot wide sidewalk along the property frontage on Burning Tree Road, unless construction is waived by MCDPS.
6. The record plat must reflect common ingress/egress and utility easements
7. The record plat must show necessary easements.
8. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
9. The applicant must submit a final forest conservation plan and have that plan approved by staff prior to any land disturbing activity occurring on site.

10. All retained and planted forests must be protected by a category I conservation easements. All conservation easements to be shown on the record plat. Recordation must occur prior to any land disturbing activity occurring on site.

11. Areas of stream valley buffer (SVB) outside of the stream channel and the proposed dedications associated with Burning Tree Road which are not protected by the conservation easement require offsite compensation. The mitigation will occur by the use of 2:1 offsite mitigation plantings to be protected by a category I easement approved by staff, prior to any land disturbing activity occurring on site.

12. Adjust the proposed conservation easement boundary per the following:

- a. Shift the proposed conservation easement line northward to remain at least 15 feet from the existing storm drainage R/W.
- b. Delete the portion of the conservation easement which overlaps the proposed PUE.

Refinement of the proposed easement plantings is required to meet reforestation criteria for spacing and species distribution, at the time of final forest conservation plan submission (subject to staff approval).

SITE DESCRIPTION

The subject property is located at 8701 Burning Tree Road, east of the intersection with Beech Tree Road and adjacent to Booze Creek (Cabin John Creek Watershed, Use 1). It is comprised of and identified as the following property with a gross tract area of 63, 066 square feet or 1.45 acres:

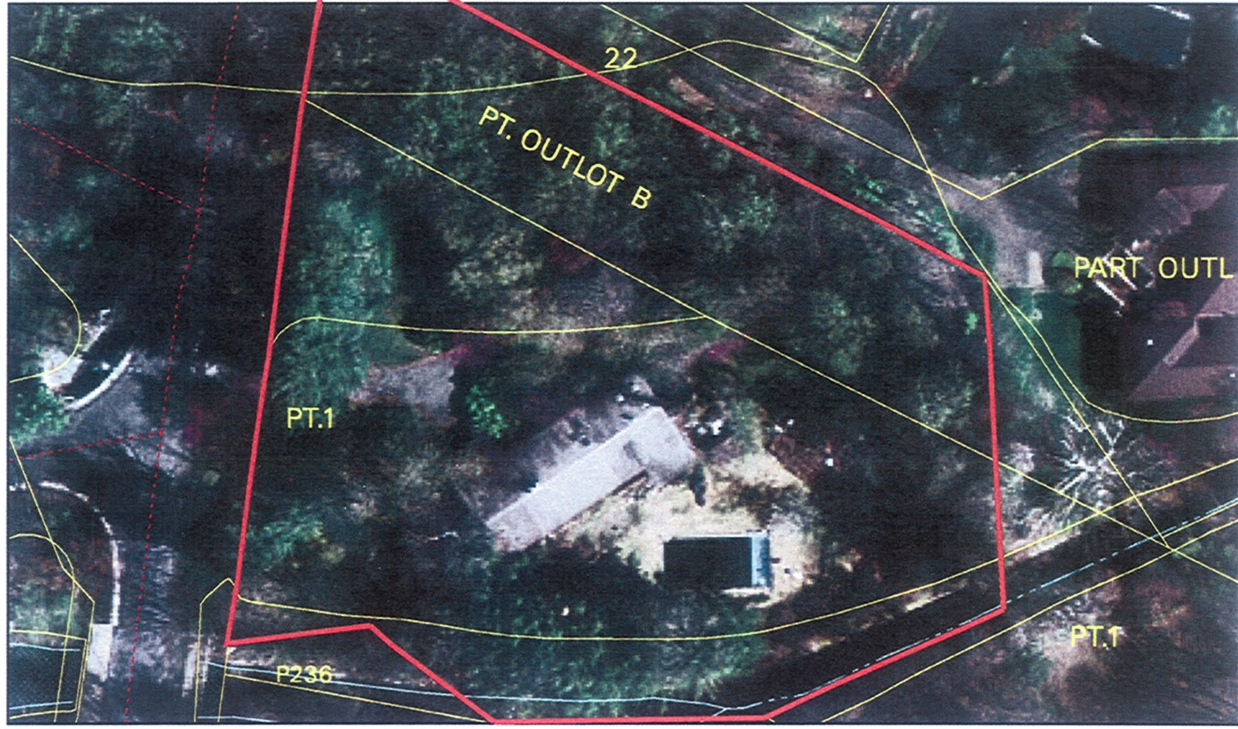
- Outlot B located in Bradley Hills Grove Subdivision
- Part of Lot One located in the Lee Lloyd's Addition to Burning Tree Valley Subdivision
- Remaining portion (triangular shaped area roughly 175 feet x 70 feet) of unimproved Lybrook Drive, which was abandoned by Montgomery County Resolution (16-1296)

An existing one-story, one- family detached residence that has been damaged by fire and a dilapidated pool are located on Lot One. The site is encumbered by a variety of environmental features including a stream buffer and 100-year floodplain. The existing house is located entirely within the stream buffer and partially within the floodplain and its buffer. The existing pool is located entirely within the flood plain and stream buffer. A storm drain right of way traverses the southern boundary adjacent to Booze Creek, which is contained within a concrete

flume along this boundary. There are no known Threatened or Endangered plant or animals or Critical Habitat documented in the field or by the Maryland Department of Natural Resources. However, the study area contains one contiguous forest stand, portions of which area contained within environmentally sensitive areas and their buffers.

