



MCPB  
Item No.:  
Hearing Date: 2/2/12

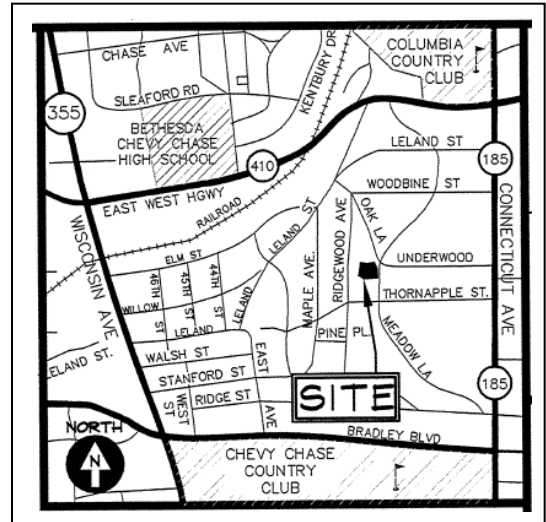
**7206 Meadow Lane Preliminary Plan 120100270**

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**Date of Report: 1/20/12**

**Description**

Location: Located in the northwest quadrant of the intersection of Meadow Lane and Oak Lane  
 Zone: R-60  
 Master Plan: Bethesda/Chevy Chase  
 Property size: 1.33 acres  
 Application to subdivide 1.33 acres of land into two lots for two one-family detached dwellings.  
 Applicant: CC Green Vision, LLC  
 Filing date: April 8, 2010



**Summary**

**Staff Recommendation: Approval with Conditions**

Staff is recommending that a Category I conservation easement be placed on areas of forest retention and steep slopes. The applicant is requesting that either no conservation easement be placed on the property or that it be limited to a category II easement.

The application is a resubdivision. A finding that the proposed lots are of the same character as existing lots in the neighborhood is necessary for approval.

This application is in the Town of Chevy Chase and the Town has reviewed the current application and provided comments.

**RECOMMENDATION: Approval subject to the following conditions:**

- 1) Approval under this preliminary plan is limited to two lots for two one-family detached dwelling units.
- 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 include:
  - a. Show a Category I easement over the steep slopes and associated large trees.
  - b. Shift the proposed limits of disturbance (LOD) and the associated root zone impacts for trees 5, 6, 7 and 12 to areas outside of the forested steep slopes.
  - c. Revise the plan, worksheet, notes, tables and legend to reflect the forest retained and/or planted in the Category I Easement.
  - d. Include a provision to install all unground utilities for proposed Lot 38 by directional boring to be performed in manner minimizing any disturbance to the roots of save trees. Air spading (instead of boring) may be performed in areas outside of forest boundary.
  - e. Revise the legend symbols and plan views for existing vs. proposed root protection matting so they match actual existing and proposed conditions.
  - f. Delete miscellaneous tree note #1.
  - g. Update miscellaneous tree note #2 to reference the project arborist's pending explicit recommendation on whether or not tree #6 is to remain. Provide appropriate plan notes for the care/monitoring or the careful removal of the tree as applicable.
  - h. Revise miscellaneous tree note #7 (regarding tree #17) to retain tree protection fence at curb line throughout construction and install additional fencing along the proposed sidewalk edge. Alternately, temporary root protection matting can be used instead of fencing installation in the street right-of-way.
  - i. 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.
  - j. Remove the proposed "bump out" of the wall (near trees #4 and 41) on lot 38. Relocate the wall outside of the high priority forest and steep slope areas.
  - k. 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 for review and approval a Final Forest Conservation Plan (FFCP). Specific conditions 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 forest 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 root 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 sediment and erosion control plan and stormwater management plan with the revised Final Forest Conservation Plan to ensure consistency with the LOD and the associated tree and forest preservation measures.
- 5) The applicant must submit for review and approval a financial security for any planting requirements which may be specified in the FFCP, prior to any land disturbing activities occurring onsite.
- 6) The Category I conservation easement must be recorded by plat prior to any land disturbing activities occurring onsite. The record plat must reflect a Category I easement over all areas of steep slopes and forest conservation.
- 7) The certificate of compliance for any off-site forest mitigation must be submitted by the applicant, then approved by M-NCPPC Associate General Counsel Office, prior to land disturbing activities occurring onsite.
- 8) Any applicable maintenance and management agreement must be submitted by the applicant and then approved by M-NCPPC Associate General Counsel Office. 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.

