

Committee members should bring their packets from the February 25, April 1, and June 24 worksessions. Most items in those packets are not duplicated here. Committee members may be asked to retain this packet for future reference.

M E M O R A N D U M

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM: ~~Michael~~ Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Attorney *AMihill*

SUBJECT: **Worksession 5: Bill 35-12, Trees – Tree Canopy Conservation**

Bill 35-12, Trees – Tree Canopy Conservation, sponsored by the Council President at the request of the County Executive, was introduced on November 27, 2012. A public hearing was held on January 17, 2013, along with Bill 41-12 (see selected testimony, ©29-54). Transportation, Infrastructure, Energy and Environment Committee worksessions were held on January 28, February 25, April 1, and June 24.

Bill 35-12 would broadly:

- establish a fee-based program to minimize and compensate for the loss and disturbance of tree canopy as a result of development;
- provide for County mitigation when tree canopy is lost or disturbed; and
- establish a fund that the County can spend for tree canopy conservation projects, including plantings of individual trees, groups of trees, or forests, on private and public property.

At the January worksession Executive branch staff presented an overview of Bill 35-12 and the issues it raises, and answered Committee members' questions. (See Executive staff presentation, ©63-96.) The Committee did not take any further action on this Bill at that worksession. At the February worksession, Executive branch staff updated the Committee on discussions they have had with various stakeholders on key issues. At the April worksession Committee members requested more data from Executive staff on tree preservation programs in other comparable jurisdictions. DEP staff presented that data at the June worksession (see ©162-174).

Circle numbers from 29-198 may be cited in this memo but with minor exceptions are not included in it. They are included in the February 25, April 1, and June 24 Committee packets, which Committee members should bring to this worksession. This was done to save a few trees.

Committee Recommendations To Date

At its April 1 worksession, the Committee made the following recommendations:

- exempt the Parks Department from Bill 35-12;
- do not exclude quarry operations from Bill 35-12 (the Bill would already exempt non-coal surface mining conducted in accordance with applicable state law);
- verify that agricultural activity is not subject to Bill 35-12 (Executive staff continue to affirm that agricultural activities are not subject to the bill because they do not normally require a sediment control permit); and
- grandfather existing projects (see Executive staff language below).

Remaining Issues for Committee Discussion

1) How do other jurisdictions handle tree canopy protections? At previous worksessions, Committee members asked Executive staff to research other jurisdictions that have tree canopy laws and compare them to Bill 35-12. The initial response from DEP staff before the April 1 worksession is on ©146-158. As DEP staff noted when it transmitted this material:

This was not any easy task due to the wide variability and complexity of laws in other jurisdictions (imagine someone trying to interpret our Forest Conservation Law, which still sometimes confuses County staff). However, we hope this gives an indication that (1) other jurisdictions have enacted tree protection programs and (2) the approach to doing this varies greatly.

DEP staff also transmitted a USDA Forest Service Study on urban tree canopy retention (see ©136-145). DEP staff noted that:

This study analyzed the recent change in the urban tree canopy in 20 jurisdictions across the country. Clearly, some of the results of this study would not be applicable to more rural areas of the County, but I think it is applicable in the more urbanized areas (which are increasing). The conclusion notes “Despite various and likely limited tree planting and protection campaigns, tree cover tends to be on the decline in U.S. cities while impervious cover is on the increase. While these individual campaigns are helping to increase or reduce the loss of urban tree cover, more widespread, comprehensive and integrated programs that focus on sustaining overall tree canopy may be needed to help reverse the trend of declining tree cover in cities.”

More recently, DEP transmitted information on several comparable jurisdictions (see ©162-181), showing that fees charged elsewhere would substantially exceed those proposed in this Bill.

2) Is the fee-based approach outlined in Bill 35-12 a good way to protect and manage the County’s tree canopy? Many organizations and speakers questioned different aspects of the approach in Bill 35-12. For instance, Renewing Montgomery argued that if the County’s goal is

to retain tree canopy, the law should apply to all property owners, regardless of whether they need a sediment control permit.

Committee members may wish to discuss the following questions about the Bill's scope and approach with Executive staff and other stakeholders:

- Proposed §55-9(a) (see ©12, lines 279-283) provides that the Bill's objective is to retain existing trees and that "every reasonable effort should be made to minimize the cutting or clearing of trees and other woody plants..." Is this language intended to be a general policy goal, or instead to function as a substantive regulatory standard? We believe this language, if not entirely hortatory, is at best a broad policy goal.
- Why does Bill 35-12 apply only to properties that must obtain a sediment control permit? Why not apply the Bill to all properties? Or trigger the restrictions after a particular amount of tree canopy is disturbed?
- As essentially a fee-based approach, Bill 35-12 would not require replacing any tree canopy where it is removed (i.e., the bill does not require on-site replacement when possible). Should it? For one option to require replanting, see the Renewing Montgomery proposal discussed on page 6 of this memo.
- How would this Bill overlap the forest conservation law? Will most properties that are subject to the forest conservation law also be subject to the tree canopy law? Should properties subject to the forest conservation law be exempt from the tree canopy law? The Maryland National Capital Building Industry Association (BIA) and attorney Timothy Dugan argued that properties that are subject to the forest conservation law should not be subject to a tree canopy law. Effectively they are not; under ©12-13, lines 291-294, any disturbance in a tree canopy that is identified as part of a forest in a natural resources inventory/forest stand delineation and subject to a forest conservation plan would not have to pay mitigation fees.
- Much of the Bill's content seems to assume a more direct regulatory approach than a simple fee requirement, and in Council staff's view would not be necessary if the only action needed to comply with this Bill will be to submit limits of disturbance information and pay the fee that is calculated accordingly. For example, on ©13-17, lines 296-342 and 346-387 appear superfluous. The Planning Board suggested an amendment to clarify the respective Board and DPS role in enforcement (see ©37 and 233); **Council staff recommends this amendment** if the enforcement provisions remain in the Bill.

3) Should Bill 35-12 set canopy goals? Many organizations, including Conservation Montgomery and West Montgomery County Citizens Association, urged that Bill 35-12 be amended to include specific tree canopy goals. Some individuals suggested establishing a no-net loss tree canopy goal; other organizations suggested setting a countywide goal of 55%, with a minimum goal of 40% in all areas evaluated in a county tree canopy assessment. The Bill does neither.

4) Should the Parks Department be exempt? The County Planning Board and many environmental organizations expressed concern that Bill 35-12 would cover the Parks Department in its requirements. As Board Chair Carrier noted in her letter on ©31-32, many park capital projects involve work under tree canopy and the Department strives to avoid,

minimize, and mitigate the negative effects of park projects on native tree canopy. At the February 25 worksession, Executive staff noted that although they were willing to amend Bill 35-12 to assure that the fee the Parks Department pays would be directed back to the Parks system, they concluded that the Parks Department should not be exempt entirely from the bill. **Committee recommendation: exempt the County Parks Department from this Bill.**

5) What other exemptions (if any) should be allowed? Several organizations or individuals requested exemptions from the fee requirement:

- As drafted, Bill 35-12 would exempt any tree nursery activity performed with an approved Soil Conservation and Water Quality Plan (see ©6, line 121-123). The Soil Conservation District and the Agricultural Advisory Committee would broaden this exemption to include any agricultural or conservation activity performed with an approved Soil Conservation and Water Quality Plan (see ©112-115). Because agricultural activities are normally not required to apply for a sediment control permit, we concur with Executive branch staff that this exemption would be unnecessary.
- Bill 35-12 would exempt any non-coal surface mining conducted in accordance with applicable state law (see ©7, lines 149-150). Tri-State Stone and Building Supply requested the Council to amend the law to specifically exclude quarry operations (see letter from Linowes and Blocher, ©119-121). We see no reason to do so; a quarry normally would have little tree cover, but if it does the requirements should apply.

Committee recommendation: do not adopt either amendment.

- Pepco (see Pasternak email, ©183) asked for an amendment, similar to language in the redraft of Bill 41-12, to clarify that utility vegetation management activities are not subject to this Bill. While Council staff concurs with Executive branch staff that those activities likely would not be covered by this Bill because, among other reasons, those activities don't require a sediment control permit, we agree with Pepco that inserting language similar to that in lines 100-106 of draft 16 of Bill 41-12 on line 136 of this Bill would avoid negative implications and make that result certain.
- BIA requested that Bill 35-12 exempt lots covered by the Forest Conservation Law in order to "avoid double indemnity" and promote tree conservation. BIA stated that a property owner may have a disincentive to planting trees on potential lots because they would not be given any credit for those trees and the subsequent lot owner would still be required to plant trees on their lot in spite of the compliance with the Forest Conservation Law. Council staff notes that while both 35-12 and the Forest Conservation law currently would both apply to a given lot, the trees on the lot are not governed by both. Under Bill 35-12, canopy that is subject to a forest conservation plan is not subject to mitigation fees (©211, lines 301-305).

6) What is the appropriate mitigation fee level? Bill 35-12 would require the payment of a mitigation fee set by Method 3 regulation. The fee would not apply to the first 5% of the tree canopy disturbed and, as already mentioned, would not apply to canopy that is subject to forest conservation law restrictions. Some environmental groups, including Conservation Montgomery, urged DEP to set a fee that is high enough to provide incentives to save trees or cover the cost of replacement trees. The Planning Board was concerned that Bill 35-12 does not set a specific mitigation rate.

When Committee members pressed Executive staff for proposed fee levels, DEP staff submitted a fee scale based on the forest conservation law's fee-in-lieu payment (\$1.05/square foot at 40,000 square feet) (see ©128-135). To show how the fee is calculated on sample sites, DEP submitted a Powerpoint presentation (see ©184-198).

Committee members expressed an intent to insert whatever fee level that is approved into the law, at least as the initial fee, possibly subject to revision through a regulation that the Council would have to approve (not a Method 3 regulation, as the Bill proposed). In the worksessions so far, Committee members have not discussed in detail what fee levels are appropriate.

Bill 35-12 would set a fee based on the amount of tree canopy within the limits of disturbance, regardless of how much if any canopy is actually removed. Should the fee structure instead be measured by how much canopy would be removed?

7) *What mitigation credits should be allowed?* Some environmental organizations and building community representatives seem to agree in theory regarding credits for on-site planting. Conservation Montgomery recommended a 25% canopy fee credit for trees replanted on site (the higher the fee, the higher the level of credit that should be allowed) and a tree protection credit for unusual efforts to save trees on site. Larry Cafritz, a custom builder, said that there should be an appreciable credit for homeowners to replant onsite. The Planning Board argued for a credit for protecting individual trees and their critical root zone and for replanting on site. Additionally, BIA expressed concerns that Bill 35-12 does not include a credit for stormwater management structures that builders are now required to install on lots to capture stormwater, which can require some trees to be removed.

Just before the April worksession, DEP staff submitted an outline of a potential credit program for tree protection and tree planting (see ©159-161). Much of the detail in this proposal could be contained in the implementing regulation, but the basic thrust and the minimum or maximum credits would need to be inserted into the Bill. Executive staff later submitted amendments to do that (see ©199-218, especially ©211-212).

8) *Should the uses of the Tree Conservation Fund be restricted?* Environmental and builder representatives raised concerns about the Tree Conservation Fund. Conservation Montgomery and Ashton Manor Environmental urged that the Bill be amended to assure that the fund is not used for salaries and other administrative expenses. In Council staff's view, this can be regulated through the operating budget process; if too much of the Fund turns out to be used for less important purposes, the annual operating budget resolution can include appropriate restrictions.

9) *Which if any projects should be grandfathered?* Both attorney Timothy Dugan and Larry Cafritz requested that Bill 35-12 grandfather existing projects. The Bill does not specifically provide when it would take effect or how it would apply to projects that filed applications for sediment control permits or forest conservation law approvals before the Bill takes effect.

Executive branch staff proposed a relatively narrow transition clause, which Council staff would redraft as follows:

Sec. 2. Transition. This Act does not apply to any lot where a sediment control permit or final forest conservation plan, or an exemption from submitting a forest conservation plan, was approved before March 1, 2014, unless the property owner later submits an application to the Planning Director to amend the approved final forest conservation plan.

Building industry representatives prefer a transition clause which exempts any lot where an application for a building permit, sediment control permit, or forest conservation plan was submitted before that date.

Executive redraft/Renewing Montgomery option

After the June 24 worksession, Executive staff submitted a redraft which incorporates their proposed fee schedule and broad authorization for onsite tree planting and protection. (See ©199-218, especially ©211-212.) Otherwise, this redraft is essentially identical to Bill 35-12 as introduced.

Renewing Montgomery proposal As an alternative to the fee and credit structure that DEP advocates, a group of small builders, Renewing Montgomery, proposed an **option for smaller lots (smaller than 20,00 square feet)** that in their view would be less expensive, fairer, less subject to administrative discretion, and result in more trees being replanted onsite. For the RM option, see ©219-225. BIA endorsed their approach (see BIA letter, ©226.)

Essentially Renewing Montgomery would allow, at the owner/builder's option, the applicant to commit to plant a certain number of trees onsite, regardless of whether any trees were previously there or were removed. The applicant would have the option to pay a set in-lieu fee, somewhat lower than DEP proposed, that would be based on the cost to plant a replacement tree. Proceeds from that fee (as with the fee proposed under this Bill) would be used to plant trees somewhere in the County. Renewing Montgomery's formula for trees on-site and in-lieu fees is shown on ©221, and site-specific examples are shown on ©222-225. RM's option has not yet been drafted as an amendment to Bill 35-12.

Since the June 24 worksession, Renewing Montgomery representatives and DEP staff met and maintained a dialogue about the RM proposal. This dialogue is shown in the messages and letters on ©227-232. In its notes of a June 27 meeting (see ©232), DEP staff conceded that RM's option could be a "potentially workable alternative" if the required number of trees to be planted on a specific-sized lot were increased to account for the mortality rates of newly-planted trees.