The current driveway is opposite the intersection of Beech Tree Road and Burning Tree Road and crosses the 100 year flood plain of Booze Creek.

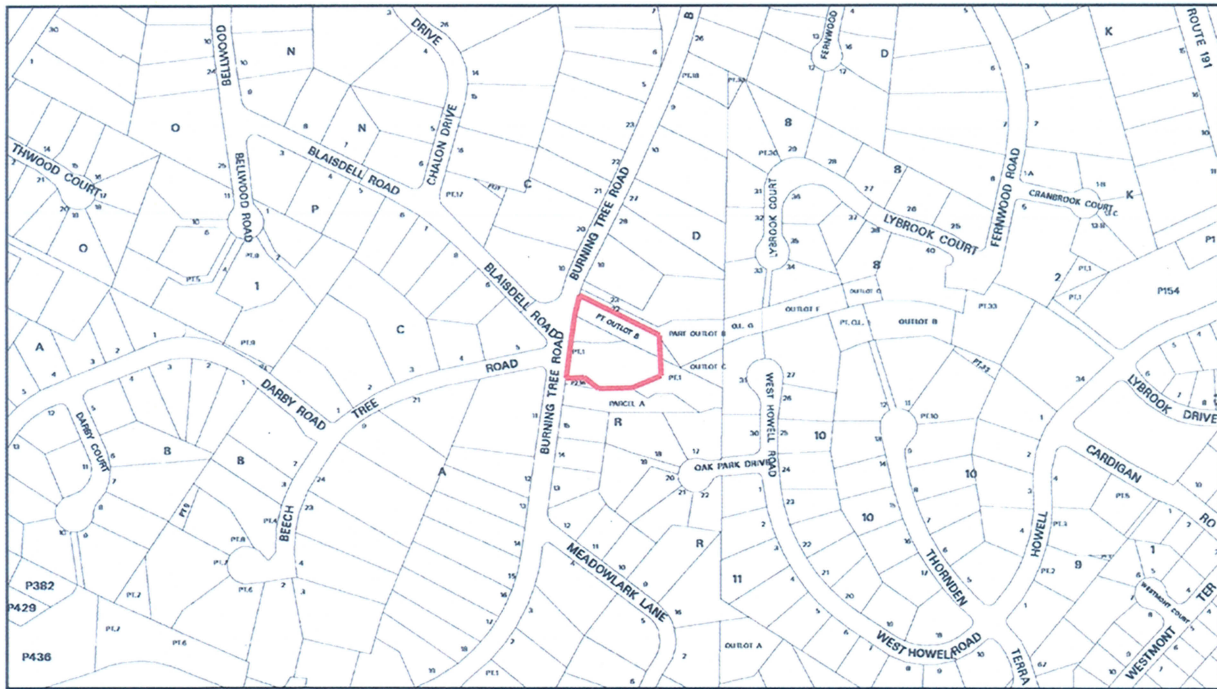
8701 BURNING TREE ROAD (120110200)



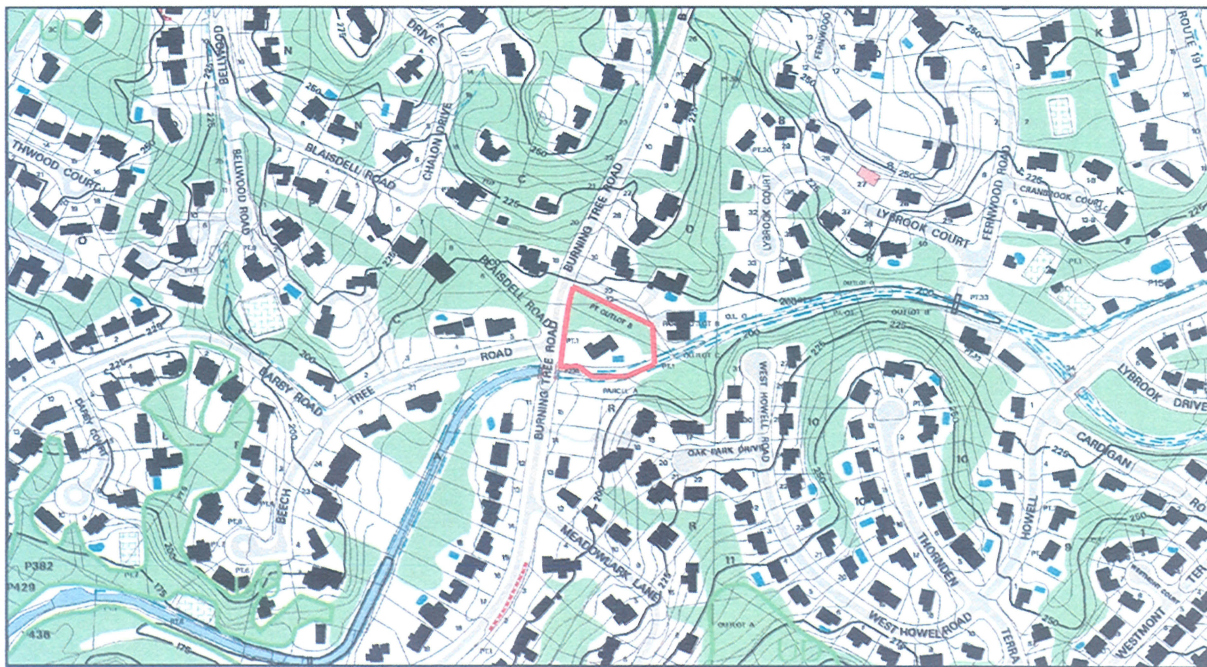
Vicinity

The surrounding area is zoned R-200 and occupied by other one-family detached residences. The site slopes from north to south draining into Booze Creek. There are significant trees or other vegetation on the site. The site has limited sidewalks and is not served by transit. Access would be provided from Burning Tree Road. Approximately .60 acres will be protected for forest conservation, leaving an area of 36,930 square feet for site development.

