



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 12-39**  
**Preliminary Plan No. 120100270**  
**7206 Meadow Lane**  
**Date of Hearing: March 15, 2012**

**JUN 19 2012**

**RESOLUTION**

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

WHEREAS, on April 8, 2010, CC Green Vision, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots<sup>1</sup> and one outlot on 1.33 acres of land in the R-60 zone, located in the northwest quadrant of the intersection of Meadow Lane and Oak Lane ("Property" or "Subject Property"), in the Bethesda/Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100270, 7206 Meadow Lane ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 20, 2012, setting forth its analysis and recommendation for approval of the Application subject to certain conditions; and

WHEREAS, on February 2, 2012, the Planning Board held a public hearing on the Application; and

WHEREAS, at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application, but at the request of Applicant, the Planning Board deferred action to a later date in order for Staff and the Applicant to work out terms of a conservation easement for the purpose of protecting steep slopes on the Property; and

WHEREAS, after further discussion between the Applicant and Staff, Staff issued a supplemental memorandum to the Planning Board, dated March 2, 2012, addressing

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<sup>1</sup> Applicant originally submitted an application to create three residential lots, which it later revised to create two residential lots. Only the two residential lot subdivision was taken to the Board for review and action.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

**MNCPPC Legal Department**  
**www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org**

the protection of the steep slopes and setting forth its analysis and recommendation for approval of the Application subject to certain conditions (together with the memorandum issued January 20, 2012, the "Staff Report"); and

WHEREAS, on March 15, 2012, the Planning Board continued the public hearing on the Application (together with the hearing on February 2, 2012, the "Hearing") and heard further testimony and received further evidence submitted for the record on the Application; and

WHEREAS, on March 15, 2012, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor; and Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves Preliminary Plan No. 120100270 to create two lots on the Subject Property, subject to the following conditions:<sup>2</sup>

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units and one outlot.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services' ("MCDPS") issuance of sediment and erosion control permits, as applicable. Specific conditions of the forest conservation plan include:
  - a. Show a Category I conservation easement, as approved by Staff, over the steep slopes and associated large trees.
  - b. Revise the plan, worksheet, notes, tables and legend to reflect the forest retained and/or planted in the conservation easement.
  - c. Revise the legend symbols and plan views for existing vs. proposed root protection matting so they match actual existing and proposed conditions.
  - d. Delete miscellaneous tree note #1.
  - e. Provide appropriate plan notes for the careful removal of tree #6<sup>3</sup>, and update miscellaneous tree note #2 accordingly.
  - f. Revise miscellaneous tree note #7 (regarding tree #17) to retain tree protection fencing at the curb line throughout construction and install additional fencing along the proposed sidewalk edge. Alternately, temporary root protection matting can be used instead of installing fencing in the street right-of-way.

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<sup>2</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

<sup>3</sup> Trees are identified with numbers that correspond to the trees as identified in the forest conservation plan.

- g. Remove the plan note and graphics related to "LOD previously recommended by M-NCPPC-EPD" or show the LOD which was actually recommended by M-NCPPC.
    - h. Shift the LOD away from tree #2/23 to an east-west line that is no closer than 15' from the tree.
  - 3) Prior to any clearing, grading, demolition, or issuance of any building permit, the Applicant must submit to Staff for review and obtain approval of a final forest conservation plan. Specific conditions of the final forest conservation plan include:
    - a. Replace the arborist's report, dated December 13, 2011, with a table or chart on the plan that concisely highlights all necessary tree protection measures.
    - b. Specify the reforestation requirements and how they will be met.
    - c. The project arborist must supervise all tree care work, including the directional boring of utilities.
    - d. Provide details and locations of permanent boundary monuments to appropriately delineate the conservation easement.
    - e. Provide details for applications of root protection and/or aeration matting.
    - f. Provide plan notes, details, specifications and/or exhibits to clearly demonstrate how the roots of saved trees will be preserved underneath of proposed structures such as the driveway, walls, and the garage. This condition particularly applies to trees 1/22, 2/23, 18, 23, 24 and 25.
  - 4) The Applicant must submit the final drafts of the sediment and erosion control plan and stormwater management plan with the approved final forest conservation plan to ensure consistency with the limits of disturbance and the associated tree and forest preservation measures.
  - 5) The Applicant must submit to Staff for review and approval a financial security for any planting requirements which may be specified in the final forest conservation plan, prior to any land disturbing activities occurring onsite.
  - 6) The Category I conservation easement must be recorded in the Montgomery County Land Records and shown on the plat prior to any land disturbing activities or clearing occurring onsite.
  - 7) The certificate of compliance for any off-site forest mitigation must be submitted by the Applicant, then approved by Staff, prior to land disturbing activities occurring onsite.
  - 8) Any applicable maintenance and management agreement must be submitted by the Applicant and approved by Staff. The final document must be recorded in the land records prior to any land disturbing activities occurring onsite.
  - 9) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 8, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
  - 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation ("MCDOT") letter dated June 18, 2010. These

- conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
  - 12) Before any building permit is issued, the Applicant must make school facilities payments to MCDPS at the elementary, middle, and high school levels.
  - 13) The record plat must show building restriction lines at the top and bottom of the steep slope area, as depicted on the Preliminary Plan. Building foundations must not be placed on the steep slope area between the two building restriction lines.
  - 14) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
  - 15) The record plat must show necessary easements.
  - 16) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

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

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The Master Plan does not specifically address the Subject Property. However, in the absence of a specific recommendation for change on a particular property, the Master Plan recommends retention of existing zoning throughout the Master Plan area. In the Land Use and Zoning section of the Master Plan, the Subject Property and surrounding development is identified as suitable for one-family detached housing, and the Preliminary Plan is approved for one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The lots are similar to surrounding lots with respect to dimensions, orientation, and shape. The subdivision will not alter the existing pattern of development or land use.

The Master Plan also recommends the preservation, wherever possible, of wetlands and steeply sloping areas (25 percent and greater slopes) that may lie

outside of floodplains or stream buffers as defined by existing regulations and guidelines (page 137). The Preliminary Plan, as conditioned, is in substantial conformance with this recommendation of the Master Plan by placement of a conservation easement on the steeply sloped portion of the Subject Property.

2. *Public facilities will be adequate to support and service the area of the subdivision.*

A. Roads and Transportation Facilities

Access to the lots will be via individual driveways from a public alley, which is accessed from Ridgewood Avenue. Because fire and rescue vehicles cannot safely negotiate a 90 degree turn in the existing alley, those vehicles will serve the two lots by entering the alley, stopping at the turn in the alley, and serving the lots from that point.

The Preliminary Plan does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. The subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is not subject to Policy Area Mobility Review.

B. Other Public Facilities and Services

The Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property will have adequate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Property. The Application is within the Bethesda Chevy Chase School cluster area which is currently operating between 105-120% of capacity at the elementary and middle school levels, and therefore a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Property.

3. *The size, width, shape, and orientation of the lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for subdivision. The size,

width, shape and orientation of the lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features.*

A. Forest Conservation

A condition of this approval requires that a Category I conservation easement be placed on the steeply sloped portion of the Subject Property and the associated large trees. This easement will ensure protection of the steep slopes and will retain vegetation on the slope in order to avoid erosion of the slope.

The Forest Conservation Plan covers approximately 1.57 acres that includes the offsite limits of disturbance. The onsite conservation easement area and associated limits of disturbance required by the Planning Board will retain enough forest to meet the forest definition. A minor planting requirement may be generated. However, the minor planting requirement can be accommodated on site, along the southern and northern sides of the slope, which would expand the existing forest boundary and further protect the slope.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

The Preliminary Plan calls for the removal of or CRZ impact to 17 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant

would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

- i. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Subject Property previously contained a large residential structure. The Preliminary Plan occupies roughly the same area of disturbance that would be needed to replace a similar structure. As conditioned, the Preliminary Plan avoids unnecessary impacts to Protected Trees.

- ii. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

Some level of impact is required to redevelop the site, and some of the disturbance corresponds to existing disturbed conditions. The Planning Board concurs with the removal assessment of the Protected Trees to be removed. As conditioned, the Application minimizes disturbances to the Protected Trees. The Variance request would be granted to any applicant in a similar situation.