Variations on RM's option could include:

- requiring a certain minimum number of shade trees (say half of those proposed) to be planted onsite in all cases unless in its plan review the Department of Permitting Services (DPS) finds that exceptional circumstances make planting the required trees onsite infeasible; and/or

- limiting the use of this option to lots where application of state and County stormwater management requirements results in the loss of all or most trees, as Renewing Montgomery argues is often the case.

If planting trees onsite is allowed as an alternative to a mitigation fee, in our view a builder's warranty of at least 2 years should be required for each tree planted.

This packet contains:	<u>Circle #</u>
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Bill No. 35-12
Concerning: Trees - Tree Canopy Conservation
Revised: 6-29-13 Draft No. 2
Introduced: November 27, 2012
Expires: May 27, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- (2) maximize tree canopy retention and establishment;
- (3) establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development;
- (4) provide for mitigation when tree canopy is lost or disturbed;
- (5) establish a fund for tree canopy conservation projects, including plantings of individual trees, groups of trees, or forests, on private and public property; and
- (6) generally revise County law regarding tree canopy conservation.

By adding

Montgomery County Code
Chapter 55, Tree Canopy Conservation
Sections 55-1, 55-2, 55-3, 55-4, 55-5, 55-6, 55-7, 55-8, 55-9, 55-10, 55-11, 55-12, 55-13 and 55-14.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 55 is added as follows:**

2 **Article 1. Purpose and General Provisions.**

3 **55-1. Short title.**

4 This Chapter may be cited as the Montgomery County Tree Canopy
5 Conservation Law.

6 **55-2. Findings and purpose.**

7 (a) Findings. The County Council finds that trees and tree canopy
8 constitute important natural resources. Trees filter groundwater,
9 reduce surface runoff, help alleviate flooding, and supply necessary
10 habitat for wildlife. They cleanse the air, offset the heat island effects
11 of urban development, and reduce energy needs. They improve the
12 quality of life in communities by providing for recreation,
13 compatibility between different land uses, and aesthetic appeal. The
14 Council finds that tree and tree canopy loss as a result of development
15 and other land disturbing activities is a serious problem in the County.

16 (b) Purpose. The purposes of this Chapter are to:

- 17 (1) save, maintain, and establish tree canopy for the benefit of
18 County residents and future generations;
19 (2) maximize tree canopy retention and establishment;
20 (3) establish procedures, standards, and requirements to minimize
21 the loss and disturbance of tree canopy as a result of
22 development;
23 (4) provide for mitigation when tree canopy is lost or disturbed;
24 and
25 (5) establish a fund for tree canopy conservation projects, including
26 plantings of individual trees, groups of trees, or forests, on

27 private and public property.

28 **55-3. Definitions.**

29 In this Chapter, the following terms have the meanings indicated:

30 **Critical Root Zone** means the minimum area beneath a tree. The critical
31 root zone is typically represented by a concentric circle centering on the tree
32 trunk with a radius equal in feet to 1.5 times the number of inches of the
33 trunk diameter.

34 **Development plan** means a plan or an amendment to a plan approved under
35 Division 59-D-1 of Chapter 59.

36 **Director of Environmental Protection** means the Director of the
37 Department of Environmental Protection or the Director's designee.

38 **Director of Permitting Services** means the Director of the Department of
39 Permitting Services or the Director's designee.

40 **Forest conservation plan** means a plan approved under Chapter 22A.

41 **Forest stand delineation** means the collection and presentation of data on
42 the existing vegetation on a site proposed for development or land disturbing
43 activities.

44 **Land disturbing activity** means any earth movement or land change which
45 may result in soil erosion from water or wind or the movement of sediment
46 into County waters or onto County lands, including tilling, clearing, grading,
47 excavating, stripping, stockpiling, filling, and related activities, and covering
48 land with an impermeable material.

49 **Limits of disturbance** means a clearly designated area in which land
50 disturbance is planned to occur.

51 **Limits of tree canopy disturbance** means all areas within the limits of
52 disturbance where tree canopy or forest exists.

53 Lot means a tract of land, the boundaries of which have been established by
 54 subdivision of a larger parcel, and which will not be the subject of further
 55 subdivision, as defined by Section 50-1, without an approved forest stand
 56 delineation and forest conservation plan.

57 **Mandatory referral** means the required review by the Planning Board of
 58 projects or activities to be undertaken by government agencies or private and
 59 public utilities under Section 20-302 of the Land Use Article of the
 60 Maryland Code.

61 **Natural resources inventory** means a collection and presentation of data on
 62 the existing natural and environmental information on a site and the
 63 surrounding area proposed for development and land disturbing activities.

64 **Person** means:

65 (a) To the extent allowed by law, any agency or instrument of the federal
 66 government, the state, any county, municipality, or other political
 67 subdivision of the state, or any of their units;

68 (b) An individual, receiver, trustee, guardian, executor, administrator,
 69 fiduciary, or representative of any kind;

70 (c) Any partnership, firm, common ownership community or other
 71 homeowners' association, public or private corporation, or any of their
 72 affiliates or subsidiaries; or

73 (d) Any other entity.

74 **Planning Board** means the Montgomery County Planning Board of the
 75 Maryland-National Capital Park and Planning Commission, or the Planning
 76 Board's designee.

77 **Planning Director** means the Director of the Montgomery County Planning
 78 Department or the Director's designee.

79 **Preliminary plan of subdivision** means a plan for a proposed subdivision
80 or resubdivision prepared and submitted for approval by the Planning Board
81 under Chapter 50 before preparation of a subdivision plat.

82 **Project plan** means a plan or an amendment to a plan approved under
83 Division 59-D-2 of Chapter 59.

84 **Public utility** means any water company, sewage disposal company, electric
85 company, gas company, telephone company, or cable service provider.

86 **Qualified professional** means a licensed forester, licensed landscape
87 architect, or other qualified professional who meets all of the requirements
88 under Section 08.19.06.01A of the Code of Maryland Regulations or any
89 successor regulation.

90 **Retention** means the deliberate holding and protecting of existing trees and
91 forests on the site.

92 **Sediment control permit** means a permit required to be obtained for certain
93 land disturbing activities under Chapter 19.

94 **Site** means any tract, lot, or parcel of land, or combination of tracts, lots, or
95 parcels of land, under a single ownership, or contiguous and under diverse
96 ownership, where development is performed as part of a unit, subdivision, or
97 project.

98 **Site plan** means a plan or an amendment to a plan approved under Division
99 59-D-3 of Chapter 59.

100 **Special exception** means a use approved under Article 59-G of Chapter 59.

101 **Subwatershed** means the total drainage area contributing runoff to a single
102 point, and generally refers to the 8-digit hydrologic unit codes.

103 **Technical Manual** means a detailed guidance document adopted under
104 Section 55-13 and used to administer this Chapter.

105 Tree means a large, woody plant having one or several self-supporting
 106 stems or trunks and numerous branches that can grow to a height of at least
 107 20 feet at maturity. Tree includes the critical root zone.

108 Tree canopy means the area of one or many crowns of the trees on a site
 109 including trees in forested areas.

110 Tree Canopy Conservation Fund means a special fund maintained by the
 111 County to be used as specified in Section 55-14.

112 Tree canopy cover means the combined area of the crowns of all trees on the
 113 site, including trees in forested areas.

114 Tree canopy cover layer means the Geographic Information System (GIS)
 115 layer, or shape file, that contains polygons outlining the aerial extent of tree
 116 canopy in the County or any portion of the County.

117 **55-4. Applicability.**

118 Except as otherwise provided under Section 55-5, this Chapter applies to any
 119 person required by law to obtain a sediment control permit.

120 **55-5. Exemptions.**

121 This Chapter does not apply to:

122 (a) any tree nursery activity performed with an approved Soil Conservation
 123 and Water Quality Plan as defined in Section 19-48;

124 (b) any commercial logging or timber harvesting operation with an
 125 approved exemption from the requirements under Article II of Chapter
 126 22A;

127 (c) cutting or clearing trees in a public utility right-of-way for the
 128 construction or modification of electric generation facilities approved
 129 under the Maryland Code Public Utilities Article if:

130 (1) the person cutting or clearing the trees has obtained a certificate
 131 of public convenience and necessity required under Sections 7-

- 132 207 and 7-208 of the Public Utilities Article; and
- 133 (2) the cutting or clearing of forest or tree canopy is conducted so as
- 134 to minimize the loss of both;
- 135 (d) routine maintenance or emergency repairs of any facility located in
- 136 public utility rights-of-way;
- 137 (e) routine or emergency maintenance of an existing stormwater
- 138 management facility, including an existing access road, if the person
- 139 performing the maintenance has obtained all required permits;
- 140 (f) any stream restoration project if the person performing the work has
- 141 obtained all necessary permits;
- 142 (g) the cutting or clearing any tree by an existing airport currently operating
- 143 with all applicable permits to comply with applicable provisions of any
- 144 federal law or regulation governing the obstruction of navigable
- 145 airspace if the Federal Aviation Administration has determined that the
- 146 trees create a hazard to aviation;
- 147 (h) cutting or clearing any tree to comply with applicable provisions of any
- 148 federal, state, or local law governing the safety of dams; or
- 149 (i) any non-coal surface mining conducted in accordance with applicable
- 150 state law.

151 **Article 2. Tree Canopy Conservation Requirements, Procedures, and**

152 **Approvals.**

153 **55-6. Tree Canopy – General.**

- 154 (a) Submissions. A person that is subject to this Chapter must submit to
- 155 either the Director of Permitting Services or the Planning Director the
- 156 following information on the amount of disturbance of tree canopy.
- 157 (1) Any person required by law to obtain a sediment control permit
- 158 for land disturbing activity that is not subject to Chapter 22A

159 must submit a limits of tree canopy disturbance concurrently with
160 the sediment control permit application to the Director of
161 Permitting Services under Section 55-7.

162 (2) Any person engaging in activity that is subject to Chapter 22A
163 must submit a limits of tree canopy disturbance concurrently with
164 any other plan required under Chapter 22A to the Planning
165 Director under Section 55-8.

166 (b) Timing of submissions. The person must submit the limits of tree
167 canopy disturbance for review in conjunction with the review process
168 for a sediment control permit, forest conservation plan, development
169 plan, project plan, preliminary plan of subdivision, site plan, special
170 exception, or mandatory referral. If a natural resources inventory/forest
171 stand delineation is required, the person must include the aerial extent of
172 the tree canopy with the natural resources inventory/forest stand
173 delineation as specified in Section 22A-10.

174 (c) Incomplete submissions. The Director of Permitting Services or the
175 Planning Director must not approve an incomplete submission.

176 (d) Review of submissions. Each submission required under this Chapter
177 must be reviewed concurrently with the review of any submission
178 required under Article I of Chapter 19 or Chapter 22A.

179 (e) Coordination of review. The Director of Permitting Services and the
180 Planning Director may coordinate the review of any information
181 submitted under subsection (a) with other agencies as appropriate. The
182 reviews may be performed concurrently, and in accordance with, any
183 review coordination required under Chapter 19 or Chapter 22A.

184 (f) Time frame of validity. An approved limits of tree canopy disturbance
185 submission remains valid for:

- 186 (1) not more than 2 years unless the Planning Director has approved
- 187 either a final forest conservation plan or preliminary forest
- 188 conservation plan that includes the limits of tree canopy
- 189 disturbance;
- 190 (2) not more than 2 years unless a sediment control permit has been
- 191 issued by the Director of Permitting Services and remains valid;
- 192 or
- 193 (3) 5 years if the accuracy of the limits of tree canopy disturbance
- 194 has been verified by a qualified professional.

195 (g) *Issuance of sediment control permit.* The Director of Permitting
 196 Services must not issue a sediment control permit to a person that is
 197 required to comply with this Article until:

- 198 (1) the Planning Board or Planning Director, as appropriate, or the
- 199 Director of Permitting Services has approved an applicant's
- 200 limits of disturbance; and
- 201 (2) the applicant pays any fee required under this Article.

202 **55-7. [[Tree Canopy –] Submissions to the Director of Permitting Services.**

203 (a) *General.* The limits of tree canopy disturbance information submitted to
 204 the Director of Permitting Services must document the extent of the
 205 existing area of tree canopy and the total area of tree canopy to be
 206 disturbed by the proposed activity.

207 (b) *Incorporation of limits of tree canopy disturbance.* The limits of tree
 208 canopy disturbance information for the subject property must be
 209 incorporated in a sediment control permit or the site plan submitted for a
 210 building permit.

211 (c) *The limits of tree canopy disturbance.* The limits of tree canopy
 212 disturbance information for the subject site must include:

- 213 (1) a map delineating:
- 214 (A) the property boundaries;
- 215 (B) the proposed limits of disturbance including any off-site
- 216 areas;
- 217 (C) the aerial extent of existing tree canopy cover on the
- 218 subject site, up to 45 feet beyond the proposed limits of
- 219 disturbance;
- 220 (D) the intersection of aerial extent of existing tree canopy
- 221 cover and the limits of disturbance; [[and]]
- 222 (E) any [[additional information specified by regulation]] area
- 223 of canopy protected; and
- 224 (F) any surface area associated with tree planting;
- 225 (2) a table summarizing the square footage of:
- 226 (A) the property;
- 227 (B) the limits of disturbance of the proposed activity;
- 228 (C) the aerial extent of existing tree canopy cover;
- 229 (D) the limits of tree canopy disturbance; [[and]]
- 230 [[E]](F) the area of canopy protected by tree save measures;
- 231 (G) the surface area associated with tree planting;
- 232 (3) any plans, prepared by a qualified professional, for on-site
- 233 mitigation in the form of tree planting or proposed measures to
- 234 protect the remaining trees; and
- 235 (4) any additional information specified by regulation.
- 236 (d) Modification to limits of tree canopy disturbance. The Director of
- 237 Permitting Services may approve a modification to an approved limits
- 238 of tree canopy disturbance if:

239 (1) the modification is consistent with this Chapter, field inspections
 240 or other evaluations reveal minor inadequacies of the plan, and
 241 modifying the plan to remedy the inadequacies will not increase
 242 the amount of tree canopy removed as shown on the final
 243 approved plan; or

244 (2) the action is otherwise required in an emergency.