8701 BURNING TREE ROAD (120110200)



8701 BURNING TREE ROAD (120110200)



PROJECT DESCRIPTION

The application proposes to re-subdivide Outlot B, Part of Lot One and the abandoned portion of Lybrook Drive (triangular-shaped portion) into a single record lot.

Once combined, the Property will have a gross tract area of 63,066 square feet or approximately 1.45 acres and will be served by public water and sewer systems. The applicant is proposing the construction of a new one-family detached residence and pool, with a horseshoe driveway in the front yard.

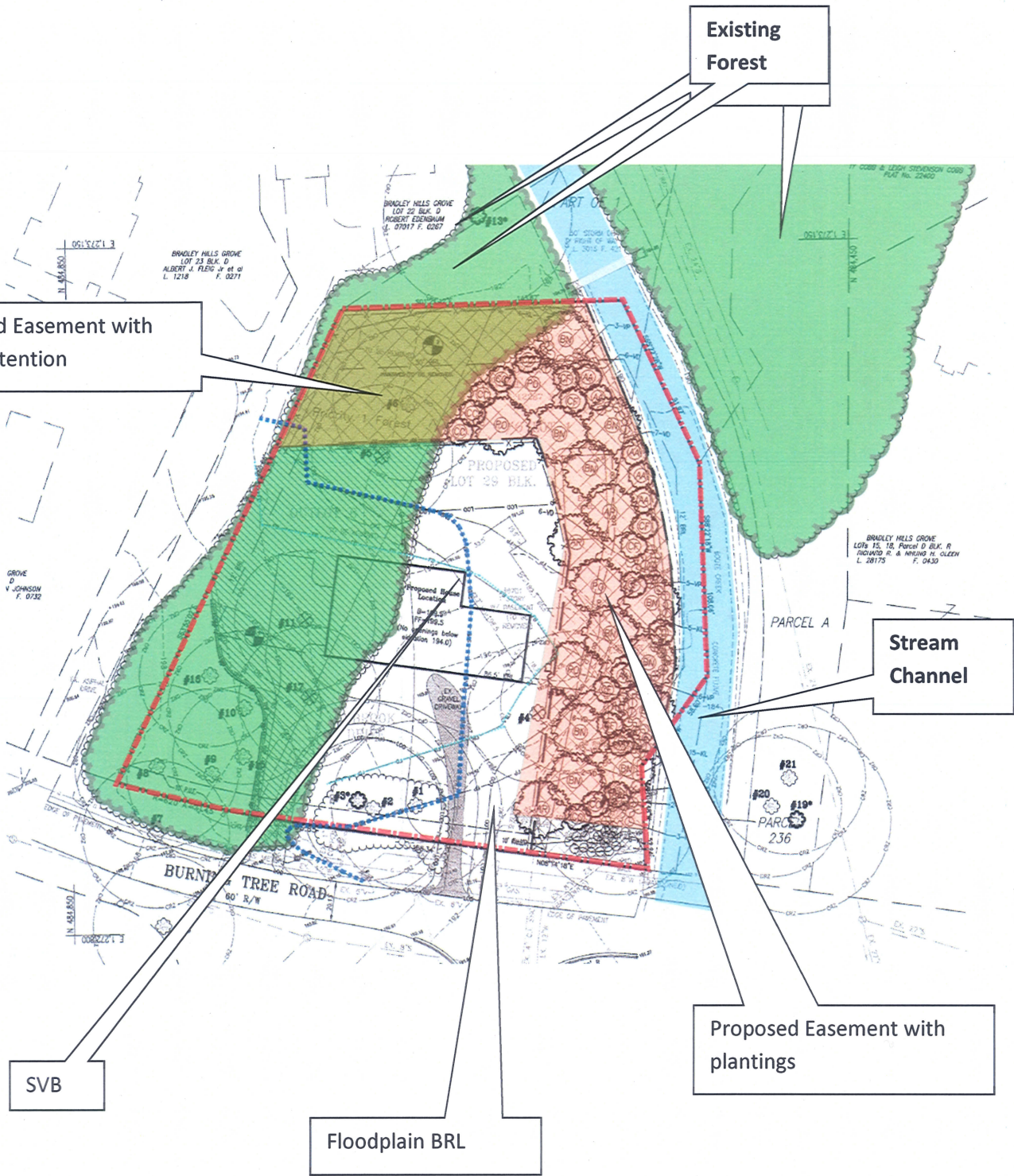
The horseshoe driveway is comprised of a portion of the existing driveway and a segment providing access to the garage. This new configuration would provide safe egress.

The new residence will be partially within the footprint of the existing residence, which is currently located within the stream valley buffer. It will be served by public water and sewer and the applicant is not proposing any new roads, drainage structures or pavement widening as part of this subdivision. The proposed improvements provide for rooftop disconnects and two rain gardens as part of their storm water management concept.