- iii. *The need for the Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The Variance is a result of the proposed site design and layout on the Subject Property.

- iv. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

On September 8, 2011, MCDPS approved a stormwater management concept. The Category I easement will be placed on the Property to protect the forest on the steep slopes in an undisturbed/stable condition.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The MCDPS Stormwater Management Section approved the stormwater management concept on September 8, 2011. The stormwater management

concept consists of environmental site design through the use of nonstructural devices including drywells and micro-bioretenion.

- 6. The Application conforms with Section 50-29(b)(2) of the Subdivision Regulations pertaining to resubdivision. The lots as approved are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

**Frontage:** In a neighborhood of 28 lots, lot frontages range from 50 feet to 224 feet. Six of the lots have frontages of less than 60 feet, 15 lots have frontages between 60 and 100 feet, and the remaining seven lots have frontages of 100 feet or more. The lots in the Preliminary Plan have frontages of 100 and 104 feet, respectively.

**Alignment:** Twenty-one of the 28 existing lots in the neighborhood are perpendicular in alignment, and the remaining seven are corner lots. The two lots as approved are perpendicular in alignment.

**Size:** The lots in the delineated neighborhood range from 5,007 square feet to 27,913 square feet. Twelve of the lots are smaller than 7,000 square feet, 11 are between 7,000 and 10,000 square feet, and five are between 10,000 and 28,000 square feet. Proposed Lot 37 will be 30,442 square feet in size, and Proposed Lot 38 will be 24,210 square feet in size. Lot 37 will be the largest lot in the neighborhood, and Lot 38 will be larger than all but one of the existing neighborhood lots. This is an unavoidable consequence of the Preliminary Plan being revised from three lots to two lots, which the Applicant did at the request of the Town of Chevy Chase. In addition, the existing lot that comprises the Subject Property is currently the largest lot in the neighborhood by a large margin. The resubdivision into two lots creates smaller lots that are closer in size to existing neighborhood lots.

**Shape:** Fourteen of the existing lots in the neighborhood are trapezoidal, eight are rectangular, and six are irregular. Two of the new lots are irregularly shaped, and one is rectangular.

**Width:** The lots in the delineated neighborhood range from 50 feet to 139 feet in width. Six of the lots have widths of less than 60 feet, 14 lots have widths between 60 and 80 feet, and the remaining eight lots have widths of more than 80 feet. Both of the new lots have widths of 100 feet.

**Area:** The lots in the delineated neighborhood range from 1,083 square feet to 11,132 square feet in buildable area. Fifteen of the lots have a buildable area less than 3,000 square feet, nine are between 3,000 and 5,000 square



feet, and four are between 5,000 and 11,500 square feet. Lot 37 has a buildable area of approximately 11,684 square feet, and Lot 38 has a buildable area of approximately 10,679 square feet. Lot 37 will have the largest buildable area in the neighborhood, and Lot 38 will have a buildable area larger than all but one of the existing neighborhood lots. This is an unavoidable consequence of the Preliminary Plan being revised from three lots to two lots, which the Applicant did at the request of the Town of Chevy Chase. In addition, the existing lot that comprises the Subject Property currently has the largest buildable area in the neighborhood by a large margin. The resubdivision into two lots creates smaller buildable areas that are closer in size to existing neighborhood lots.

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

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 19 2012 (which is the date that this Resolution is mailed to all parties of record); and

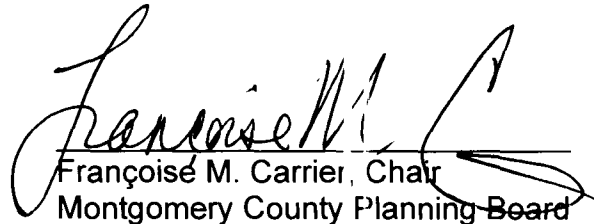
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules)

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley and Commissioner Dreyfuss voting in favor of the motion, and with Commissioner Presley abstaining, and Commissioner Anderson absent, at its regular meeting held on Thursday, June 14, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



# MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue, Silver Spring, Maryland 20910

Environmental Planning Division 301.495.4540 Fax: 301.495.1303

www.MontgomeryPlanning.Org

## NOTICE OF VIOLATION

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

On, May 2, 2014 the recipient of this NOTICE, Mr. Thomas Brault

who represents the property owner -same-

Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 7215 Meadow Lane, Chevy Chase, MD. 20815; Lot 37 Block 5-----

Plan No. 120100270	Explanation: below
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### VIOLATION:

	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
X	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector.
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
X	Other: Failed to remove two brick walls and a concrete-stone walkway from easement. Cut back vegetation in excess of what was permitted to be pruned. Did not install three permanent markers.

