



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 lots¹ 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

¹ 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, MD 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:²

- 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 #6³, 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.

² 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.

³ 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

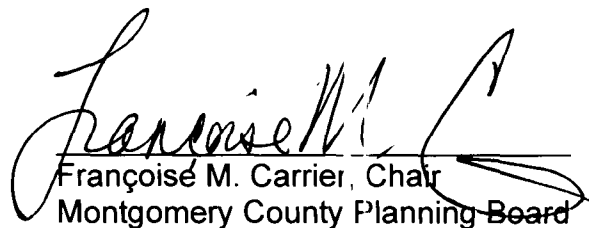
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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

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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