The R-200 zone requires that a sidewalk be built along the frontage of 8701 Burning Tree Road; MCDOT recommends that the sidewalk be 5' in width and connect to sidewalks on adjacent properties.

The Property has a number of environmental constraints:

- 100 year flood plain
- Booze Creek Stream Valley buffer
- High priority forest area
- FEMA has conditioned the project subject to approval of certified as-built elevations and/or a certified as-built survey to ensure the work is completed per FEMA requirements.



ANALYSIS AND FINDINGS

Conformance to the Master Plan

The Property is located in Bethesda, which is a mature, stable community, predominantly zoned R-60 and R-90. The western most portions are zoned R-200. The area is largely built out, does not contain any commercial properties and there is little opportunity for redevelopment.

The Bethesda-Chevy Chase Master Plan (the Plan) does not specifically address this site but does make a general recommendation (p.51) reconfirming the existing zoning throughout the Plan area. This application consolidates property specifically for a one-family detached use, which preserves the existing residential character and land use patterns described in the Plan area.

Additionally, the Plan aims to “protect the high quality residential communities throughout the Planning area, as well as the services and the environmental qualities that enhance the area”. The applicant has agreed to relocate the new one-family residence and swimming pool outside of the 100 Year Flood Plan and associated 25 foot building restriction line. The swimming will be shifted significantly further from the stream.

This proposal substantially conforms to the master plan recommendations since it is compatible with the existing neighborhood in terms of building type, and meets the requirements and development standards of the R-200 zone. Additionally, the proposal furthers the Plan’s general guidance and is consistent with the Bethesda Chevy Chase Master Plan.

Public Facilities

Roads and Transportation Facilities

The Application does not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. Additionally, the applicant is not proposing any new roads, drainage structures or pavement widening. Existing conditions will be maintained as much as possible resulting in very little impact on the capacity and/or operation of roads, intersections and drainage systems at/near the property. The applicant will be required to construct a 5 foot sidewalk along the property

frontage, connecting to the existing sidewalk along Burning Tree and provide for safe to adequate pedestrian mobility.

Other Public Facilities and Services

The Application has been reviewed by all public utilities including: Washington Gas, PEPCO, Verizon and WSSC. All agencies recommend approval of the plan having found that their respective utilities are adequate to serve the proposed development. The Department of Fire and Rescue Services has approved a Fire Access Plan that assures emergency vehicles can access the site. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Resolution currently in effect.

The Property is within the Bethesda – Chevy Chase school cluster which is currently operating above capacity at the middle and high school levels; however, the proposed development is not considered a new construction but is in fact a replacement of an existing residence, and therefore will not increase the number of dwelling units. As such, no School Facility Payment is needed.

Finding: Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Finding: Other public facilities and services are available and will be adequate to serve the proposed dwelling unit(s) or use.

Finding: The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles.

Finding: Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect.

Environment

ENVIRONMENTAL GUIDELINES

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # 420100810 was approved for the site on September 14, 2010. The property is approximately 1.45 acres in size and contains 0.55 acres of high priority onsite forest which is contiguous with adjacent offsite forest. The site contains numerous native trees, some of which are significant or specimen in size. The forest stand is rated as high priority for retention mainly due to the connection with the perennial stream, 100-year floodplain, and their associated buffers. The site is located within the watershed of the Booze Creek Tributary to Cabin John Creek; a Use I-P watershed¹. Highly erodible soils are not mapped on the subject property but are located in the immediate surroundings on adjacent properties. A minor area of steep slopes is associated with existing fill that had been placed to elevate the existing home above the floodplain.

The existing home is partially burned-out and has been boarded up for several years. A dilapidated in-ground swimming pool is also located on the site. A dense stand of invasive bamboo (not part of the forest area) is located along the stream.

The Booze Creek stream runs parallel to, and partially within the site boundary. The section of stream is contained within an open, trapezoidal shaped concrete channel consisting of an approximately 20' wide flat bottom with 45 degree side slopes. During extreme flooding events the water will flow out of the concrete banks and flood the surrounding low-lying areas. The site contains approximately 0.75 acres of 100-year floodplain and 0.25 acres of existing floodplain buffer (area within the 25' floodplain building restriction line or BRL which extends beyond the mapped floodplain boundary). In total approximately 1.0 acre of the subject property (almost 70 %) overlaps with the 100 year floodplain and its associated 25' BRL.

The stream valley buffer (SVB) area as shown on the approved NRI/FSD includes the floodplain (but not necessarily the floodplain BRL) and measures approximately 0.9 acres. The proposed

¹ Use I-P:

WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY

Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; industrial water supply; and public water supply.

work includes demolition of the dilapidated swimming pool (located entirely within the floodplain) and existing residential structure (located partially within the floodplain and largely within the 25' BRL). The activities occurring within areas affected by floodplains are also regulated by the Federal Emergency Management Agency (FEMA) and the Montgomery County Department of Permitting Services (DPS). FEMA has conditioned the project subject to approval of certified as-built elevations and/or a certified as-built survey to ensure the work (such as grading within the floodplain) is completed per FEMA requirements. DPS has stated that the proposed development is outside of the revised FEMA floodplain and satisfied with the proposal.