## **SITE DESCRIPTION**

The subject property, shown below and in Attachment A, is a platted lot and is 57,726 square feet (1.33 acres) in area. The property is zoned R-60. It is located in the northwest quadrant of the intersection of Meadow Lane and Oak Lane, within the Town of Chevy Chase. The property has frontage on Meadow Lane and Oak Lane to the east and on a public alley to the west. There are currently no buildings on the property, but parts of the lot have been graded in a previous attempt to construct a

one-family detached dwelling. The partially completed dwelling has been demolished. Surrounding properties to the north, south, east, and west are developed with one-family detached dwellings in the R-60 zone.

The subject property is located within the Lower Rock Creek watershed. Steep slopes, with gradients of 25% or greater, exist in a band in the center of the property. An area that exhibits some of the characteristics of a wetland exists on the lower portion of the property, near Meadow Lane. This area was ultimately determined not to be a wetland. There are no streams or floodplains on the site. The subject property contains 0.32 acre of forest.



## PROJECT DESCRIPTION

The applicant proposes to resubdivide the existing lot into two lots for two one-family detached dwellings. Proposed Lot 37 is 30,442 square feet and proposed Lot 38 is 24,210 square feet in area. The lots are proposed to be perpendicular to the street and the public alley to the west of the property, similar to other lots in the area. Despite having frontage on Meadow Lane and Oak Lane on one side and the alley on the other side, the lots are not considered to be through lots per the zoning ordinance because the alley is not considered to be street frontage. As such, they will have front and rear yards and not two front yards for each lot. Access to the lots is proposed via individual driveways from the alley. Although both lots will have frontage on Meadow Lane and Oak Lane, no vehicular access is proposed from those streets. A 2,447 square-foot outlot is proposed along the frontage of Oak Lane,

north of proposed Lot 38. This outlot was requested by the Town of Chevy Chase to prevent further resubdivision of proposed Lot 38. Creation of the outlot limits the width of proposed Lot 38 to 100 feet. Without the outlot, the width of proposed Lot 38 would have been approximately 135 feet, wide enough to provide for two lots that are at least 60 feet wide, which is the minimum width for the R-60 zone.

(Attachment B – proposed plan)

### **Previously Scheduled Hearing**

A hearing for this application was scheduled for February 17, 2011. At that time, the preliminary plan included three lots. After the hearing was noticed but before the hearing date, the applicant requested that the hearing be postponed so that the application could be revised by reducing it to two lots. The two-lot subdivision is now under consideration at today's hearing. The staff report for the previous three-lot subdivision can be found at:

[http://www.montgomeryplanningboard.org/agenda/2011/documents/20110217\\_Meadow\\_Lane\\_CORRECTED\\_000.pdf](http://www.montgomeryplanningboard.org/agenda/2011/documents/20110217_Meadow_Lane_CORRECTED_000.pdf)

## **ANALYSIS AND FINDINGS**

### **Conformance to the Master Plan**

The Bethesda/Chevy Chase Master Plan does not specifically address the subject property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the subject property, the Master Plan calls for retention of the existing R-60 zoning. In the Land Use and Zoning section of the plan, the property and surrounding development is identified as suitable for one-family detached housing. The proposed subdivision complies with the recommendations adopted in the Bethesda/Chevy Chase Master Plan in that it proposes one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The proposed lots will be similar to surrounding lots with respect to dimensions, orientation, and shape, and the proposed residences will have a similar relationship to the public street and surrounding residences as do existing residences in the area. The proposed subdivision will not alter the existing pattern of development or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing 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 in the staff recommendation, would be in substantial conformance with this recommendation of the Master Plan by placement of a category I conservation easement on the steeply sloped portion of the property.