245 (e) Qualification of preparer. If a tree canopy cover layer developed by the
 246 County is available and is used without alteration, a professional
 247 engineer, land surveyor, architect, or other person qualified to prepare
 248 erosion and sediment control plans under Chapter 19 is also qualified to
 249 prepare the limits of tree canopy disturbance information under this
 250 Section. Otherwise, the limits of tree canopy disturbance information
 251 must be prepared by a qualified professional as defined in Section
 252 08.19.06.01 of the Code of Maryland Regulations or any successor
 253 regulation.

254 **55-8. [[Tree Canopy – Submission]] Submissions to the Planning Director.**

255 (a) General. The limits of tree canopy disturbance information submitted
 256 to the Planning Director must document the extent of existing tree
 257 canopy and the total area of tree canopy to be disturbed by the proposed
 258 activity. The Planning Director may use the information to identify the
 259 most suitable and practical areas for tree conservation and mitigation.

260 (b) Limits of tree canopy disturbance. A person that is subject to this
 261 Section must submit the same limits of tree canopy disturbance
 262 information as required under Section 55-7.

263 (c) Incorporation of the limits of tree canopy, the natural resources
 264 inventory/forest stand delineation, and forest conservation plan. If an
 265 applicant is required to submit a natural resources inventory/forest stand

266 delineation, the extent of tree canopy must be incorporated into that
 267 submission for the same area included in the natural resources
 268 inventory/forest stand delineation. If an applicant is required to submit
 269 a forest conservation plan, both the extent of tree canopy and the limits
 270 of tree canopy disturbance must be incorporated into that submission for
 271 the same area included in the forest conservation plan.

272 (d) Modification to limits of tree canopy disturbance. The Planning
 273 Director may approve a modification to an approved limits of tree
 274 canopy disturbance that is consistent with this Chapter if:

275 (1) field inspection or other evaluation reveals minor inadequacies of
 276 the plan, and modifying the plan to remedy those inadequacies
 277 will not increase the amount of tree canopy removed as shown on
 278 the final approved plan; or

279 (2) the action is required because of an emergency.

280 (e) Submission for special exception. If a special exception application is
 281 subject to this Chapter, the applicant must submit to the Planning Board
 282 any information necessary to satisfy the requirements of this Chapter
 283 before the Board of Appeals considers the application for the special
 284 exception.

285 **55-9. Tree Canopy [(- Fee to Mitigate)] Disturbance Mitigation – Fees and**
 286 **Credits.**

287 (a) Objectives. The primary objective of this Section is the retention of
 288 existing trees. Every reasonable effort should be made to minimize the
 289 cutting or clearing of trees and other woody plants during the
 290 development of a subdivision plan, grading and sediment control
 291 activities, and implementation of the forest conservation plan.

292 (b) Fees paid for mitigation. [[Mitigation required to compensate for the]]
 293 The loss of, or disturbance to, tree canopy must [[take]] be mitigated
 294 through a fee calculated according to the square footage of tree canopy
 295 inside the [[form of fees set by regulation under Method 3]] limit of
 296 disturbance, which the applicant pays to the Tree Canopy Conservation
 297 Fund. [[Mitigation fees are based on the square footage of tree canopy
 298 disturbed and, therefore, increase as the amount of tree canopy
 299 disturbance increases. To provide credit for on-site landscaping,
 300 mitigation fees must not be applied to the first 5 percent of the area of
 301 tree canopy disturbed.]] Canopy identified as part of any forest or
 302 individual trees delineated in an approved natural resources
 303 inventory/forest stand delineation and subject to a forest conservation
 304 plan [[is]] are not subject to mitigation fees under this [[Chapter]]
 305 Section. Until modified or superseded by regulation under Method 3,
 306 the schedule of fees authorized under this Section is:

<u>Incremental Area (sq. ft.)</u>		<u>Incremental</u>
<u>From</u>	<u>To</u>	<u>Fee (\$/sq.</u>
		<u>ft.)</u>
<u>0</u>	<u>2,000</u>	<u>\$0.25</u>
<u>2,001</u>	<u>4,000</u>	<u>\$0.35</u>
<u>4,001</u>	<u>6,000</u>	<u>\$0.45</u>
<u>6,001</u>	<u>8,000</u>	<u>\$0.55</u>
<u>8,001</u>	<u>10,000</u>	<u>\$0.65</u>
<u>10,001</u>	<u>15,000</u>	<u>\$0.75</u>
<u>15,001</u>	<u>20,000</u>	<u>\$0.85</u>
<u>20,001</u>	<u>30,000</u>	<u>\$0.95</u>
<u>30,001</u>	<u>40,000</u>	<u>\$1.05</u>
<u>40,001</u>	<u>55,000</u>	<u>\$1.15</u>
<u>55,001</u>	<u>70,000</u>	<u>\$1.25</u>
<u>70,001</u>	<u>and above</u>	<u>\$1.35</u>

307 (c) Credits for on-site mitigation. The Director of Permitting Services or
 308 the Planning Director must credit an applicant that mitigates the loss of,

309 or disturbance to, tree canopy through on-site tree planting or by
 310 protecting trees existing on the property. For each tree planted, the
 311 credit is equal to 25 percent of the assumed area of a crown at 20-years
 312 for different categories of trees if the minimum area of open soil surface
 313 exists as shown in following table. For tree protection, the credit is
 314 equal to the area of canopy protected by approved measures.

<u>Category of Tree Size</u>	<u>Assumed Area of Canopy at 20-yrs (ft²)</u>	<u>Minimum Open Soil Surface Area (ft²)</u>
<u>Small</u>	<u>400</u>	<u>100</u>
<u>Medium</u>	<u>800</u>	<u>200</u>
<u>Large</u>	<u>1,600</u>	<u>400</u>

315 **Article 3. Enforcement and Appeals.**

316 **55-10. Inspections and notification.**

- 317 (a) Permission to gain access. The Director of Permitting Services or the
 318 Planning Director may enter any property subject to this Chapter to
 319 inspect, review, and enforce.
- 320 (b) Plan to be on site; field markings. A copy of the approved limits of
 321 tree canopy disturbance must be available on the site for inspection by
 322 the Director of Permitting Services or the Planning Director. Field
 323 markings must exist on site before and during installation of all tree
 324 protection measures, sediment and erosion control measures,
 325 construction, or other land disturbing activities.
- 326 (c) Inspections.
- 327 (1) The Director of Permitting Services must conduct field
 328 inspections concurrently with inspections required for a
 329 sediment control permit under Article I of Chapter 19 for any
 330 activity subject to Section 55-7.

331 (2) The Planning Director must conduct field inspections
 332 concurrently with inspections required for a forest conservation
 333 plan for any activity subject to Section 55-8.

334 (3) The Director of Permitting Services or the Planning Director
 335 may authorize additional inspections or meetings as necessary
 336 to administer this Chapter.

337 (d) Timing of inspections. The inspections required under this Section
 338 must occur:

339 (1) after the limits of disturbance have been staked and flagged, but
 340 before any clearing or grading begins;

341 (2) after necessary stress reduction measures for trees and roots
 342 have been completed and the protection measures have been
 343 installed, but before any clearing or grading begins; and

344 (3) after all construction activities are completed, to determine the
 345 level of compliance with the limits of tree canopy disturbance.

346 (e) Scheduling requirements. A person must request an inspection by:

347 (1) the Director of Permitting Services within the time required to
 348 schedule an inspection under Section 19-12; or

349 (2) the Planning Director within the time required to schedule an
 350 inspection under Section 22A-15.

351 (f) Coordination. The Department of Permitting Services and the
 352 Planning Department must coordinate their inspections to avoid
 353 inconsistent activities relating to the limits of tree canopy disturbance.

354 **55-11. Penalties and enforcement.**

355 (a) Enforcement authority. The Department of Permitting Services has
 356 enforcement authority for any activity approved under Section 55-7

357 and the Planning Board has enforcement authority for any activity
 358 approved under Section 55-8.

359 (b) Enforcement action. The Director of Permitting Services or the
 360 Planning Director may issue a notice of violation, corrective order,
 361 stop-work order, or civil citation to any person that causes or allows a
 362 violation of this Chapter.

363 (c) Civil penalty. The maximum civil penalty for any violation of this
 364 Chapter or any regulation adopted under this Chapter is \$1,000. Each
 365 day that a violation continues is a separate offense.

366 (d) Other remedy. In addition to any other penalty under this Section, the
 367 Planning Board may seek any appropriate relief authorized under
 368 Section 22A-16.

369 **55-12. Administrative enforcement.**

370 (a) Administrative order. In addition to any other remedy allowed by
 371 law, the Planning Director may at any time, including during the
 372 pendency of an enforcement action under Section 55-11, issue an
 373 administrative order requiring the violator to take one or more of the
 374 following actions within the time specified by the Planning Director:

375 (1) stop the violation;

376 (2) stabilize the site to comply with a forest conservation plan;

377 (3) stop all work at the site;

378 (4) restore or reforest unlawfully cleared areas;

379 (5) submit a limits of tree canopy disturbance, forest conservation
 380 plan, or tree save plan for the net tract area;

381 (6) place forested land, reforested land, or land with individual
 382 significant trees under long-term protection by a conservation

383 easement, deed restriction, covenant, or other appropriate legal
 384 instrument; or

385 (7) submit a written report or plan concerning the violation.

386 (b) Effectiveness of order. An order issued under this Section is effective
 387 when it is served on the violator.

388 Article 4. Administration

389 55-13. General.

390 (a) Regulations. The County Executive must adopt regulations, including
 391 technical manuals, to administer this Chapter, under Method 2. The
 392 regulations must include procedures to amend a limits of tree canopy
 393 disturbance.

394 (b) Technical manual. The technical manual must include guidance and
 395 methodologies for:

396 (1) preparing and evaluating maps of the aerial extent of the tree
 397 canopy and the limits of tree canopy disturbance;

398 (2) providing protective measures during and after clearing or
 399 construction, including root pruning techniques and guidance
 400 on removing trees that are or may become hazardous;

401 (3) monitoring and enforcing the limits of disturbance and the
 402 limits of tree canopy disturbance; and

403 (4) other appropriate guidance for program requirements consistent
 404 with this Chapter and applicable regulations.

405 (c) Administrative fee. The Planning Board and the County Executive
 406 may each, by Method 3 regulation, establish a schedule of fees to
 407 administer this Chapter.

408 (d) Reports. On or before March 1 of each year, the Department of
 409 Permitting Services, the Planning Board, and the Department of

410 Environmental Protection each must submit an annual report on the
 411 County tree conservation program to the County Council and County
 412 Executive.

413 (e) Comprehensive plan for mitigation. The Department of
 414 Environmental Protection must develop and maintain a
 415 comprehensive County-wide plan to mitigate disturbance to tree
 416 canopy. The Department of Environmental Protection should develop
 417 the plan in consultation with the Planning Department, the
 418 Department of Transportation, the Department of General Services,
 419 the Department of Economic Development, the Soil Conservation
 420 District, and other agencies as appropriate.

421 (f) Sediment control permit application. To prevent circumvention of
 422 this Chapter, the Planning Director and the Director of Permitting
 423 Services may require a person to submit an application for a sediment
 424 control permit enforceable under this Chapter if that person:

425 (1) limits the removal of tree canopy or limits land disturbing or
 426 construction activities to below requirements for a sediment
 427 control permit; and

428 (2) later disturbs additional tree canopy or land on the same
 429 property, or by any other means, such that in total, a sediment
 430 control permit would be required.

431 **55-14. Tree Canopy Conservation Fund.**

432 (a) General. There is a County Tree Canopy Conservation Fund. The
 433 Fund must be used in accordance with the adopted County budget and
 434 as provided in this Section.

435 (b) Mitigation fees paid into the Tree Canopy Conservation Fund. Money
 436 deposited in the Tree Canopy Conservation Fund to fulfill mitigation

437 requirements must be spent on establishing and enhancing tree
 438 canopy, including costs directly related to site identification,
 439 acquisition, preparation, and other activities that increase tree canopy,
 440 and must not revert to the General Fund. The Fund may also be spent
 441 on permanent conservation of priority forests, including identification
 442 and acquisition of a site within the same subwatershed where the
 443 disturbance occurs.

444 (c) Fines paid into the Tree Canopy Conservation Fund. Any fines
 445 collected for noncompliance with a limits of tree canopy disturbance
 446 or forest conservation plan related to tree canopy disturbance must be
 447 deposited in a separate account in the Tree Canopy Conservation
 448 Fund. The Fund may be used to administer this Chapter.

449 (d) Use of the Tree Canopy Conservation Fund.

450 (1) Any fees collected for mitigation must be used to:

451 (A) establish tree canopy;

452 (B) enhance existing tree canopy through non-native invasive
 453 and native invasive species management control,
 454 supplemental planting, or a combination of both;

455 (C) establish forest; and

456 (D) acquire protective easements for existing forests or areas
 457 with existing tree canopy that are not currently protected,
 458 including forest mitigation banks approved under Section
 459 22A-13.

460 (2) The canopy established under paragraph (1)(A) should shade
 461 impervious surfaces, manage stormwater runoff, and generally
 462 increase tree canopy coverage. Trees native to the Piedmont area

463 of the County should be used, if feasible, to meet the mitigation
464 requirements of this Chapter.

465 (3) The establishment of tree canopy to satisfy the mitigation
466 requirements of a project must occur in the subwatershed where
467 the project is located. Otherwise the tree canopy may be
468 established anywhere in the County.

469 **Sec. 2. Transition.** This Act does not apply to any person that had an
470 approved sediment control permit before this Act took effect, or to any person that
471 had an approved final forest conservation plan as required under Chapter 22A before
472 this Act took effect unless the property owner submits to the Planning Director an
473 application to amend the approved final forest conservation plan.