As conditioned by staff the proposed layout will protect 0.5 acres of the SVB (and approximately the same amount of floodplain). Note: A 0.1 acre area of the concrete stream channel is located onsite and within the SVB/floodplain, but is not proposed to be included with the Category I easement due to the limitations and maintenance requirements of the concrete channel structure. Additionally, there are other areas of SVB/floodplain occurring within the proposed right-of-way (ROW) and public utility easement (PUE) dedications which are not compatible with a Category I easement.

However, there is approximately 0.25 acres of onsite SVB which is not proposed for protection by the recommended easement area. The proposed encroachment into the buffer areas has been minimized but is still far enough away to allow a reasonable yard space and avoid future conservation easement violations. A permanent split rail fence with signage will be established to delineate the conservation easement. Areas outside of the ultimate easement areas which are either within the floodplain or associated BRL will still have limitations on development and future construction. For example, residential structures would not be allowed in such areas. However, DPS can approve in-ground pools within the floodplain (above-ground pools would not be permitted with a floodplain). The proposed location of the new in-ground pool would be shown on the final forest conservation plan and located in manner which would not adversely affect the proposed easement area.

Even though some level of protection is provided by other regulatory agencies (relative to the floodplains), proposed compensation for loss of the otherwise suitable easement areas will include the offsite plantings at a 2:1 ratio. Therefore the 0.25 SVB area not protected would trigger a 0.5 acres credit to be satisfied offsite. The offsite planting can be established by the applicant following criteria previously established by M-NCPPC. Alternatively, the applicant may purchase the equivalent credits from a private forest conservation bank. Ideally, the selection of an available plantings site or forest conservation bank occurs within the same watershed of the subject property. (A new planting site has not been proposed by the applicant at this time). Since no conservation banks are currently available within the same watershed, the next preference is to select the geographically closest bank. The Lorax Forest is the only bank in the down-county. It is located four miles east of the subject property and currently has the necessary credits available.

FOREST CONSERVATION and TREE SAVE

The property is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Preliminary Forest Conservation Plan has been submitted for approval (stamped received on July 18, 2012).

The subject property contains high priority forest area in association with 100-year floodplain and stream valley buffer. The plan proposes to clear 0.30 acres of forest, retain 0.26 acres and then plant 0.37 acres which will satisfy the forest conservation planting requirements onsite. Due to the overlapping environmentally sensitive features (such as high priority forest, SVB and floodplain) a Category I conservation easement is proposed to protect all of the retained and planted forest. The proposed Category I easement include 0.25 acres of plantings above the forest conservation plantings requirements. The additional plantings partially serve as mitigation for encroachment to other areas of the SVB. As referenced in the previous section of the report, the proposed compensation for loss of the otherwise suitable easement areas will include the offsite plantings at a 2:1 ratio. These mitigation plantings are to address SVB encroachments and are not directly tied to forest conservation plantings requirements.

FOREST CONSERVATION VARIANCE

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Unless the variance is granted, the law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Since the project boundary affects a tree that is ≥ 30 " DBH, a variance is required. The Applicant submitted a variance request on June 26, 2012 for the impacts to, but retention of a subject tree that is ≥ 30 " DBH (see Attachment A for variance request). In total, one tree that is considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law is proposed to be affected. The subject tree is located in the center of a proposed horseshoe driveway and will receive relatively minor impacts. In all cases where CRZ impacts are proposed to save trees, appropriate tree preservation and/or stress reduction measures will be performed under the supervision of a licensed tree care professional.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

In addition to the required findings outlined numerically below, staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship for the following reasons:

The existing gravel driveway overlaps the CRZ of the subject tree. Any modification or even careful demolition of the driveway would cause impact to the subject tree and trigger a variance. Furthermore, the driveway is narrow in size and expansion of the driveway for construction access would be necessary.

Staff has reviewed this application and based on the existing circumstances and conditions on the property, staff agrees that there is an unwarranted hardship (for disturbance but not removal).

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other Applicants.*

The existing driveway is the only means of currently accessing the site. Any upgrade of the driveway, or even abandonment and restoration of driveway into a natural area would require a variance. Therefore, the variance request for the proposed impact would be granted to any applicant in a similar situation.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is based on proposed development allowed under the existing zoning and the need for site access. The variance can be granted under this condition if the impacts are avoided or minimized.

- 3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

- 4. Will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The Department of Permitting Services (DPS) staff approved the Stormwater Management (SWM) Concept for the project on April 4, 2011. The DPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. Additionally, the one tree subject to the variance is not located within the floodplain or stream valley buffer. Some portion of the subject trees' CRZ does overlap the Floodplain and SVB area. However, the minor grading proposed in the floodplain will be subject to the review of both the Federal Emergency Management Agency (FEMA) and DPS. FEMA has conditioned the project subject to approval of certified as-built elevations and/or a certified as-built survey to ensure the work is completed per FEMA requirements.

COUNTY ARBORIST'S RECOMMENDATIONS

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The applicants' request was forwarded to the County Arborist on June 26, 2012. The County Arborist issued a response to the variance request on June 27, 2012 and recommended the variance be approved with the condition that mitigation is provided. (Attachment B). Additionally, the County Arborist provided general recommendations on calculating mitigation plantings and providing tree preservation measures.

MITIGATION for TREES SUBJECT to the VARIANCE PROVISIONS

Generally, staff recommends that replacement plantings for variance purposes occur at a ratio of approximately 1" DBH for every 4" DBH removed, using onsite tree plantings that are a minimum of 3" caliper. However, staff generally does not recommend mitigation for trees impacted but retained. Since the subject tree can be appropriately retained, no mitigation planting is recommended.