### **Public Facilities**

#### **Roads and Transportation Facilities**

Access to the proposed lots is proposed via individual driveways from a public alley, which is accessed from Ridgewood Avenue. This access will be safe and adequate for pedestrian and vehicular

access. Because fire and rescue vehicles cannot safely negotiate a 90 degree turn in the existing alley, those vehicles will serve the two proposed lots by entering the alley and stopping at the turn in the alley. Rescue vehicles will be able to serve the proposed lots from that point.

The proposed subdivision 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. In addition, the proposed subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the application is also not subject to Policy Area Mobility Review.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property is proposed to 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 appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Growth 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 a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Property.

#### Environment

##### Background And Project History

The site is within the Coquelin Run sub-watershed of Lower Rock Creek, which is a use-class I watershed<sup>1</sup>. Three distinct topographic areas characterize the property. The western portion contains the area of highest elevation, which has a number of individual trees, and an open lawn area, which was created after the stabilization of a former home site. The central portion of the site contains a forested area associated with mature trees and steep slopes in excess of 25%. All onsite forest is considered a high priority for retention due to the presence of specimen trees and association with steep slopes. At the bottom of the steep slopes there is relatively flat area that contains low-lying ground. The area is lower in elevation than the adjacent land associated with the Meadow Lane right-of-way

According to Town records, a previously-existing house was constructed in 1947. Most of the adjacent homes in the community were built in the 1920s through 1940s. Forest conservation exemption #42001045E was granted on August 18, 2000, for the demolition of the original house and the construction of a new home. The work included high-end construction for the new home and extensive tree care and stress reduction measures to preserve trees during the demolition of the original structure and the construction of the new home. The most significant item of the tree

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<sup>1</sup> *Use I: WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE*

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

care/preservation measures at the Meadow Lane site included extensive use of protective matting that was installed over the existing undisturbed soil surface and overlaid with stone or mulch. The matting and its cover allowed heavy construction equipment to access the site with only minimal disturbance to the adjacent trees and the root systems. A sediment control fence was also lapped into the matting and was not trenched in to the ground (which would otherwise sever the roots of adjacent trees).

However, the construction of the large home was not completed, and it was ultimately demolished in 2007 under an updated forest conservation exemption granted on April 11, 2007. The demolition was also conducted under the supervision of an International Society of Arboriculture (ISA) certified arborist in a manner which continued to protect the saved trees.

The applicant originally submitted an application for a 3-lot subdivision. At some point during the review process, staff was asked to evaluate the property for possible acquisition. Parks staff assessed the property but did not express interest in acquiring the property. Planning Department Staff ultimately recommended approval with conditions of the proposed three-lot development and a staff report was posted for the scheduled hearing. However, the applicant requested that the hearing be postponed in order to resolve issues with the Town of Chevy Chase. (Refer to the link provided at front of this report for a copy of previous report).

Three major circumstances have changed since the three-lot plan was submitted. First, the limits of disturbance (LOD) for the project have expanded, and this additional disturbance is not supported by staff. Second, staff and the Planning Board has expressed higher expectations for appropriate and strong justifications to make the findings necessary to grant a forest conservation variance. Third, additional trees affected by the plan were determined to be subject to the variance.

#### Existing Forest and Environmental Setting

Currently, large native trees dominate the existing on-site forest. The shrub layer and groundcover of the forest area include both native species and non-native landscape plantings. The definition of forest requires that only one half of its trees measure 2" diameter or greater; no minimum size is specified for the other half of the trees. Although the forest on the subject property (measuring 13,980 square feet or 0.32 acres) contains landscape shrub plantings (which are not specifically precluded in the forest definition), there are also numerous native trees interspersed throughout, which contribute to the total tree counts. Numerous native tree species less than 2" diameter identified in the NRI/FSD and observed by M-NCPPC staff include dogwood, elm, ash, holly, beech, sycamore, and tulip tree, in addition to the larger trees that are greater than 2" diameter. The forest area still meets the definition of forest even if the landscape plantings are not included in the stem counts.