474 *Approved:*

475

476

Nancy Navarro, President, County Council Date

477 *Approved:*

478

479

Isiah Leggett, County Executive Date

480 *This is a correct copy of Council action.*

481

482

Linda M. Lauer, Clerk of the Council Date



renewingmontgomery

Tree Canopy Bill 35-12 was introduced without including comments from the building industry so it is flawed beyond the ability to amend it. There has never been any study or data that demonstrates there is a problem that requires legislation. *The most recent MNCPPC study shows our canopy is thriving by any standard.* Why rush to this far reaching legislation that is based on anecdotal evidence. Renewing Montgomery has a better proposal.

Our proposal provides more incentives for the property owner to replant trees on their property and avoids devaluing properties that have trees. In addition our proposal increases the County canopy by requiring replanting even on properties without any trees. *County regulations require the removal of the trees so the focus should be on replanting a renewable resource.* In summary our proposal allows the property owner and their neighbors to benefit from replanting trees, thereby providing an incentive to replant.

The following is a list of the specific improvements our proposal includes:

1. The new trees will be planted where trees are removed and will thrive.
2. The new trees will add value to the property.
3. This alternative will both replace and increase the County tree canopy.
4. The fee in lieu is based on the value of a new tree – not satellite imagery of canopy square footage, which will include invasive species and canopy overhanging from adjacent properties. Basing the fee on the value of a tree will avoid establishing a fee that may be used as a deterrent to home improvements.
5. All properties subject to a sediment control plan will have a tree planting requirement - regardless if there were existing trees.
6. Tree replacement requirements will be based on a chart that accounts for the size of the property to establish a realistic replanting plan.
7. The required trees will be listed on the sediment control plan; therefore they will be bonded and inspected by the County – exactly like the trees planted in the right of way. No additional plans, plan review, or County inspections are needed.
8. We request the Council authorize a County canopy study to identify if there is a problem to address. The new state law requires the state to do a canopy coverage assessment for each county, every 5 years. The state goal is 40%, the current coverage is 50% for Montgomery County. Our County has 20% more canopy coverage than Fairfax County.
9. The County will educate the general public and citizen associations on the benefits of trees. The County will promote the various Tree Planting Tax Incentives that are contained within the new state tree bill before generating new fees, new regulations, and new staff positions.

We oppose this Bill because it will not result in planting trees or increasing the canopy where the trees are removed. Other than a deterrent for home improvements, it is just another fee that is unnecessary since the County already has over 6 million dollars to plant trees. The Bill will require additional engineering and consultant fees both on the private and public side, which will quickly negate any incentive to replant trees. The fee will add no value to the lot and effectively transfers the responsibility for replanting trees from the property owner to the County. The Bill will actually encourage property owners to remove trees to avoid the fee, and the general public will be outraged that the County is now regulating trees on their private property which they planted and maintained.

The advantages of our alternative over the proposed Bill.

1. Trees will be planted where they are removed – not somewhere else.
2. The private sector can plant a tree at a far less cost and faster than the County.
3. Trees will be planted even if no trees are removed thereby increasing the County canopy.
4. Will not regulate trees on private property which has historically been a basic inherent property right.
5. Will not penalize or devalue those who own properties with trees.
6. The new trees will have an immediate impact on those most affected by the removal of trees.
7. There are no fees that may act as a deterrent to home improvements or the removal of hazardous trees.
8. The required plan is simple and inexpensive and does not require additional costs for arborists or engineers.
9. The County has over 6 million dollars for trees. Why essentially tax only those property owners seeking to improve their property. The Bill will not produce much revenue but will act as a deterrent to those who want to improve their property.
10. No additional County staff, satellite overlays, or plans are needed to implement this alternative.
11. Will not penalize property owners for removing invasive species such as bamboo and mulberry trees.
12. Will not penalize or discourage property owners for removing dangerous trees prone to storm damage such as poplars and locust trees.
13. The current source of funding for County-Wide tree planting is appropriately tax revenue generated on a County-Wide basis. This Bill avoids targeting only property owners who remove trees on their private property.
14. A current canopy study will allow the County to evaluate the existing canopy and evaluate the effectiveness of our proposal.
15. Will allow time for community associations to be educated on the benefits of trees, incentives, and to provide input.

Tree Canopy Planting Requirement min 1.5" caliper trees for future canopy goals

19-Jun-13						Optional	SF at Maturity	Canopy	
		Lot Size	Total Trees Rqd	# of Shade	# of Ornamental	Total trees/acre	Fee in Lieu (2)	Canopy Planted (1)	Canopy Coverage (% of Lot)
-	to	6,000	2	1	1	17.4	\$ 400.00	1,900	38%
6,001	to	8,000	3	2	1	18.7	\$ 650.00	3,400	49%
8,001	to	10,000	4	3	1	19.4	\$ 900.00	4,900	54%
10,001	to	12,000	5	3	2	19.8	\$ 1,050.00	5,300	48%
12,001	to	14,000	6	4	2	20.1	\$ 1,300.00	6,800	52%
14,001	to	16,000	7	5	2	20.3	\$ 1,550.00	8,300	55%
16,001	to	20,000	7	5	2	16.9	\$ 1,550.00	8,300	46%

4.9
Avg.

18.9
Avg.

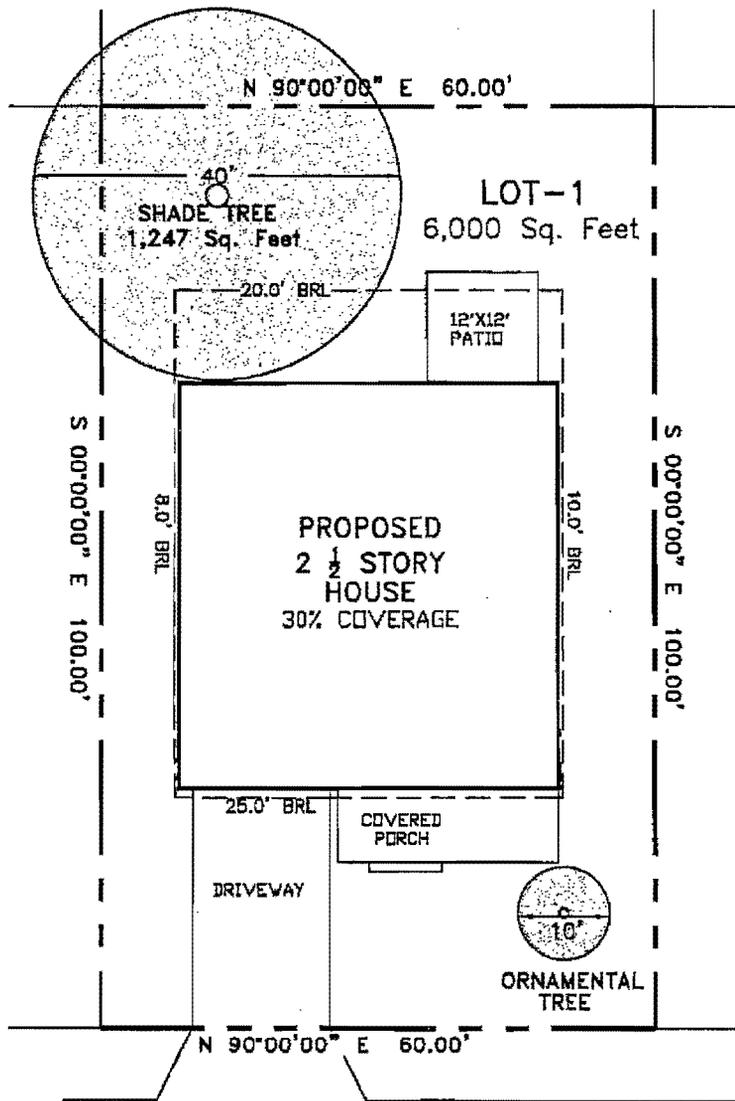
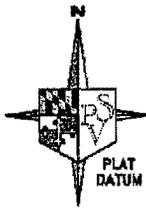
49%
Avg.

1

Canopy Area, Diameter, Radius and Estimated DBH of Tree Trunk					
At Maturity		SF	Diameter	Radius	DBH
Shade Tree	=	1500	43.71	21.86	29
Orn. Tree	=	400	22.57	11.29	15
Athens - Clarke County, Georgia: Mature Tree Canopy Sizes for Trees Growing in Urban Areas					
Very Small Canopy: 150 square feet (approximately 12 x 12 feet)					
Small Canopy: 400 square feet (20 x 20 feet)					
Medium Canopy: 900 square feet (30 x 30 feet)					
Large Canopy: 1600 square feet (40 x 40 feet)					

2

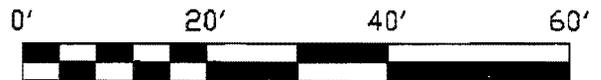
Cost for 1.5" caliper tree: Ornamental is \$150 And Shade is \$250.*
 *Based on Montgomery County DPS Bond Estimate for a Street Tree - see link below
<http://permittingservices.montgomerycountymd.gov/DPS/bond/BondsEstimate.aspx>



-STREET-

ZONING:

- PROPERTY ZONED: R-60
- FRONT YARD: 25.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 18.0'
- REAR YARD: 20.0'
- MAXIMUM COVERAGE: 30%



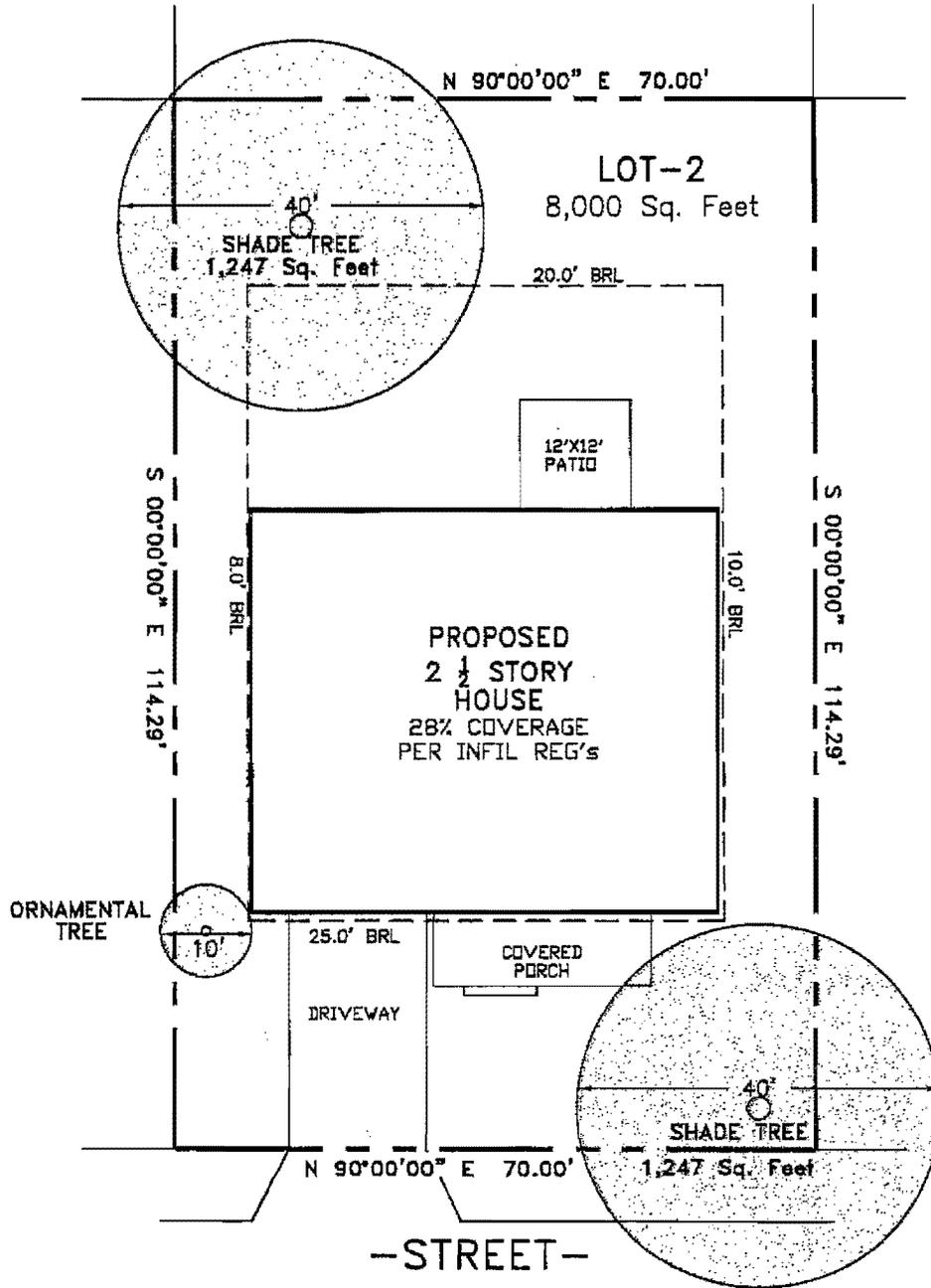
SCALE: 1"=20'



**POTOMAC VALLEY
SURVEYS**
 20010 FISHER AVENUE, SUITE F
 POOLESVILLE, MARYLAND
 1-888-349-5090

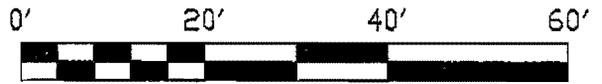
TREE CANOPY
EXHIBIT-1
 R-60 ZONE
 6,000 SQ.FT. LOT

DATE:06-13-13



ZONING:

- PROPERTY ZONED: R-60
- FRONT YARD: 25.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 18.0'
- REAR YARD: 20.0'
- MAXIMUM COVERAGE: 28.0% PER INFILL REG'S