**Failure to comply with this NOV by May 31, 2014 may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at 301-495-4581 when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:**

	Failed to have the required pre-construction meeting with Inspector.
X	(1) Remove the two brick retaining walls and concrete-stone walkway from the easement as directed by an arborist. (2) Within the easement plant 12 shrubs of species native to Maryland (minimum 4' high) and 3 native understory trees (minimum 1.5"-2" caliper sized) such as multi-stem Serviceberry, or Dogwood. Place the new trees and shrubs around the area where the material was removed. Do not plant them where they would be damaged by removal of the retaining walls. Do not dig up the existing Rhododendron stumps. (3) Install three permanent easement marker posts (18" high) with 5 1/2" x 8" metal signs.
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-495-4540.
	Cease all cutting, clearing, or grading and/or land disturbing activity. Approval from Forest Conservation Inspector is required to resume work.
	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
	Record a Conservation Easement Agreement approved by M-NCPPC which has been recorded in Montgomery County Land Records.

MNCPPC  
Inspector

David Wigglesworth

*David Wigglesworth*  
Signature

May 2, 2014

Date

RECEIVED BY:  Send via mail

*Thomas A. Brault*

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May 31, 2014

The Honorable Françoise Carrier  
Planning Board Chair  
Maryland National Capital Park and Planning Commission  
9797 Georgia Avenue  
Silver Spring, Maryland 20910

**RECEIVED**  
0350  
JUN 02 2014

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

Ms. Rose Krasnow  
Deputy Director of the Planning Department  
Maryland National Capital Park and Planning Commission  
9797 Georgia Avenue  
Silver Spring, Maryland 20910

Sent Via Email and Hand Delivered

***RE: Appeal – May 2, 2014 Notice of Violation***

Dear Madam Chair and Ms. Krasnow:

We most respectfully Appeal the subject and attached notice for the following reasons.

1. A third party witness that participated in the subject inspection has indicated we followed the field inspector's directions correctly. This person performed similar work on the adjacent lot without violation.
2. The 30 day calculation from the May 2, 2014 notice was calculated incorrectly, and, the notice was not received until and May 6, 2014.
3. The Notice indicates that all of the Yew were removed from the site. Make special note that not one was removed and that there are currently more than twenty 20 on site.
4. The Notice indicates that all of the Rhododendrom were removed from the site. There are currently four on site. Only the dead and unsafe Rhododenrom were removed. The Plan Reviewer had authorized all of the Rhododendrom removal previously, but we kept what we could.
5. The stem count on site, lot 37, is radically more than required in the easement and Forrest Management Plan and, more than on the adjacent lot that had similar removals performed by JC in item one above, lot 38.
6. Despite items above, the 15 supplemental additional plantings were completed on or about May 8 as was the installation of the required posts and retaining wall removal.
7. The field inspector approved the unpaved, natural stone mud set path being left in place via voicemail in late winter 2014 and acknowledged same in an email on March 14, 2014. It is wrong to approve it being left in place and then change mind later after we,

the immediate neighbors, the Town, and our arborists and other experts acted on the field approval.