#### Wetland Delineation

The U.S. Department of Agriculture 1961 Soil Survey of Montgomery County shows the downslope side of the property as part of the bottomland of a stream valley. The soil survey shows the soils in the bottomland area as Worsham silt loam. Such soils are hydric and poor draining and are typically associated with floodplains. The current Master Plan (page 137) strongly discourages development on these soils. However, as development took place, fill was placed over portions of the low-lying areas and some flow was diverted to the storm drainage system installed along Meadow Lane.

During the Natural Resources Inventory / Forest Stand Delineation (NRI/FSD) review process, staff noted the apparent wetland on the site and issued the following comment on February 1, 2010 (a similar comment was previously made on October 19, 2009):

1. *M-NCPPC considers the wetland to exist on the subject property based on staff observations of standing water and associated plant species such as New York ironweed, in addition to soils exhibiting low chromas and mottling/oxidation (which were in some instances also associated with sulfidic odor). The NRI/FSD cannot be conditionally approved. Therefore prior to approval of the plan the wetland must either be shown as existing or otherwise proven to be absent from the site (would require further information which disputes the presence of the wetland for consideration by staff, and staff would have to agree with findings). Update related plan notes, labels, legend datasheets and reports accordingly. Note: include the wetland buffer on the plans as applicable.*

In response to the comment, the applicant's consultant (CAS Engineering) revisited the site and delineated the wetland boundary in the field. The NRI/FSD 420100470 approved on February 23, 2010, contains a note stating "The wetland delineation shown hereon is based on a field study performed by James W. Witmer on December 18, 2009.

The applicant had also been coordinating with a separate consultant specializing in wetland delineations and believed that he could ultimately prove that the wetlands did not technically exist on the property.

Ultimately, MDE determined that the site does not contain jurisdictional wetlands.

#### Slope Protection and Conservation Easement

The Bethesda-Chevy Chase Master Plan (page 137) emphasizes the following recommendation:

***This plan supports 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. This recommendation will prevent extensive hillside erosion which can result in large amounts of sediment runoff into streams.***

A major goal of the Bethesda-Chevy Chase Master Plan (on Page 5) states:

***A goal of this Plan is to protect the natural resources and environmental qualities which are important to the quality of life for Bethesda-Chevy Chase. Steeply sloped and heavily wooded areas are distinctive features of the Palisades area and portions of the Chevy Chase area. Throughout B-CC, residential areas are heavily wooded. Environmental concerns with those areas include loss of mature woodlands, stream quality...***

***...Recommendations to protect the natural resources of B-CC include:***

1. *Preserve wetlands, steeply sloping areas...*

The plan and associated worksheet shows the removal of the entire onsite forest, even though most of the areas are not affected by the proposed work. The clearing figures are reflected in the



submitted forest conservation worksheet, which identifies all of the forest as being cleared. The plan proposes offsite mitigation for the clearing of the high priority onsite forest. Staff does not support the clearing and proposes a condition to more appropriately protect the existing forest and environmentally sensitive steep slope areas.

If the plan were approved as submitted, any tree contained within the forest could be cleared in the future with no further input from M-NCPPC. The forest areas shown as cleared also contain trees which are 30" in diameter or greater and would, therefore, be subject to a forest conservation variance (since they are part of the forest proposed as cleared). Therefore, the condition to show additional areas of conservation easement is necessary to consider the application as complete, since the variance request does not mention the tree clearing beyond the LOD and the variance request must be consistent with the plan. Refer to the variance section of this staff report for additional information on the forest conservation variance.

There is disagreement between staff and the applicant over which type of conservation easement should be placed on the subject property – a Category I easement or a Category II easement.

A Category II Easement would partially meet the requirements of the variance request in terms of physically protecting individual trees. However, a Category II Easement will not ensure stabilization of the slope, which is necessary to make the finding of no adverse impacts on water quality.