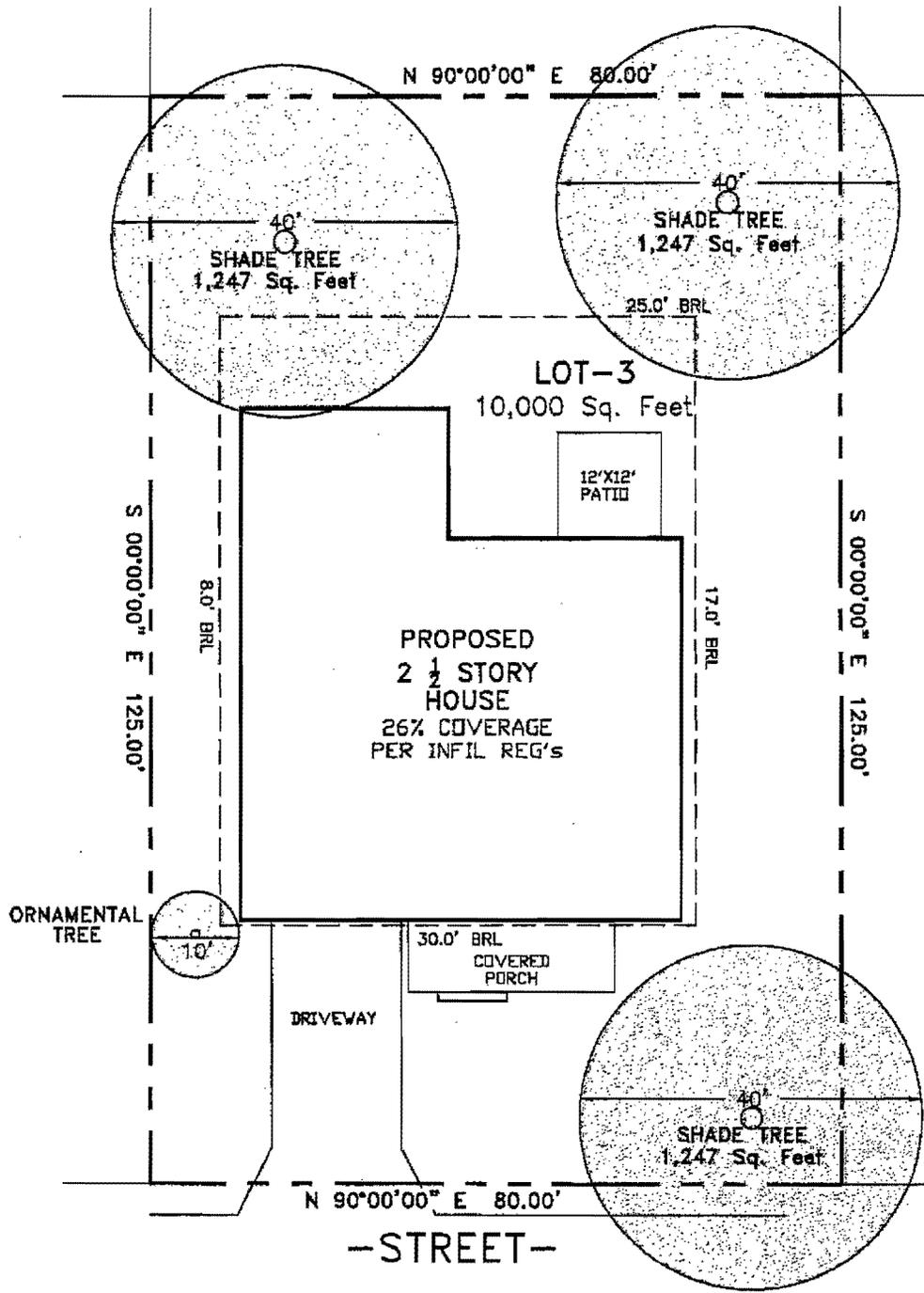
SCALE: 1"=20'



**POTOMAC VALLEY
SURVEYS**
20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

TREE CANOPY
EXHIBIT-2
R-60 ZONE
8,000 SQ.FT. LOT

DATE:06-13-13

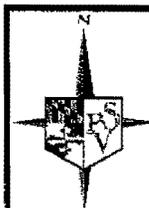


ZONING:

- PROPERTY ZONED: R-90
- FRONT YARD: 30.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 25.0'
- REAR YARD: 25.0'
- MAXIMUM COVERAGE: 26.0% PER INFILL REG'S



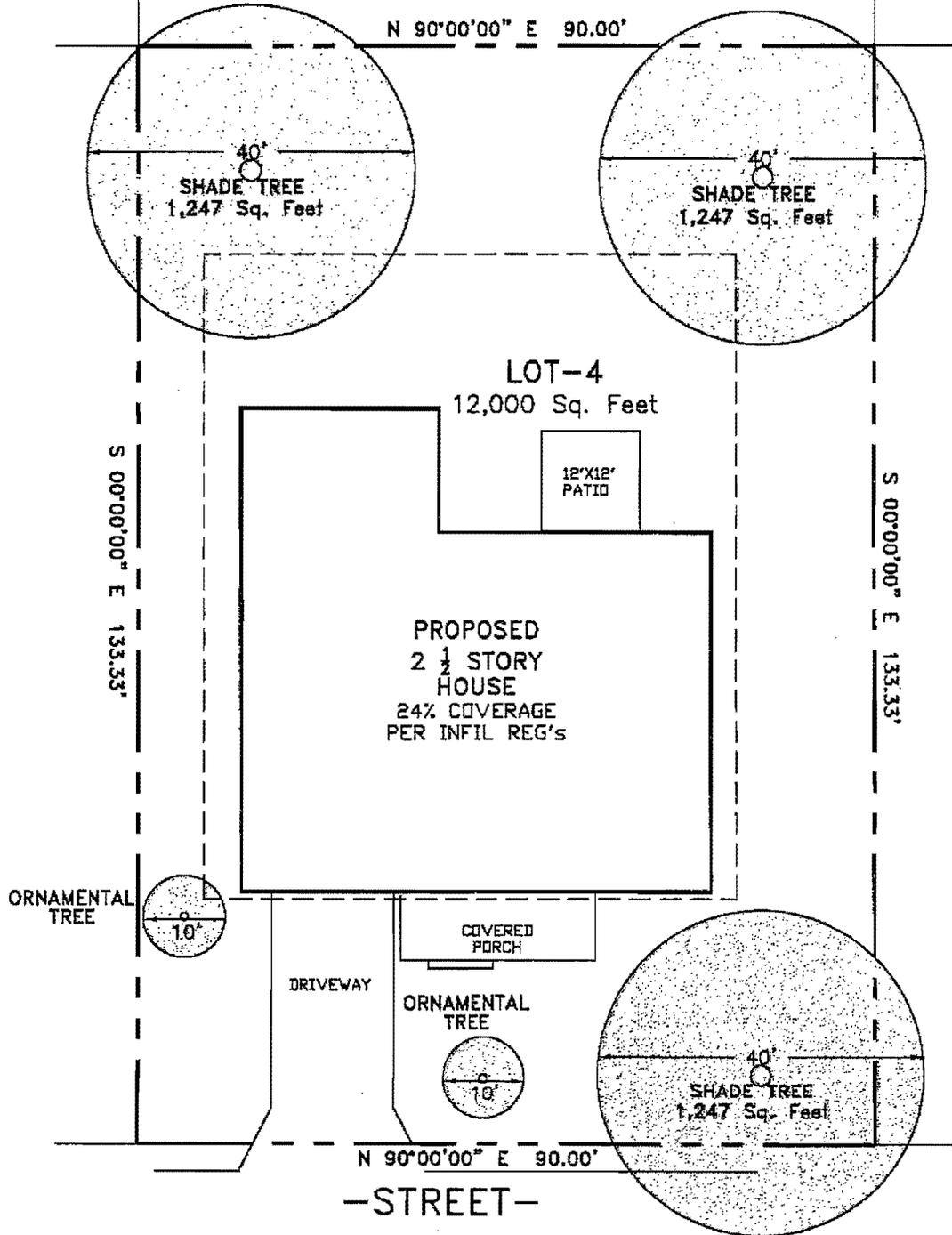
SCALE: 1"=20'



**POTOMAC VALLEY
SURVEYS**
20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

TREE CANOPY
EXHIBIT-3
R-90 ZONE
10,000 SQ.FT. LOT

DATE: 06-13-13

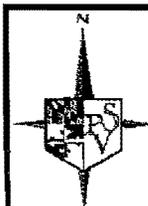


ZONING:

- PROPERTY ZONED: R-90
- FRONT YARD: 30.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 25.0'
- REAR YARD: 25.0'
- MAXIMUM COVERAGE: 24.0% PER INFILL REG'S



SCALE: 1"=20'



POTOMAC VALLEY
SURVEYS
20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

TREE CANOPY
EXHIBIT-4
R-90 ZONE
12,000 SQ.FT. LOT

DATE: 06-13-13

Faden, Michael

From: Robert Kaufman [rkaufman@mncbia.org]
Sent: Thursday, June 20, 2013 10:34 AM
To: Faden, Michael
Cc: Floreen's Office, Councilmember; Riemer's Office, Councilmember; Berliner's Office, Councilmember; larry@cafritzbuilders.com; todd@toddwood.com; Clark Wagner; cw@carterbuildersmd.com; mimibkress@aol.com; Chuck Sullivan
Subject: Tree Canopy Amendments

The Renew Montgomery organization, a separate organization unconnected to MNCBIA, recently submitted a proposal to amend the canopy bill that allows builders an alternative to the canopy calculation and fee recommended by the County Executive. Under their proposal, a property owner will be required to plant a specific number of trees on a lot that is being improved with a sediment control permit based on the size of the lot. The property owner can choose to plant the required number of trees or pay into a fund a fee based on the cost of a tree replacement using DPS calculations. The addition to the sediment control permit will include a bond amount for the tree and will include the cost of the tree in determining the application fee based on the Method 3 Regulations for Land Development permits.

The MNCBIA position has always been to support the canopy goals of the County with an effort to add, save or replace trees on a lot not covered by the existing Forest Conservation Law during development and if it is not feasible or desirable to plant the trees on site than to allow the builder/owner to pay into a fund for planting trees elsewhere in the community. The fee should be based on the actual costs of a planting a new tree selected from the list of acceptable trees. The high cost (can be up to \$8000) of removing mature trees on in-fill sites serves as a natural deterrent to removing mature trees. Additionally, the value of the lot can be enhanced with healthy trees offering a further incentive to save trees and plant trees on site.

The alternative proposed by Renew Montgomery meets the objectives of the MNCBIA and therefore the MNCBIA removes our objection to the bill with the addition of this amendment. We note however that the proposal shows a gap between lots larger than 20,000 square feet and less than 40,000 square feet. Our recommendation is to allow the property owner the choice to follow the replacement chart for canopy disturbance below 20,000 sq. ft. and require the property owner to meet the canopy calculation and pay the fee for disturbances between 20,000 sq. ft. and 40,000 sq. ft. While there may be occasions where a property owner may need to clear a significant portion of the lot to meet storm water management grading requirements, this is likely to be rare and unusual. Perhaps DPS can consider an exemption for storm water management where the grading of the site may be necessary to clear cut the site to provide the best management of the flow.

The MNCBIA observes that the County, including the developed parts often called down-county, shows a significant canopy of over 49% throughout the County and over 60% in Bethesda. Perhaps the best it has been in the past 200 years. We also note, that the major reason that builders today clear trees on in-fill sites is to meet the recently passed storm water requirement for 100% management ON-SITE. Given the extraordinary existing canopy and the conflict with the County's own regulations, the canopy bill remains problematic at best. But we can still make a reasonable contribution to conserving our precious tree canopy. We can help by removing old trees or invasive species or trees inappropriate for urban environments and replace them with trees more appropriate. This can help minimize damage during severe storms and may help reduce maintenance costs and still add value to our neighborhoods. As an industry, we are proud of our contribution to the canopy of the County through the Forest Conservation Law and through our efforts to save or plant trees as part of our landscape designs. Trees clearly add value to a home, a community and a County.

S. Robert Kaufman

Faden, Michael

From: Edwards, Stan**Sent:** Friday, June 21, 2013 2:35 PM**To:** Berliner's Office, Councilmember; Riemer's Office, Councilmember; Floreen's Office, Councilmember; Faden, Michael; 'larry@cafritzbuilders.com'; 'todd@toddwood.com'; 'cw@carterbuildersmd.com'; 'mimibkress@aol.com'; 'cwagner@pleasants.org'; 'chuck.csh@verizon.net'**Cc:** Hoyt, Bob; Miller, Laura; Boucher, Kathleen; Jones, Diane; Brush, Rick; Etheridge, Mark; Mihill, Amanda
All,

Thank you for the proposed canopy bill alternative offered by Renewing Montgomery. We have had a chance to do a quick review of it and offer the following initial thoughts:

1. One goal of Bill 35-12 was to encourage the retention of existing canopy by encouraging a reduction in the size of the LOD on the lot, to possibly avoid removing trees and to reduce the fee. The addition of a credit for protecting trees further encourages retention of existing canopy. There doesn't seem to be any incentive in the Renewing Montgomery proposal to retain trees because a developer that attempted to conserve trees on a lot would have the same planting/fee requirement as a developer who would clear the same lot.
2. Renewing Montgomery's proposal requires all lots to plant a minimum number of trees. This imposes requirements on lots with no trees to impact or on lots with trees even if none are impacted. Bill 35-12 imposes no requirements on activity that does not impact canopy.
3. The proposed credit for tree planting under Bill 35-12 included a requirement of a minimum amount of soil area to ensure that planted trees have a reasonable chance to grow to their expected size. Does the Renewing Montgomery proposal include such a requirement?
4. Builders have suggested (and we have not argued otherwise) that there is no room on many small lots to plant trees once the market required house/driveway, utilities, stormwater management features, etc. are taken into account. However, the drawings provided with the proposal don't include this infrastructure. In addition, while our experience may be limited, it seems there are very few new homes without at least a 2-car driveway, and most have much larger patios/decks than shown in the sample drawings. Inclusion of all of these features might alter the ability to plant the trees shown on the drawings, and would certainly affect the likelihood that the trees would grow to maturity.
5. The Renewing Montgomery proposal appears to require the planting of trees even where they may not be wanted by the ultimate owner of the property (which makes it unlikely that the tree once planted will survive). An important consideration of Bill 35-12 was that it did not mandate that property owners plant trees where they were not desired. Rather it provides for the development of a comprehensive canopy program along with the funds to plant and care for trees.
6. Given the issues noted in #4, it would appear in many cases the proposal would result in the payment of a fee in lieu as opposed to the plantings shown on the drawings. A quick analysis of the 9,000 square foot lot that we included in our presentation for the June 24 work session shows that the fees due under Bill 35-12, not including any credit for protecting existing trees or planting new ones, would be \$2,278. The fee under the Renewing Montgomery proposal (assuming no trees are planted) would be \$900.