8. Only 4 or 5 steps on this natural stone path mud set in concrete was known and shown on the final approved plan, which is roughly 10 to 15 feet. We also did not know it was made primarily of natural stone, which it is. In March of 2014 after the rough winter weather passed, 25 plus more steps were uncovered never before known to exist. Roughly 80 more feet was uncovered and the total distance is 95 feet. It goes out of the easement at each end, top and bottom. The new path is in the critical root zone of 5 trees and many shrubs not previously shown or known.
9. This historic path is quite attractive and performs the desired movement from home to property. We are willing to mitigate the need for the two paths allowed under the easement if this one can be kept, meaning, there is no further need for another path if left in place and we would agree never to install them.
10. If we remove the path, there will be significant erosion and the easement was created to prevent erosion. See attached recital from the easement:

*WHEREAS, the purpose of this Easement is to protect steep slopes on the Property from degradation and erosion by maintaining existing natural conditions; existing and future forest cover; individual trees; and other sensitive natural features; and*

11. Natural stones are allowed in the easement. We disagree with your staff that this mud set natural stone path constitutes paving. Paving is black and machines are used to install it. This was clearly hand set and created by hand winds with many radius changes in and around the tree roots to traverse the grade
12. While possible to remove by hand under the Town tree ordinance and FFCP, it introduces the strong possibility for human error that could harm the trees. Our arborist and the Town arborist agree with staff that it is possible for removal, however, they disagree with your staff that there would be any adverse impacts to simply leaving it in place. And both have expressed concern over the complexities of finding and installing two new paths as has your field inspector.
13. The immediate neighbors and everyone in the community that has ever seen or been on the path supports it being kept in place. So much so, that the closest neighbor took time off of work to attend a field meeting with the inspector and is of record indicating it would be, "Tragic", for it to be removed.
14. The easement allows two paths, three feet wide and we can use natural stones. This path is just 28 to 30 inches wide, so its 6- 8 inches more narrow than the size allowed under the easement. We could remove it and create significantly more impervious run off that would create velocity of rain runoff and erode under the plan. We submit that it being more narrow then required under the plan is a benefit and additional rationale item to

*Thomas A. Brault*

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keep it. So, the offer to mitigate not installing the one or two other paths depending on the outcome, could mean 40% of the total impervious material allowed under the approved plan and therefore, significantly less erosion potential.

15. If we remove the path, we then have to find where to put the new stones down in a way that does not violate the fibrous root structure and meet the grade transitions down, which is not easy and water will find new ways to run during heavy rains. In sum, there is much more benefit to leaving it in place.
16. Your staff did not have the time to meet with us and discuss the matter.
17. No appeal form was included in the notice, so we created this letter.
18. Item 10 in the easement was specifically created just to deal with this issue granting the power for slight adjustments like this to Ms. Kransow.

We most respectfully request she make such approval to keep the path in place and we will gladly agree not to install any other paths through lot 37 down to the field. That along with all the supplemental plantings and the removal of the brick around the retaining wall is fine and fair outcome to all and we fully support that.

19. To see this project, now two homes, come to life this spring after the previously 14 year blithe, is quite special. We make special note to thank each of you and EACH AND EVERYONE of your staff that helped us achieve this dream along with each of the staffers in the Town as well as the Town Counsel and Town itself.

It took us over 6 years and 7,000 work hours from when we got involved for the two lot subdivision to get to this point. We most humbly and respectfully would like to conclude this final item cooperatively and neighborly.

Very truly yours,

*Tom*

Thomas A. Brault

Cc: file

## MCP-CTRACK

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**From:** Tom Brault <tbrault@woodsideventures.net>  
**Sent:** Monday, June 02, 2014 12:20 AM  
**To:** MCP-Chair  
**Subject:** FW: Inspection Request  
**Attachments:** EPSON059.pdf; Appeal.pdf

Attached kindly find both the notice and appeal in one email for your use.

**From:** Tom Brault [<mailto:tbrault@woodsideventures.net>]  
**Sent:** Monday, June 02, 2014 12:01 AM  
**To:** 'Françoise.Carrier@mncppc-mc.org'; 'Rose.Krasnow@mncppc-mc.org'  
**Cc:** 'Ed A'; 'James Lawson'  
**Subject:** FW: Inspection Request

Dear Madam Chair and Ms. Krasnow as well as immediate neighbors,

Attached is our Appeal to the notice of violation, also attached. We look forward to your favorable response. Kind Regards, Tom

**From:** Wigglesworth, David [<mailto:david.wigglesworth@montgomeryplanning.org>]  
**Sent:** Friday, May 30, 2014 5:00 PM  
**To:** Tom Brault  
**Subject:** RE: Inspection Request

Mr. Brault:

I discussed it with my supervisor. We cannot give you an extension as your house is completed. The items on the NOV must be corrected per the due date.