STAFF RECOMMENDATION ON VARIANCE

As a result of the above findings, staff recommends the Board approve the Applicant's request for a variance from Forest Conservation Law to impact, but retain one subject tree associated with the project. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

FFCP CONCLUSION

Staff is recommending **approval** of Final Forest Conservation Plan **with conditions** listed at Attachment C. The variance approval is assumed into the Planning Board's approval of the Preliminary Forest Conservation Plan.

Compliance with the Subdivision Regulations and Zoning Ordinance

The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified within the Montgomery County Code Zoning Ordinance, Chapter 50 - the Subdivision Regulations. The application meets all applicable sections and as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone and for the location of the property. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

A. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment,

size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

B. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. In this instance, the Neighborhood selected by the applicant, and agreed to by staff, consists of 21 lots (Attachment C). The neighborhood does not contain any commercial uses and all residential lots share common configurations, shape and size. The designated neighborhood provides an adequate sample of the lot and development pattern of the area. A tabular summary of the area based on the resubdivision criteria (Attachment D.)

C. Analysis

Comparison of the Character of Proposed Lots to Existing

In performing the analysis, the above-noted resubdivision criteria were applied to the delineated neighborhood. The proposed lots are of the same character with respect to the resubdivision criteria as other lots within the defined neighborhood. Therefore, the proposed resubdivision complies with the criteria of Section 50-29(b)(2). As set forth below, the attached summary and graphical documentation support this conclusion:

Frontage:

The delineated neighborhood has a range of frontages measuring 25 feet to 328 feet. Twelve of the existing lots have frontages ranging from 25 feet to 108 feet. The remaining nine lots have frontages ranging from 135 feet to 328 feet.

Of the delineated neighborhood, 18 of the 21 lots have singular frontage. There are four properties fronting on two or more rights-of-way.

The approved lot will front solely onto Burning Tree Road with a proposed frontage of 274 feet and will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment:

Eighteen of the 21 existing lots in the neighborhood are perpendicular in alignment, and the remaining eight are angled with the street. The approved lot is perpendicular in alignment and of the same character as existing lots with respect to the alignment criterion.

Size:

The 21 lots in the delineated neighborhood range from 61,380 square feet to 11,035 square feet. Seven of the lots are smaller than 20,000 square feet, seven are between 20,000 and 36,000 square feet, and seven are larger than 36,000 square feet. The approved lot will be 47,431 square feet in size.

At 47, 431 square feet, the approved lot will be the fourth largest lot in the neighborhood. The approved lot size is in character with the size of existing lots in the neighborhood.

Shape:

Four of the 21 existing lots in the neighborhood are irregular as is the approved lot. The shapes of the approved lot will be in character with shapes of the existing lots.

Width:

The width of the 21 existing lots in the delineated neighborhood range from 99 feet to 269 feet (averaged). Nine of the 21 lots range from 99 – 118 feet and nine range from 122 feet to 269 feet. The applicant reported that the width of three existing lots was unavailable. The approved lot will be the third widest lot in the delineated neighborhood with a proposed width of 256 feet.

Area:

The existing lots in the delineated neighborhood range from 7, 370 square feet to 33,741 square feet in buildable area. Ten of the existing lots have a buildable area less than 16,000 square feet, six are between 16,000 and 21,000 square feet, and four are larger than 22,000 square feet. The applicant reported that the area for one existing lot was unavailable.

Suitability for Residential Use: The existing lots and the proposed lot are zoned residential and the land is suitable for residential use.

Compliance with Prior Approvals

As conditioned, the application complies with all applicable conditions of Montgomery County Council Resolution No.: 16-1296 for the abandonment of a portion of Lybrook Drive. The resolution was approved on March 23, 2010 and requires the applicant to consolidate an outlot, part of a lot and the abandonment area into a single record lot for the purpose of constructing a home.

Citizen Correspondence and Issues

A notice of pre-application and pre-submission was held on November 29, 2010 at the Bethesda Library. Its purpose was to explain the project, address community concerns and to notify and educate attendees about the review process and their right to participate.

The plan was properly processed in accordance with the current submittal procedures and was attended by 26 individuals.

A variety of issues were discussed:

- Number of homes, type of home and length of construction
- Requirement and extent of forest conservation area
- Storm water management and flooding concerns
- Driveway design
- FEMA letter of map amendment

Since the pre-submission meeting, Staff has not been contacted and believes that the application as presented dealt with the issues that were raised during the pre-submission meeting.

The project does not increase density (replacement of existing single family detached residence), has made allowances for forest conservation (Forest Conservation Easement – Category 1) and low impact storm water management (two rain gardens) and does not generate additional traffic. Staff believes that community concerns have been addressed with respect to this redevelopment of this site.