We look forward to further discussion of these issues.

Stan Edwards
 Division of Environmental Policy & Compliance
 Department of Environmental Protection
 Montgomery County, MD
 240-777-7748



July 2, 2013

Dear Council Members,

We would like to thank Councilmembers Hans Riemer and Nancy Floreen for their time and input in considering our alternative to Tree Canopy Bill 35-12. In addition we truly appreciate the meetings with Stan Edwards and Laura Miller as we reviewed newly constructed homes in Bethesda to resolve practical issues. The result of this collaboration is the attached truly progressive Tree Planting Plan that is designed to maintain the 50% canopy the County currently enjoys.

Through the process of these meetings we agreed on the following issues:

- The County and property owners seeking to improve their homes have a shared goal of maintaining tree canopy in the same areas where trees are removed.
- Tree preservation on lots under 20,000 sq ft is not feasible because of storm water management, driveways, utilities, and concerns over the long term safety of trees whose critical root zone may be impacted by development activity. Accordingly neither the Bill nor the Tree Planting Plan saves trees but instead focuses on planting trees.
- There is sufficient room on redeveloped lots for newly planted trees to have a reasonable chance to grow to maturity. DEP will allow the use of the right of way to be included in the needed tree planting area.
- No matter what legislation is adopted, or even if nothing is adopted, data on the existing canopy, the number and types of trees planted, location of trees planted, survival rates, etc. would be valuable information to evaluate tree concerns, goals, and progress.

The Tree Planting Plan will result in the following advantages over the Bill:

1. Trees will be planted by the Permittee immediately following construction on the property where the trees were removed.
2. The Renewing Montgomery proposal is more stringent than the Canopy Bill because it requires planting trees even on lots where no trees were removed.
3. The tree planting will be bonded as part of the sediment control plan.
4. No additional consultants, plans or permits are required; it is easy and inexpensive to implement.
5. A simple tree requirement chart will allow for the necessary flexibility to locate the tree after construction is completed.
6. Tree species and planting specifications will be determined by the County.
7. This plan will not cause some to either take down existing trees to avoid the fee, or discourage some from planting trees to avoid the fee.
8. If tree planting is not possible, a fee in lieu will be required before the bond is released.
9. The fee in lieu is based on the value of a tree as determined by County bonding requirements instead of an interpreted methodology.
10. Properties with existing trees are not devalued because of tree removal fees.
11. This plan avoids the concern that the regulation of trees on private property infringes on property rights.
12. This plan is not anti-business or anti-development and provides certainty so that infill development will continue to improve storm water management and triple tax revenue.

Modifications to the previously submitted Tree Planting Plan

- It is the experience of builders that over 85% of the trees we plant survive as they all come with a one-year warranty and homeowners do an excellent job at maintenance. DEP estimates only 25% of newly planted trees survive. However we both agree that there is no reliable data to know the survivability rate of trees planted on private property in down-County areas that are maintained by homeowners. In an effort to account for an 80% survival rate, we have increased our “shade tree” planting requirements by 25%.
- At the request of DEP we have also revised our chart to include all properties under 40,000 sq ft, which will address all properties not subject to the Forest Conservation Law. This addresses DEP’s preference to have one regulation that applies to all properties instead of alternatives. Therefore the Tree Planting Plan would replace the proposed Tree Canopy Bill.
- In addition, we have specified a certain mandatory number of trees that must be planted on the improved property to ensure that some trees will be planted to start the next generation of tree canopy.
- In exchange for this compromise we request that no further tree legislation be considered until a tree canopy study can demonstrate over at least a 5-year period the effects of this progressive Tree Planting Plan.

These are complicated and far reaching issues that involve property rights, property values, and who pays for a public benefit. We believe this Tree Planting Plan achieves all the stated goals of the parties who participated in this collaboration. Your consideration of this request is greatly appreciated.

Sincerely,

Laurence Cafritz
Renewing Montgomery

Renewing Montgomery Proposed Tree Canopy Planting Requirement min 1.5" caliper trees for future canopy goals

7/2/2013				*			Optional	SF at Maturity	Canopy
		Lot Size	Total Trees Rq'd	# of Shade	# of Ornamental	Total trees/acre	Fee in Lieu (2)	Canopy Planted (1)	Coverage (% of Lot)
-	to	6,000	2	1	1	17.4	\$ 400.00	1,900	38%
6,001	to	8,000	3	2	1	18.7	\$ 650.00	3,400	49%
8,001	to	10,000	4	3	1	19.4	\$ 900.00	4,900	54%
10,001	to	12,000	5	3	2	19.8	\$ 1,050.00	5,300	48%
12,001	to	14,000	6	4	2	20.1	\$ 1,300.00	6,800	52%
14,001	to	16,000	7	5	2	20.3	\$ 1,550.00	8,300	55%
16,001	to	20,000	7	5	2	16.9	\$ 1,550.00	8,300	46%
20,001	<	40,000	7	5	2	10.2	\$ 1,550.00	8,300	38%

5.1
Avg.

17.8
Avg.

48%
Avg.

Canopy Area, Diameter, Radius and Estimated DBH of Tree Trunk					
At Maturity		SF	Diameter	Radius	DBH
Shade Tree	=	1500	43.71	21.86	29
Orn. Tree	=	400	22.57	11.29	15
Athens - Clarke County, Georgia: Mature Tree Canopy Sizes for Trees Growing in Urban Areas					
Very Small Canopy: 150 square feet (approximately 12 x 12 feet)					
Small Canopy: 400 square feet (20 x 20 feet)					
Medium Canopy: 900 square feet (30 x 30 feet)					
Large Canopy: 1600 square feet (40 x 40 feet)					
2 Cost for 1.5" caliper tree: Ornamental is \$150 And Shade is \$250.*					
*Based on Montgomery County DPS Bond Estimate for a Street Tree - see link below					
http://permittingservices.montgomerycountymd.gov/DPS/bond/BondsEstimate.aspx					

- * Increase shade tree planting count by 25% to account for survivability.
Then round up when reaching 0.5 above whole number.
On lots greater than 8000 SF, a minimum of 2 shade trees must be planted on site.

Notes Regarding June 27, 2013 DEP/Renewing Montgomery Meeting

Items where we appear to agree:

1. We have a shared goal of maintaining and improving the tree canopy in the County through the conservation of healthy trees where possible, the removal of unhealthy trees where prudent, and the planting and care of new trees where appropriate.
2. The public could benefit from information about (a) the benefits of trees, (b) procedures for proper tree care, and (c) the availability of incentives that support the planting of new trees.
3. There is a great deal of passion in the community about trees, but there is no consensus on the need for, or approach to, additional tree regulations.
4. The basis for mitigation under Bill 35-12 is the amount of canopy that is disturbed as a result of development activity. The basis for mitigation under the Renewing Montgomery proposal is the size of the lot where the development occurs.
5. It is difficult, if not impossible, to preserve trees during the approved redevelopment of smaller lots due to the new larger house, driveway, and other structural elements; gas, electric, water, and other utilities; requirements for stormwater management on the property; and concerns over the long-term safety of trees whose critical root zone may have been impacted by development activities.
6. Neither proposed Bill 35-12 nor the Renewing Montgomery alternative require the saving of trees during the development process.
7. Ideally, when canopy is lost due to development, new canopy of a similar character (e.g., new canopy trees to replace removed canopy trees) with a reasonable chance to grow to maturity would be planted on the same lot. This holds true with both the Renewing Montgomery proposal, as well as Bill 35-12.
8. There is sufficient room on some redeveloped lots for newly planted trees to have a reasonable chance to grow to maturity.

DEP believes:

1. There should be one tree canopy law that applies to lots of all sizes.
2. No matter what legislation is adopted (or even if nothing is adopted), we think data on the number and types of trees planted, location of trees planted, survival rates, etc. would be valuable information.
3. Property owners will not necessarily maintain new trees that they did not request. This is understandable as the property owner may want open space for a lawn, a place for children to play, sunlight to a garden, etc.
4. Trees are living things and, like most living things, have remarkable adaptations. Many trees grow, and even thrive, in harsh conditions. However, the presence of large trees does not mean that every tree will behave the same way. We cannot see the many trees that were planted (or grew naturally) that did not survive. This mortality rate varies due to a number of factors. The

proposed planting credit under Bill 35-12 assumes four trees must be planted to under reasonable conditions in order for one to reach maturity. However, there is scientific research that suggests a much higher number is needed and other jurisdictions, such as DC, require more trees. Renewing Montgomery suggests their proposal will result in 50% tree canopy coverage over time. This would only occur if 100% of the planted trees survive to maturity.

5. The relative stringency of Bill 35-12 and the Renewing Montgomery proposal, and the potential replacement of lost canopy under each, depends on the character of the lot being developed, as well as the nature of the redevelopment.
6. Bill 35-12 is a reasonable approach to replacing some of the canopy lost through the development process. Reasonable modifications could be considered, such as increasing the credit for planting trees, and allowing part of the ROW to be included in surface area requirements.
7. The Renewing Montgomery proposal is not DEP's preferred option but could be a potentially workable alternative if it including the following:
 - a. A minimum required planting area specified for each type of tree (canopy, ornamental, etc.) planted, which may include the area in the ROW between the house and the sidewalk and outside of public utility easements.
 - b. An increase in the required number of trees to be planted on each lot to account for mortality.

Note: The Renewing Montgomery proposal may raise legal issues that need to be reviewed by the County Attorney related to the relationship between the activity being conducted on the lot (i.e., the removal of trees) and the mitigation required.

Amended staff recommendations presented to the Planning Board on January 10, 2013.

Replace staff recommendations 7 and 8 of the staff report with new recommendation #7 below

55-11. Penalties and enforcement.

- (a) **Enforcement authority.** The Department of Permitting Services has enforcement authority for any activity approved under Section 55-7 and the Planning Board has enforcement authority for any activity approved under Section 55-8.
- (b) **Civil Enforcement actions.** For any activity subject to Chapter 55-7 or 55-8 tThe Director of Permitting Services or the Planning Director may bring any civil action authorized by law under Sections 1-18, 1-19, and I-20 to enforce this Chapter or any regulation adopted under it except that the maximum civil fine permitted is as stated in 55-11(c).~~may issue a notice of violation, corrective order, stop work order, or civil citation to any person that causes or allows a violation of this Chapter.~~
- (c) **Civil finepenalties.** The maximum civil finepenalty for any violation of this Chapter or any regulations adopted under this Chapter is \$1,000. Each day that a violation continues is a separate offense.
- (d) **Other remedies.** In addition to any other penalty under this Section, the Planning Board may seek any appropriate relief authorized under Section 22A-16.

MEMORANDUM

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney -
Amanda Mihill, Legislative Attorney *AMihill*

SUBJECT: **Worksession 5:** Bill 35-12, Trees – Tree Canopy Conservation

After the Council staff packet went to print, we received the attached documents: DEP Response to the Renewing Montgomery Alternative, dated July 5, and Trees Matter Coalition letter, dated July 8.

DEP Response to the June 2, 2013 Renewing Montgomery Alternative to Bill 35-12

The Department of Environmental Protection (DEP) has reviewed the revised proposal submitted by Renewing Montgomery dated July 2, 2013 and offers the following comments. The dialogue we have had with Carter Willson, Chuck Sullivan, Todd Wood, Mimi Kress, Bob Kaufman and other representatives of the building community has been informative and has led to a shared understanding on a number of issues. Although the County Executive's original proposal remains our preferred option because it ties a property owner's obligation directly to the extent of the damage to the resource (tree canopy) caused by the development activity, the alternative approach offered by Renewing Montgomery is a potentially workable concept, as we have noted previously. Aside from making a property owner's obligations the same irrespective of whether trees are lost or damaged, the main stumbling block for DEP remains the concept's assumption that all newly planted trees will live to full maturity.

DEP has reviewed literature, discussed mortality with other jurisdictions, and had extensive discussions with the building community about tree mortality and the correct planting ratio to use to ensure that at least one tree grows to maturity. DEP cited Washington, DC's law, which may require up to 12 trees to be planted to replace one mature tree. Other jurisdictions use an "inch for inch" replacement philosophy, i.e., when a tree that is 20" in diameter is removed, 10 two-inch trees must be planted in its place. Renewing Montgomery's original proposal was essentially a one-to-one ratio, meaning they assume every tree that is planted will grow to maturity. Renewing Montgomery's revised proposal increases the number of shade trees required to be planted by 25% over their original proposal (because the numbers are small the effective increase is one additional tree per lot). This still does not provide a reasonable expectation that the trees that are planted will result in canopy that replaces the canopy that is lost as part of the development process.

To address this concern, DEP offers two alternative proposals. Option 1 would be to double the number of trees that would need to be planted under the original Renewing Montgomery proposal. Option 2 would be to triple the number of shade trees planted under the original Renewing Montgomery proposal and eliminate the required planting of ornamental trees. The attached spreadsheet provides the rationale for these options. There is a lot of data on this spreadsheet, and DEP will be prepared to discuss it in detail at the July 8, 2013 work session if necessary.