David

**From:** Tom Brault [<mailto:tbrault@woodsideventures.net>]  
**Sent:** Thursday, May 29, 2014 11:00 AM  
**To:** Wigglesworth, David  
**Subject:** RE: Inspection Request

Good Morning David,

We have completed the majority of the items on your notice but need more time given the severe rain storms and jurisdictional unknowns. May we get between a 15 to 30 day extension of time?

**From:** Wigglesworth, David [<mailto:david.wigglesworth@montgomeryplanning.org>]  
**Sent:** Thursday, May 08, 2014 5:18 PM  
**To:** Tom Brault  
**Subject:** RE: Inspection Request

Mr. Brault:

I do not agree with everything in your email.

1. Yes the 3 posts with signs are approved.
2. Your approved FC plans require removal of the brick retaining walls. Yes one would be able to hand rake and hand shovel the soil so that it is sloped, and re-vegetate it with native plants or mulch it.
3. If the Town Ordinance is in conflict with your approved FC plans then you need to discuss that with M-NCPPC legal staff. I enforce the approved M-NCPPC plans, I don't determine the legality of Town Ordinances.
4. No it is NOT my opinion that there would be significant impact to the surround trees or erosion created by removal of the walls or walkway. If you had done as I had advised last winter and removed them when the ground was frozen it would have been easier, but regardless, busting them up by hand with a sledge hammer and hauling the brick and stone out by hand would not cause a significant impact, unless you hired someone who really wanted to tear up your property and make it a mess.
5. Regarding the existing walkway, I don't disagree that the walkway is not obtrusive, is not particularly noticeable or unattractive. That is a matter of taste. I did not approve the plans or the easement document, so you will have to go back to staff and determine what you have to do if you want the walkway to remain. The plans and language say that it should be removed.
6. Yes you do need to plant the (12) native to Maryland shrubs stated in the NOV 3' to 4' tall, and the (3) Maryland native understory trees (1.5"-2" caliper sized).

Good luck,  
David

**From:** Tom Brault [<mailto:tbrault@woodsideventures.net>]  
**Sent:** Thursday, May 08, 2014 10:33 AM  
**To:** Wigglesworth, David  
**Subject:** RE: Inspection Request

Thank you for the inspection attended by the immediate neighbor Jim Lawson, you and I. JC from PPKeating Builders attended for 75% of the meeting. My understanding of the outcome is as follows, please advise if you concur:

1. The 3 posts are approved.
2. I will slightly re-grade around the upper, already removed retaining wall, and put mulch to avoid erosion as much as possible.
3. I will remove the lower retaining wall and do the same grading and mulching
  - a. Your professional opinion is that the removal and re-grading around the retaining walls can be done without undue erosion and harm.
  - b. Jim Lawson and several neighbors in the Town expressed a different view to me. As a result, we slowed the removal to have this inspection. I simply want to comply and demonstrate responsiveness to my neighbors.
4. The Town tree ordinance does not allow the removal of the existing path. We cannot comply with your violation notice because of the Town law.
  - a. It is your opinion that there would be significant impact to the surrounding trees and erosion created by removal. It is also your opinion that there is no harm for the path to be left in place and further, that you will state that in a office meeting with other MNCPPC staff.
  - b. We do not want to remove the path.
  - c. Given this situation, I will request an office meeting and / or send in a written request to leave it in place along with rationale.
5. We will conduct all of the plantings you required by the term noted in the violation.
  - a. You will allow shrubs between 3 to 4 feet



**From:** Wigglesworth, David [<mailto:david.wigglesworth@montgomeryplanning.org>]  
**Sent:** Tuesday, May 06, 2014 4:48 PM  
**To:** Tom Brault  
**Subject:** RE: Inspection Request

Mr. Brault,

I will call you tomorrow morning to schedule your inspection. Although there is the possibility that I may have to take a family member to the Dr.. In that case I will email you from my phone.

David

**From:** Tom Brault [<mailto:tbrault@woodsideventures.net>]  
**Sent:** Tuesday, May 06, 2014 3:02 PM  
**To:** Wigglesworth, David  
**Subject:** Inspection Request

David,

Can we walk the easement this week? I believe Mr. Keating would like to as well.