CONCLUSION

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which re-subdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As set forth above, the lot is of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria, and therefore, comply with Section 50-29(b)(2) of the Subdivision Regulations. The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the Bethesda – Chevy Chase Master Plan. Access and public facilities will be adequate to serve the proposed lot, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

Attachment A – Application for Variance Request

Attachment B – County Arborist Response – Laura Miller

Attachment C – Forest Conservation plan

Attachment D – Neighborhood Delineation

Attachment E – Neighborhood Tabular Summary

June 13, 2012

Ms. Rose Krasnow
Area 1 Chief
Environmental Planning, Community-Based Planning
Maryland – National Capital Park and Planning Commission
8787 Georgia Ave.
Silver Spring, MD 20910

RE: 8701 Burning Tree Road
30" tree variance

Dear Ms. Krasnow:

On behalf of our client, Keith Burgess ("the Applicant"), contract purchaser of the approximately 1.45 acre property ("the Property") located at the intersection of Burning Tree Road and Beech Tree Road (east of Beech Tree Road). The Property includes part of Lot 1 in Lee Lloyd's Addition to Burning Tree, Outlot B in Block D in the subdivision known as Bradley Hills Grove, as well as an abandoned portion of Lybrook Drive per County Council Resolution No. 16-1296.

We hereby request, pursuant to Section 22A-21 (b) of the Montgomery County Code ("the Code") a variance from the provisions of the Maryland Code, Natural Resource Article §5-1607(c)(2)(ii) and §5-1607(c)(2)(iii) to allow for the removal and/or disturbance of one (1) tree on the Property currently having a diameter of 30 inches or more (the "Variances"). As explained more fully below, our goal is retention of the impacted tree. If we were unable to impact the tree it would result in undue hardship to the Applicant. The peculiar conditions of the Property and the nature of the proposed improvements justify the granting of the requested Variances pursuant to Section 22A-21(b) of the code. This request is being made in concert with the reviews of the Preliminary Plan and Preliminary Forest Conservation Plan approvals for the project "8701 Burning Tree Road".

This variance is requested to allow the potential impact to the critical root zone of the tree listed below. A copy of the proposed Preliminary Forest Conservation Plan is attached for your reference.

Significant Trees Within The Limits of Study With DBH (≥30")					
ID	Common Name	Scientific Name	DBH (In.)	CRZ (Ft.)	Condition
3	Tulip Poplar	<i>Liriodendron tulipifera</i>	34	51	Fair

Our response to each point of variance criteria follows.

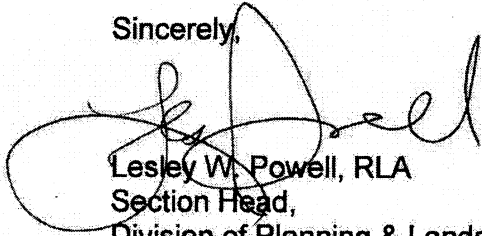
- 1) *Describe the special conditions peculiar to the property which would cause unwarranted hardship.* The tree in question is located directly adjacent to the Public Utility Easement that runs across the frontage of the property which by definition is to be left free and clear, installation of the utilities will severely impact the critical root zone. Secondly the layout of the existing and proposed driveway is impeding with the critical root zone of the Tulip Poplar, which may result in the tree needing to be removed. Due to the location of the tree along the front of the property, the critical root zone of the tree is taking up around 36% of the road frontage along Burning Tree Road. Of the remaining road frontage, around 37% is impacted by the 100 year floodplain, which would require grading due to topographic issues, so we are extremely limited in where the driveways may be located. The locations chosen have the least impact to the trees – one of the driveways is the existing driveway but paving will further impact the critical root zone. The other driveway is located such that its impact to the critical root zones of the tree in question is less than 30%.
- 2) *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.* The impacts of the utilities on the tree affect the whole neighborhood, not just the homeowner. The siting of the house is limited due to the 100 year floodplain limits to the south side of the property as a result of the concrete culvert that is known as Booze Creek. Because of the location of the culvert and associated floodplain to the south of the property, topographic and proposed grading considerations, the garage needs to be located on the north side of the house. The existing driveway is located on the south side of the Property's frontage, requiring the homeowner to cross the front of the lot. Because of this condition, we are proposing a horseshoe driveway. The horseshoe driveway allows for the owners to safely enter and exit their driveway. Again, the critical root zone of the tree is taking up around 36% of the street frontage and around 37% of the remaining is 100 year floodplain with topographic issues.
- 3) *Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will occur as a result of granting the variance.* This site includes 100-year Floodplain and Stream Valley Buffer. All water quality

requirements related to stormwater runoff will be addressed as required by county approved SWM plans.

4) *Provide any other information appropriate to the request.* Currently there is some vehicular traffic around the tree and the tree is still in fair condition.

If you have any other questions or need additional information, please contact me at 301-434-7000 or via email at lpowell@cpja.com

Sincerely,

A handwritten signature in black ink, appearing to read 'Lesley W. Powell', written over a circular flourish.

Lesley W. Powell, RLA
Section Head,
Division of Planning & Landscape Architecture



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

June 27, 2012

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: 8701 Burning Tree, DAIC 120110200, NRI/FSD application accepted on 11/13/2009

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.