The proposed development excessively encroaches into environmentally sensitive areas (slopes over 25%) in conflict with the subdivision regulations. 50-32(c) of the Subdivision Regulations allows for the Planning Board to restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. Section 50-32(c) states:

For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers.

A Category I Easement would satisfy the requirements of the above referenced code and is also required to comply with the Forest Conservation Law (Chapter 22A-12(b)). Furthermore, the Category I Easement area would ensure the stability of the steep slope, which presently shows no signs of erosion in the areas associated with the forest. Erosion is occurring in the grassy slope outside of the forest footprint. The applicant has indicated he would be agreeable to a Category II Easement over the steep slopes, but not a Category I Easement. The less stringent Category II Easement would allow the removal of groundcover and understory, which would destabilize the slope contrary to the Master Plan language, Environmental Guidelines, Forest Conservation Law, Subdivision Regulations and forest conservation variance provisions. Staff is, therefore, recommending a condition that onsite areas of existing forest and slope be placed in a protective Category I Forest Conservation Easement.

#### Forest Conservation and Tree Save

The Forest Conservation Plan covers approximately 1.57 acres that includes the offsite limits of disturbance (LOD). The plan shows clearing of the entire 0.32-acre high priority forest, which generates a reforestation requirement of 0.63 acres. The plan proposes to meet the reforestation requirements either by a payment of a fee-in-lieu or through an offsite forest conservation easement. The onsite

conservation easement area and associated LOD proposed by staff would retain enough forest to comfortably meet the forest definition. A minor planting requirement may be generated under the scenario recommended by Staff. However, the minor planting requirement could 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.

The proposed plan includes substantial impacts to a number of trees. An arborist report was provided to address the proposed impacts (Attachment D). The report contains recommendations for extensive use of a handheld air-jet tool for excavation (air-spading). For example, on page 25 of the arborist report (under the hardscape section for tree #3/25) the recommendation is to carefully excavate the piers for the garage and porch and have the structure built over the retained root systems. Such intensive measures require extremely careful coordination of all construction personnel. Staff has included conditions for the plan to provide the necessary details, notes and specifications to implement the tree save plan.

Note: the applicant has stated that the driveway could be re-designed further away from the tree which would simplify the preservation measures proposed near the northwest portion of the site.

#### Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's CRZ, requires a forest conservation variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires approval of a variance for impact to trees that measure 30 inches diameter at breast height (DBH) or greater; are part of a historic site or designated with a historic structure; are designated as National, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or are designated as Federal or State rare, threatened, or endangered species. The applicant submitted a complete variance request on December 16, 2011, for the impacts to and removal of trees as a result of the proposed subdivision (Attachment E). The applicant proposes to remove two trees that are 30" DBH or greater, and to impact, but not remove, 15 other subject trees. In total, 17 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law are proposed to be affected.

Note: As stated in previous sections of this staff report, the submitted application and associated variance request contain inherent conflicts regarding the forest clearing declared and appropriate protection of specimen trees. The only means of correcting the existing application is to condition that an easement be established to protect the subject trees. Otherwise, the application would have to be considered incomplete and could not be acted on by the Planning Board.

Variance Request

**Table 1: Trees ≥ 30” DBH to be removed or potentially removed**

Tree #	Species	Diameter (inches)	Condition	Status	CRZ Area (sf)
6	Tulip Tree	51" DBH	Poor	Remove*	18,386
9	American Beech	34.5" DBH	Hazard	Remove	8,414

\*The variance request and arborist report do not clearly indicate whether or not tree #6 is to be removed; the submitted documents state minor impacts and retention with monitoring should occur.