Thomas A. Brault  
Woodside Ventures  
301-656-4472 (o)  
240-465-0061 (f)



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

May 2, 2014

Mr. Thomas Brault  
7215 Meadow Lane  
Chevy Chase, MD. 20815

Re: Forest Conservation plan #120100270; Lot 37 Block 5

Dear Mr. Brault:

Recently an inspection of the conservation easement was conducted at your property. The house construction and sod installation has been completed. The reforestation trees were installed on this property and on lot 38. The non-native invasive Japanese Honeysuckle and English Ivy were removed.

At the pre-planting meeting you requested permission to remove the dead wood and to cut back some of the storm damaged Rhododendron and Yew from the easement. I agreed to this request. Unfortunately almost all of the Rhododendron and Yew were cut at ground level, not pruned, and the understory is now nearly bare of vegetation. Therefore some re-planting of shrubs and trees within the easement is required. Some of the Rhododendron may sprout from the cut stumps and so the existing stumps should not be dug up or cut back. In addition the brick retaining walls and concrete walkway have not been removed from the easement as required per the approved plan. This was to occur prior to clearing and grading or before issuance of the building permit. A Notice of Violation has been issued to you for a failure to comply with the Forest Conservation plan (120100270).

This violation notice requires completion of the following items within (30) days, by May 31, 2014:

- (1) Remove the two brick retaining walls and concrete-stone walkway from the easement as directed by an arborist.
- (2) Within the easement plant 12 shrubs of species native to Maryland (minimum 4' high) and 3 native understory trees (minimum 1.5"-2" caliper sized) such as multi-stem Serviceberry, or Dogwood. Place the new trees and shrubs around the area where the material was removed. Do not plant them where they would be damaged by removal of the retaining walls. Do not dig up the existing Rhododendron stumps.
- (3) Install three permanent easement marker posts (18" high) with 5 1/2" x 8" metal signs.

The approved Forest Conservation plan does allow two 3' wide mulch paths within the easement. Natural stone steps could be included within the mulch paths. Re-use of the existing stone might be a possible solution. Inform me when you have completed the corrections.

Sincerely,  
  
David Wigglesworth

Sr. Planner

Development Applications & Regulatory Coordination

Enclosure: Notice of Violation dated May 2, 2014

8787 Georgia Avenue, Silver Spring, Maryland 20910 Environmental Planning: 301.495.4540 Fax:  
301.495.1310

[www.MontgomeryPlanning.org](http://www.MontgomeryPlanning.org)



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

**NOTICE OF VIOLATION**

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

On, May 2, 2014 the recipient of this NOTICE, Mr. Thomas Brault

who represents the property owner -same-

Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 7215 Meadow Lane, Chevy Chase, MD. 20815; Lot 37 Block 5-----

Plan No. 120100270	Explanation: below
<b>VIOLATION:</b>	
	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
X	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector.
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
X	Other: Failed to remove two brick walls and a concrete-stone walkway from easement. Cut back vegetation in excess of what was permitted to be pruned. Did not install three permanent markers.
<b>Failure to comply with this NOV by <u>May 31, 2014</u> may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at <u>301-495-4581</u> when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:</b>	
	Failed to have the required pre-construction meeting with Inspector.
X	(1) Remove the two brick retaining walls and concrete-stone walkway from the easement as directed by an arborist. (2) Within the easement plant 12 shrubs of species native to Maryland (minimum 4' high) and 3 native understory trees (minimum 1.5"-2" caliper sized) such as multi-stem Serviceberry, or Dogwood. Place the new trees and shrubs around the area where the material was removed. Do not plant them where they would be damaged by removal of the retaining walls. Do not dig up the existing Rhododendron stumps. (3) Install three permanent easement marker posts (18" high) with 5 1/2" x 8" metal signs.
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-495-4540.
	Cease all cutting, clearing, or grading and/or land disturbing activity. Approval from Forest Conservation Inspector is required to resume work.
	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
	Record a Conservation Easement Agreement approved by M-NCPPC which has been recorded in Montgomery County Land Records.