There are two tables on the spreadsheet. The first table shows the assumed canopy that would be achieved over time under the various proposals if all the planted trees grew to their assumed mature canopy size. Renewing Montgomery has stated that the goal of their proposal is to result in 50% canopy coverage, which we think is a reasonable objective. DEP's Option 1 results in approximately twice as much canopy as required to achieve 50% canopy coverage if all the planted trees grew to their assumed mature canopy size. In other words, under this proposal the expectation is that two trees would need to be planted to have one grow to maturity. Option 2 results in approximately three times as much canopy as required to achieve 50% canopy coverage if all the planted trees grew to their assumed mature canopy size. In other words, under this proposal the expectation is that three canopy trees would need to be planted to have one grow to maturity. While DEP believes both of these options realistically address mortality of small trees, Option 2 will result in the most potential for mature canopy.

The second table shows the fiscal implications of the various proposals, assuming fees were paid under each option.

July 5, 2013

A couple of other things should be noted:

- DEP thinks that it is best for the County to use one approach to regulating canopy not covered by the Forest Conservation Law. Our modifications to the Renewing Montgomery concept should, logically, be applied to properties of any size.
- DEP proposes that the limits of disturbance (LOD), rather than lot size, be used in these calculations. We believe this is a fairer approach, particularly for larger lots, where the development plan may be more easily altered to reduce the LOD and save trees. Not only would this provide a potential incentive to limit the disturbance to the minimum area necessary for the development activity, it would also be more reasonable, for example, in cases where a Sediment Control Permit is required to put in a pool. This activity might disturb 5,000 square feet on a 40,000 square foot lot. It would not be reasonable to expect the planting of trees as if the whole lot had been disturbed.

The alternatives proposed herein are DEP's. We have not had the opportunity to review them in detail with the Department of Permitting Services or the Planning Department, which would be the implementing agencies of Bill 35-12 as originally proposed. Nor have we had a chance to review this with the County Executive.

We look forward to continued discussion of these issues.

July 5, 2013

Suggested DEP Alternatives in Response to Renewing Montgomery's July 2, 2013 Proposal

Projected Canopy Coverage Assuming 100% Survival of All Trees Planted

LOD			Assumed LOD for Calculation	Assumed 50% Canopy Sq. Ft.	Assumed Bill 35-12 Canopy Sq. Ft.	Original RM			Revised RM Increase Shade Trees 25%			Proposed DEP 1 Double Original #'s for All Trees			Proposed DEP 2 Triple Original #'s Shade Trees		
						Shade	Orn.	Sq. Ft.	Shade	Orn.	Sq. Ft.	Shade	Orn.	Sq. Ft.	Shade	Orn.	Sq. Ft.
0	to	6,000	6,000	3,000	4,500	1	1	1,900	1	1	1,900	2	2	3,800	3	0	4,500
6,001	to	8,000	7,000	3,500	6,000	2	1	3,400	3	1	4,900	4	2	6,800	6	0	9,000
8,001	to	10,000	9,000	4,500	9,000	3	1	4,900	4	1	6,400	6	2	9,800	9	0	13,500
10,001	to	12,000	11,000	5,500	12,000	3	2	5,300	4	2	6,800	6	4	10,600	9	0	13,500
12,001	to	14,000	13,000	6,500	15,000	4	2	6,800	5	2	8,300	8	4	13,600	12	0	18,000
14,001	to	16,000	15,000	7,500	18,000	5	2	8,300	6	2	9,800	10	4	16,600	15	0	22,500
16,001	to	20,000	18,000	9,000	22,500	5	2	8,300	6	2	9,800	10	4	16,600	15	0	22,500
20,001	to	40,000	30,000	15,000	49,500	5	2	8,300	6	2	9,800	10	4	16,600	15	0	22,500

See Notes for LODs above 40,000 sq. ft.

Dollars

LOD			Assumed LOD for Calculation	Assumed 50% Canopy Sq. Ft.	Bill 35-12 Fee	Original RM			Revised RM Increase Shade Trees 25%			Proposed DEP 1 Double Original #'s for All Trees			Proposed DEP 2 Triple Original #'s Shade Trees		
						Shade	Orn.	In-Lieu	Shade	Orn.	In-Lieu	Shade	Orn.	In-Lieu	Shade	Orn.	In-Lieu
0	to	6,000	6,000	3,000	\$850	1	1	\$400	1	1	\$400	2	2	\$800	3	0	\$750
6,001	to	8,000	7,000	3,500	\$1,025	2	1	\$650	3	1	\$900	4	2	\$1,300	6	0	\$1,500
8,001	to	10,000	9,000	4,500	\$1,425	3	1	\$900	4	1	\$1,150	6	2	\$1,800	9	0	\$2,250
10,001	to	12,000	11,000	5,500	\$1,875	3	2	\$1,050	4	2	\$1,300	6	4	\$2,100	9	0	\$2,250
12,001	to	14,000	13,000	6,500	\$2,375	4	2	\$1,300	5	2	\$1,550	8	4	\$2,600	12	0	\$3,000
14,001	to	16,000	15,000	7,500	\$2,925	5	2	\$1,550	6	2	\$1,800	10	4	\$3,100	15	0	\$3,750
16,001	to	20,000	18,000	9,000	\$3,850	5	2	\$1,550	6	2	\$1,800	10	4	\$3,100	15	0	\$3,750
20,001	to	40,000	30,000	15,000	\$8,250	5	2	\$1,550	6	2	\$1,800	10	4	\$3,100	15	0	\$3,750

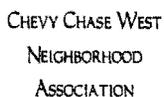
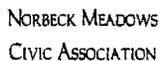
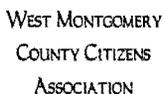
See Notes for LODs above 40,000 sq. ft.

Notes

- (1) Planting may occur anywhere on the lot (including outside the LOD) as long as sufficient space is available.
- (2) Assumes minimum open surface planting area of 400 sq. ft. for shade trees and 100 sq. ft. for ornamentals (area may include ROW between the house and the sidewalk outside of any public utility easement)
- (3) Assumes Renewing Montgomery's proposed costs for trees based on DPS bond requirements (\$250/shade tree, \$150/ornamental tree)
- (4) Assumes Renewing Montgomery's proposed canopy coverage for mature trees (1,500 sq. ft./shade tree @ 29" dbh, 400 sq. ft./ornamental tree @ 15" dbh)
- (5) For LODs greater than 40,000 sq. ft., prorate the 40,000 sq. ft. rate to the total LOD. Example: 100,000 sq. ft. LOD requires 2.5 times the 40,000 sq. ft. rate (100,000 sq. ft. divided by 40,000 sq. ft. = 2.5; then 2.5 times the number of trees required under the 40,000 sq. ft. rate equals the number of required plantings)

TREES MATTER COALITION

July 8, 2013



The Honorable Roger Berliner, Chair, and Committee Members
Montgomery County Council Transportation & Environment Committee
100 Maryland Avenue
Rockville, MD 20850

Robert Hoyt, Director
Montgomery County Department of Environmental Protection
255 Rockville Pike
Rockville, MD 20850

Dear Chair Berliner, Councilmembers Riemer and Floreen and Director Hoyt:

Thank you for the exhaustive work the committee and Department of Environmental Protection (DEP) has done to date on the urban canopy bill, Bill 35-12. We are renewing our support for Bill 35-12. After years of discussions with opponents of this bill and many compromises and negotiations along the way, we stand in support of Bill 35-12, **Option 2** and the recommendations as outlined in the attached document: *DEP Response to the June 2, 2013 Renewing Montgomery Alternative to Bill 35-12*. We urge the committee to move forward, vote favorably on Bill 35-12 and recommend that the bill be moved out of the T&E Committee on July 8th and sent forward for Council action.

We agree with the concept of assigning financial value to the tree canopy we need for a healthy and sustainable quality of life in Montgomery County. As we have noted in the past, mature tree canopy offers not only a multitude of environmental services but provides economic return in terms of energy efficiency, efficient stormwater management and financial value added to residential and commercial property.

It is imperative that the Council pass Bill 35-12 in a form that will offer the highest level of replacement of mature over-story trees that are lost to new development. For too long, our county has relied solely on a Forest Conservation Law (FCL) that has shown modest results for forested areas but was never intended to address loss of tree canopy in urban areas as well as trends in development that have changed significantly since the FCL was drafted in the early 1990s. Therefore, our coalition stands behind the Executive's Bill 35-12 and the regulation that the bill provides for an important natural asset. In particular, we support a countywide tree planting plan as a component of Bill 35-12.

A well-coordinated countywide tree-planting plan must be incorporated into Bill 35-12. We hope to see language strengthened in the Bill that will address coordination between the DEP, the Department of Transportation street tree program, the Maryland-National Capital Parks and Planning Commission and the Department of Permitting Services.

Option 2 as described in the DEP response provides for a 3:1 planting ratio for shade trees and eliminates the required planting of ornamental -- under story -- trees. We believe this is a sound approach since over-story or major shade trees will provide the best canopy benefits over the years. DEP's rationale is correct for the 3:1 ratio as it considers survival rates that point to maintaining a 50% countywide canopy percentage, and notes that at least three canopy trees need to be planted in order for one newly planted shade tree to survive and grow to full size.

We also agree with DEP's proposal that limits of disturbance (LOD), rather than lot size, be used in calculations for canopy replacement. As DEP's response notes, using LOD will offer more opportunities to either save existing trees on a lot or replanting more and larger shade trees by reducing the LOD on a development plan. However, we would like to see regulations addressing options for

protecting tree roots on adjacent lots as part of a larger tree-save scenario if the LOD is used in the calculations. While using the LOD seems fair, we would like to point out that reducing the LOD should not mean damaging the critical root zone of mature shade on adjacent sites when a site is being developed.

In addition to DEP's "Option 2" for a replanting ratio in Bill 35-12 and the use of the LOD in calculations for replacement, we suggest that the bill language be amended to address the following:

- Instead of the tiered fee structure DEP proposes, we propose a flat fee of \$1.00 per square foot for canopy removal. This will simplify the fee structure and streamline the collection of fees.
- A county-wide planting plan coordinated with DOT, DEP and Parks and Planning involved and reporting on an annual basis to the Council, the Executive and Planning Board Chair regarding progress.
- An arborist must be involved in the tasks that DPS will undertake to implement Bill 35-12. The legislation proposes to delegate DPS with a new role in implementation of tree canopy regulations, yet DPS is being assigned a role for which they presently have no experience or expertise. There must be an ISA-certified arborist within DPS who has the technical knowledge to determine what trees can be saved on a plan or should be saved, or what species and size should be replanted to replace canopy that is destroyed. Only an ISA-certified arborist and staff can fully implement the legislation and regulations in an accompanying technical manual for both tree bills.

The time has come for urban canopy legislation that will protect our canopy for future generations. Bill 35-12 must be adopted to cover what is not addressed in the existing FCL so that our tree legislation will keep pace with trends in development patterns.

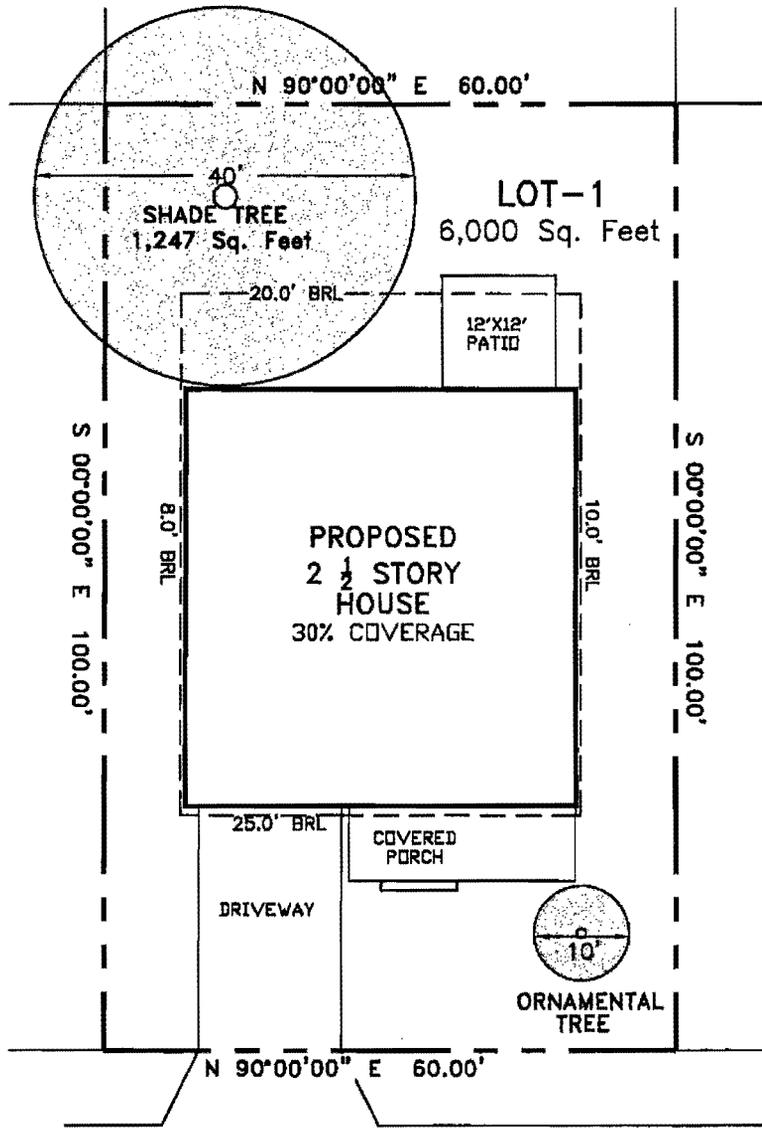
Thank you for allowing us to comment on the DEP response. Before closing, we emphasize that this legislation must not be withdrawn or tabled to accommodate one small group of infill builders and that – rather than an alternative to no legislation – a coordinated county-wide planting plan be a component of Bill 35-12. We urge you to move Bill 35-12 forward to the Council.