3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that revisions to the LOD are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

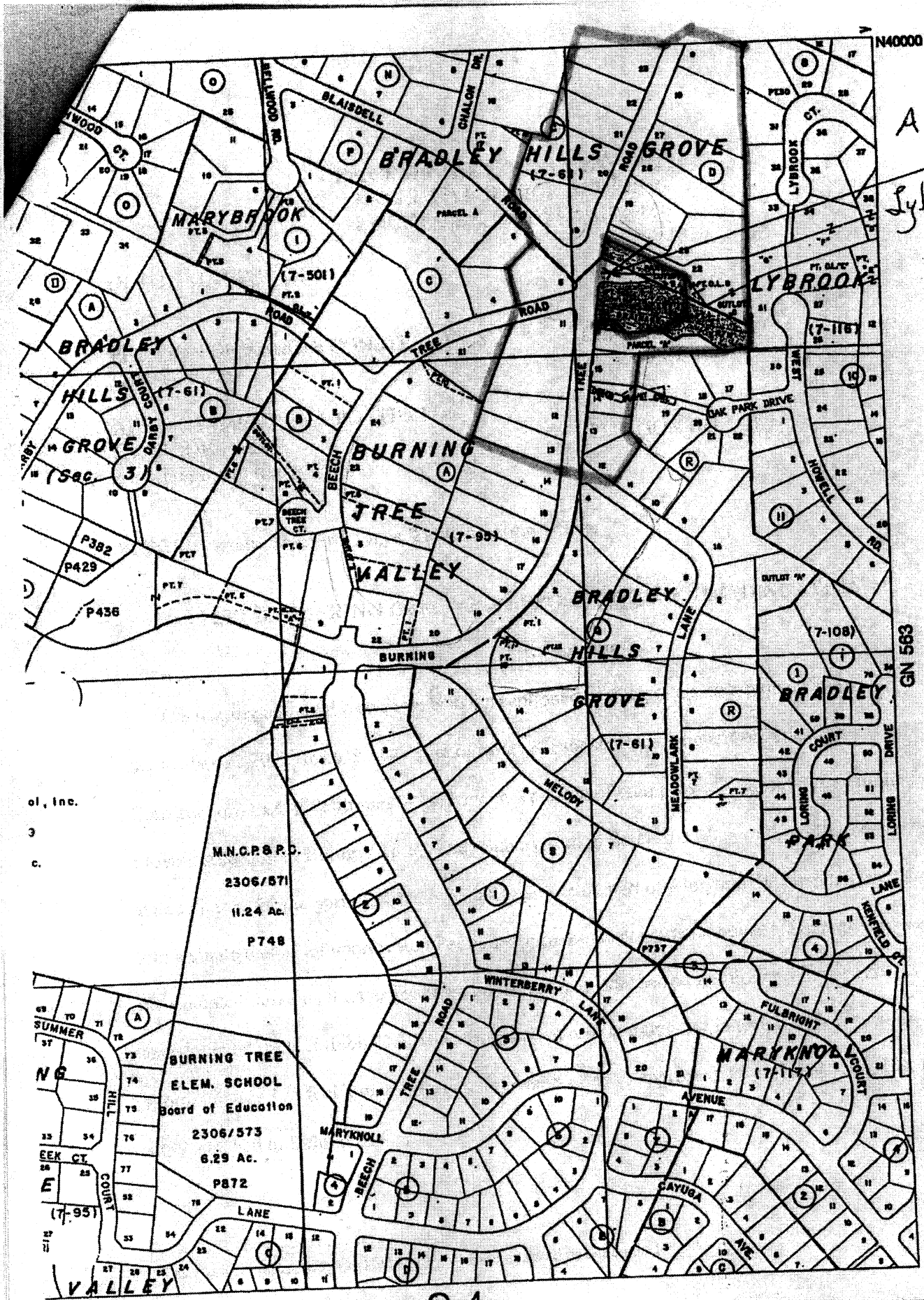
If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Chief



AB713
Lybrook Dr



GN 563 N 3

ol, Inc.
3
c.

M.N.C.P.S.P.C.
2306/571
11.24 Ac.
P748

BURNING TREE
ELEM. SCHOOL
Board of Education
2306/573
6.29 Ac.
P872

G 4

MONTGOMERY CO.,

MAP GN 343
WSSC 210 NW 07

Burning Tree Valley	A	13	2904	6/21/1951	Yes	No	100' Burning Tree Road	Perpendicular with Street	28,249	Irregular	100'	16,154
Burning Tree Valley	A	12	2904	6/21/1951	Yes	No	135' Burning Tree Road	Perpendicular with Street	27,993	Irregular	118'	14,562
Burning Tree Valley	A	11	2904	6/21/1951	Yes	No	328' Burning Tree Road 199' Beech Tree Road	Perpendicular with Street	61,380	Irregular	Avg. 269'	33,741
Burning Tree Valley	C	5	2466	1/12/1950	Yes	No	189' Beech Tree Road 43' Burning Tree Road 189' Blaisdell Road	Angled with Street	27,368	Irregular	Avg. 122'	10,660
Bradley Hills Grove	C	19	7035	2/5/1963	Yes	No	290' Blaisdell Road 191' Burning Tree Road	Perpendicular with Street	40,007	Irregular	Avg. 249'	18,334
Bradley Hills Grove	C	20	7035	2/5/1963	Yes	No	150' Burning Tree Road	Perpendicular with Street	48,225	Irregular	159'	30,114
Bradley Hills Grove	C	21	7035	2/5/1963	Yes	No	105' Burning Tree Road	Perpendicular with Street	27,172	Irregular	105'	15,231
Bradley Hills Grove	C	22	9422	5/11/1967	Yes	No	108' Burning Tree Road	Perpendicular with Street	27,922	Irregular	101'	15,164
Bradley Hills Grove	C	23	9422	5/11/1967	Yes	No	162' Burning Tree Road	Perpendicular with Street	46,553	Irregular	154'	31,213

RECEIVED
M-NCPPC
AUG 30 2012
MONTGOMERY COUNTY
PLANNING DEPARTMENT