MNCPPC  
Inspector

David Wigglesworth

*David Wigglesworth*  
Signature

May 2, 2014

Date

RECEIVED BY:      Send via mail



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

June 11, 2014

Tom Brault  
7215 Ridgewood Terrace  
Chevy Chase, MD 20815

Re: Letter dated May 31, 2014  
Appeal of May 2, 2014 Notice of Violation  
CTRAC 2014-0350

Dear Mr. Brault:

I am in receipt of your May 31, 2014 appeal of a May 2, 2014 Forest Conservation Notice of Violation (NOV). This NOV was issued to you for failure to comply with Forest Conservation Plan (FCP) 120100270 and the forest conservation easement recorded in the Land Records at Liber 44911 Folio 375. The NOV identified that you failed to: 1) to comply with the terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save Plan, or as directed by the Forest Conservation Inspector; 2) failed to remove two brick walls and a concrete-stone walkway from the easement; 3) cut vegetation in excess of what was permitted to be pruned; and 4) failure to install three permanent markers. The NOV gave you until May 31, 2014 to comply with the corrective actions.

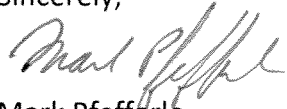
The FCP shows an existing concrete walk that is at least 45 feet long on lot 37. The FCP, which was approved on August 17, 2012, and signed by you indicating that you "the undersigned agrees to execute all the features of the approved final forest conservation plan No. 120100270 including, financial bonding, forest planting, maintenance, and all other applicable agreements" needs to be complied with. Item 10 of the Category I Conservation Easement does state that "except for the paths (two for each of Lots 37 and 38 as shown on the FCP), the 3-feet in width, unpaved paths or trails consistent with the purposes of the Easement may only be created after written approval from the Planning Director. Unpaved paths as identified and shown on the FCP may be continued and maintained."

In your May 31, 2014 appeal letter you request permission to allow the path, which is labeled as an existing concrete walk to remain. The FCP explicitly indicates that the walkway on lot 37 "ex. walls, walks, etc. to be removed by hand as directed by arborist". The retention of the existing concrete walk is inconsistent with item 10 in the conservation easement for that item allows for unpaved paths. As the Planning Director's designee on all enforcement matters, your request is denied. Therefore, those walls and walkways must be removed.

With this letter I am granting you an extension to July 10, 2014 to complete the corrective actions identified in the NOV dated May 2, 2014. If the corrective actions are not completed by July 11, 2014 additional enforcement actions, including civil administration citations will be

issued to you for failure to comply with FCP 120100270 and the May 2, 2014 NOV. If you have any questions please contact me at [mark.pfefferle@montgomeryplanning.org](mailto:mark.pfefferle@montgomeryplanning.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Pfefferle".

Mark Pfefferle  
Chief, DARC

Cc: David Wigglesworth




From: Frank Johnson <fjohnson@mhgpa.com>

Sent: Wed 12/17/2014 8:13 AM

To: Fuster, Marco

Cc: Hisel-McCoy, Elza; scrum; Tom Brault (tbrault@woodsideventures.net)

Subject: Meadow Lane

Message  08-BFCP-12010027A-001.pdf (2 MB)

Marco,

The changes we would like because of community requests and inspection concurrence are as follows:

1. 'X' out proposed pathway that is south of the existing pathway and include note that reads: "No portion of the indicated path on lot 37 shall be constructed".
2. Change note regarding existing pathway to: "Existing concrete pathway to remain in current condition"
3. Final Inspection of supplemental plantings and entire FFCP, except existing path, was approved on July 31 2014. Maintenance period commenced on July 31, 2014 and ends on July 31 2016 over both lots 37 & 38.

We will agree to 'X' out the other proposed path if conditions requiring the easement agreement to be re-recorded and the revision to the plat are removed, or other concession.

See attached updated plan.

Thank you,  
Frank

Frank Johnson  
**Macris Hendricks & Glascock, P.A.**  
Engineers · Planners · Landscape Architects · Surveyors  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886  
Tel: 301-670-0840 x 1042  
Fax: 301-948-0693  
[fjohnson@mhgpa.com](mailto:fjohnson@mhgpa.com)  
[www.mhgpa.com](http://www.mhgpa.com)