Sincerely,



Caren Madsen
Conservation Montgomery, on behalf of the TREES MATTER coalition members

Cc: County Executive Isiah Leggett
Council President Nancy Navarro



—STREET—

ZONING:

- PROPERTY ZONED: R-60
- FRONT YARD: 25.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 18.0'
- REAR YARD: 20.0'
- MAXIMUM COVERAGE: 30%



SCALE: 1"=20'

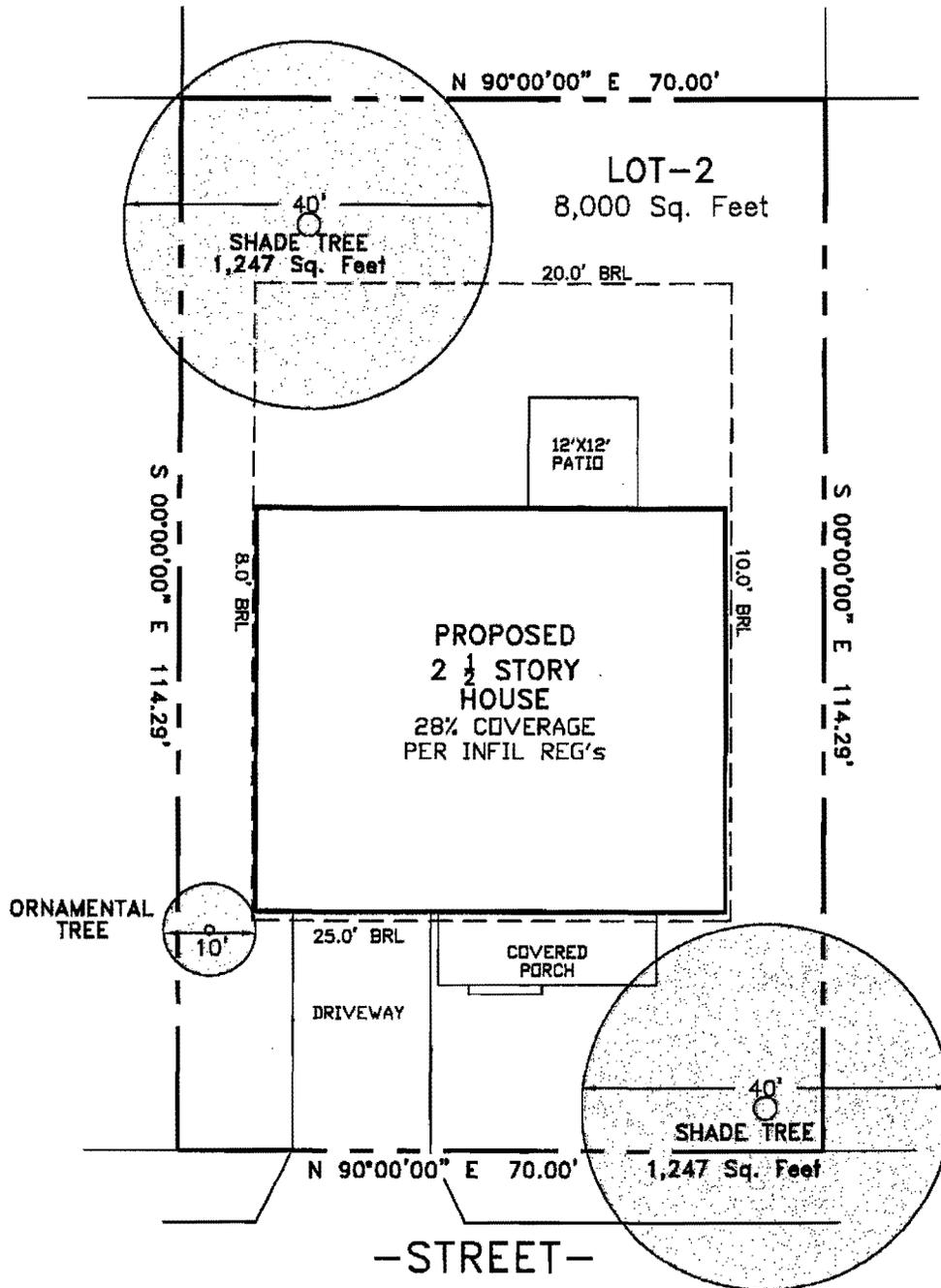


POTOMAC VALLEY
SURVEYS

20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

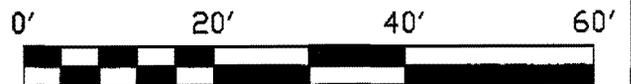
TREE CANOPY
EXHIBIT-1
R-60 ZONE
6,000 SQ.FT. LOT

DATE:06-13-13

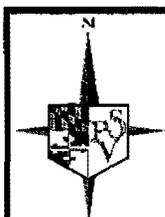


ZONING:

- PROPERTY ZONED: R-60
- FRONT YARD: 25.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 18.0'
- REAR YARD: 20.0'
- MAXIMUM COVERAGE: 28.0% PER INFILL REG'S



SCALE: 1"=20'

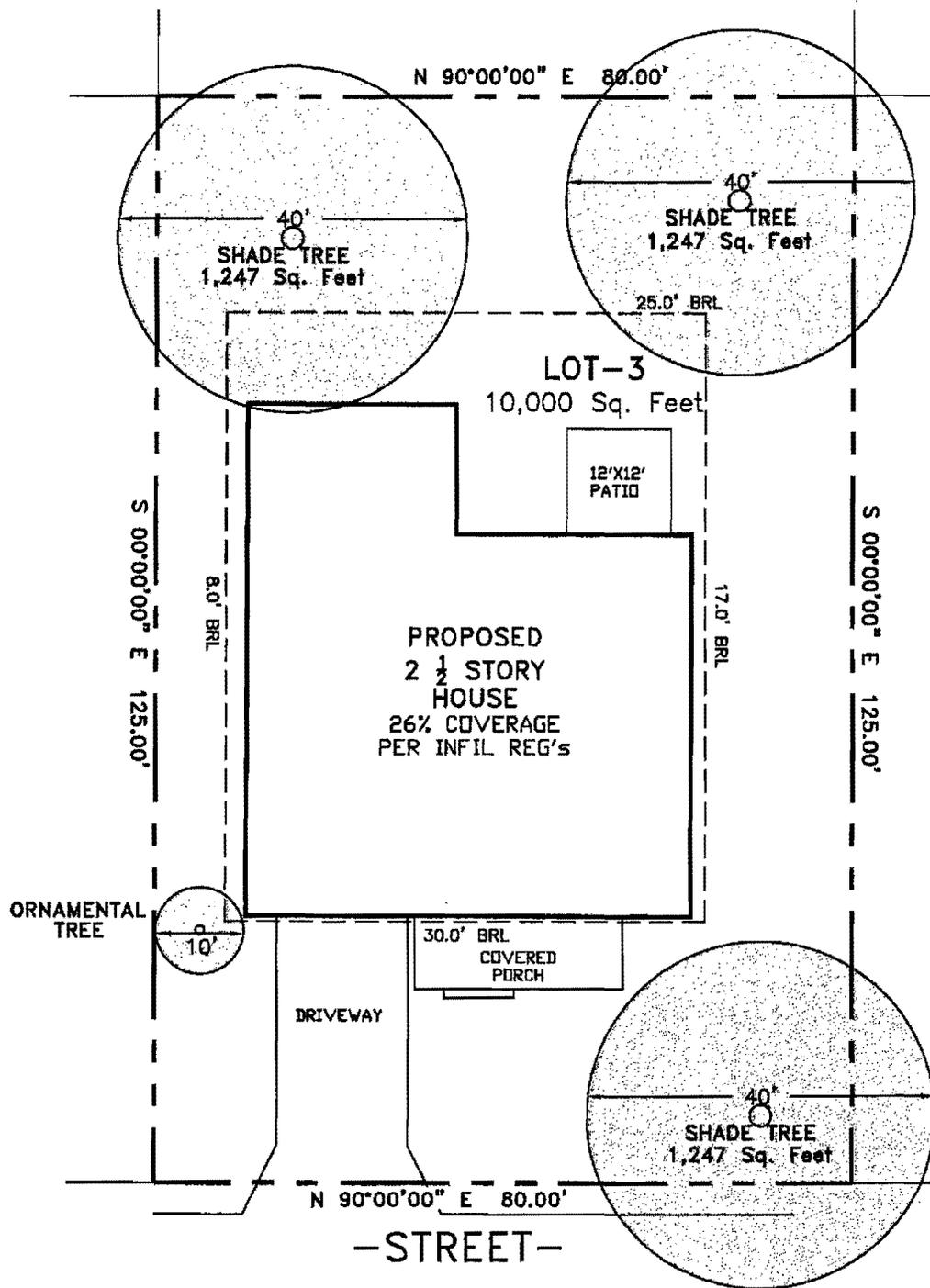


**POTOMAC VALLEY
SURVEYS**

20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

**TREE CANOPY
EXHIBIT-2
R-60 ZONE
8,000 SQ.FT. LOT**

DATE: 06-13-13

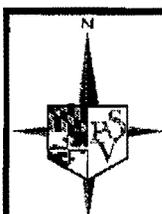


ZONING:

- PROPERTY ZONED: R-90
- FRONT YARD: 30.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 25.0'
- REAR YARD: 25.0'
- MAXIMUM COVERAGE: 26.0% PER INFILL REG'S



SCALE: 1" = 20'

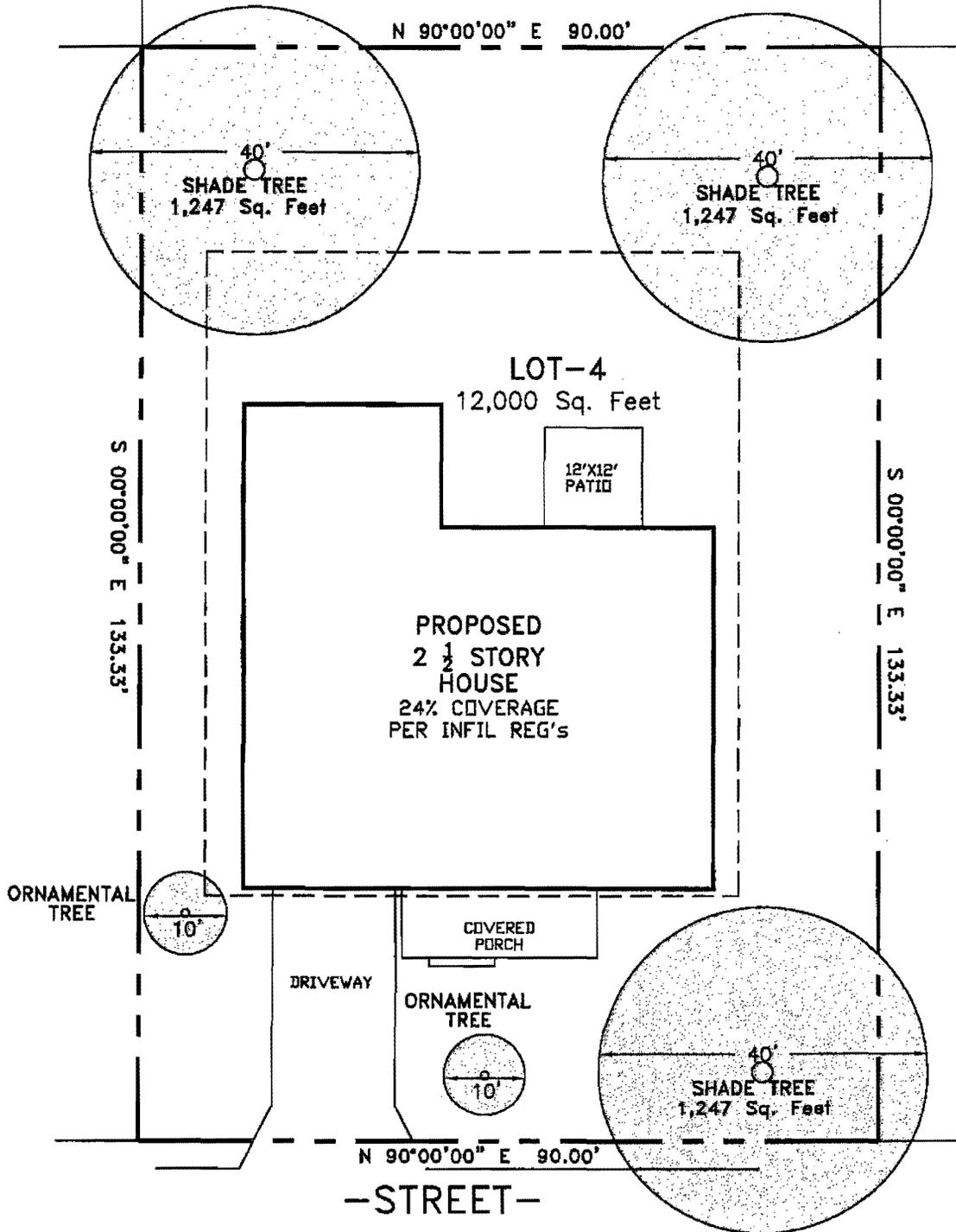


**POTOMAC VALLEY
SURVEYS**

20010 FISHER AVENUE, SUITE F
POOLESVILLE, MARYLAND
1-888-349-5090

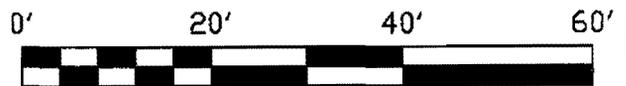
**TREE CANOPY
EXHIBIT-3
R-90 ZONE
10,000 SQ.FT. LOT**

DATE: 06-13-13

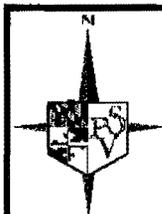


ZONING:

- PROPERTY ZONED: R-90
- FRONT YARD: 30.0' OR EBL
- SIDE YARD: 8.0' MIN; TOTAL OF 25.0'
- REAR YARD: 25.0'
- MAXIMUM COVERAGE: 24.0% PER INFILL REG'S



SCALE: 1"=20'



POTOMAC VALLEY SURVEYS

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TREE CANOPY EXHIBIT-4
 R-90 ZONE
 12,000 SQ.FT. LOT

DATE: 06-13-13