**Table 2: Trees ≥ 30” DBH to be impacted but retained**

Tree #	Species	Diameter (inches)	Condition	Status	CRZ Area (sf)	CRZ Impacts (%)
5	Tulip Tree	41" DBH	Good	Save	11,883	53.2*
8	American Beech	31" DBH	Good	Save	6,793	27.7
11	American Beech	31" DBH	Good	Save	6,793	43.0
13	American Beech	30" DBH	Good	Save	6,362	4.1
14	American Beech	30" DBH	Good	Save	6,362	7.9
15	American Beech	30" DBH	Good	Save	6,362	12.4
16	American Beech	30" DBH	Good	Save	6,362	16.8
17	Tulip Tree	32" DBH	Poor	Save	7,238	60.0
18	Red Oak	37" DBH	Good	Save	9,678	11.7
19	Tulip Tree	30" DBH	Good	Save	6,362	2.2
23/2	Red Oak	32" DBH	Good	Save	7,238	25.0
25/3	White Oak	32" DBH	Good	Save	7,238	32.5
53	American Beech	32" DBH	Good	Save	7,238	7.8
55	White Oak	30" DBH	Good	Save	6,362	5.6
56	American Beech	33" DBH	Good	Save	7,698	4.2

\* The proposed fill (not supported by staff) would increase the impact to tree #5 to 63%.

As required, the applicant has presented a variance request and justification letter to the following four questions (see Attachment E for applicant’s response):

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be violated or

that a measurable degradation in water quality will not occur as a result of the granting of the variance;  
(4) Provide any other information appropriate to support the request.

Although staff does not agree with all of the justifications made by the applicant, staff has made its own determinations to support the findings of the variance. Staff agrees that some level of impact would be required and that a plan meeting the general intent of the application can be approved. However, staff believes that some of the impacts proposed are unnecessary and recommends that additional tree preservation methods be provided on the plan, and that certain reductions in the LOD occur. As conditioned in the staff recommendation, staff agrees that there is an unwarranted hardship in not granting the variance. Based upon consideration of the existing site features, and the proposed conditions of approval, staff agrees that enforcing the rules would deprive the landowner of rights enjoyed by others in similar areas.

### Variance Findings

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

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

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

The site previously contained a large residential structure. The current proposal, as conditioned, occupies roughly the same area of disturbance that would be needed to replace a similar structure.

As conditioned, the plan will avoid a number of unnecessary impacts to subject trees.

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

The requested variance, modified by the conditions in the staff recommendation, is not based on conditions or circumstances which are the result of actions by the applicant. Some level of impact is required to redevelop the site, and some of the disturbance corresponds to existing disturbed conditions. Staff concurs with the removal assessment of tree #9; and assuming the project arborist provides an explicit recommendation for removal of tree #6, staff would also concur with the removal of that tree. Staff believes that the variance can be granted under this condition and no mitigation for the two removals would be necessary. As conditioned, the proposed plan avoids and minimizes disturbances to the subject trees. The variance request would be granted to any applicant in a similar situation.

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

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

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

On September 8, 2011, MCDPS has approved a stormwater management concept (Attachment J) for the proposed project. As conditioned, a Category I easement will be placed to protect the forest on the steep slopes in an undisturbed/stable condition. State water quality standards will not be violated and measurable degradation in water quality will not occur.

#### County Arborist's Recommendations

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The County Arborist must make a recommendation on the variance request to the Planning Board within 30 days from the receipt of the request. If there is no recommendation from the County Arborist, the response is presumed to be favorable. The request was forwarded to the County Arborist on December 19, 2011. The County Arborist issued a response to the variance request on December 23, 2011 and will not provide a recommendation since she believes that the tree variance provision does not apply to development applications submitted before October 1, 2009 (Attachment F).

#### Staff Recommendation on the Variance

Based on the above findings and conditions of approval, staff recommends that the Board approve the applicant's request for a variance to the Forest Conservation Law to remove two subject trees, and to impact 15 subject trees associated with the site. The trees subject to this variance (to be impacted but retained) will receive adequate tree protection measures, as conditioned. No mitigation is recommended for trees impacted but retained.

#### Stormwater Management

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.

#### **Compliance with the Subdivision Regulations and Zoning Ordinance**

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 resubdivision as discussed below. The proposed lot size, width, shape and orientation 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 as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

## Conformance with Section 50-29(b)(2)

### A. Statutory Review Criteria

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

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

### B. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate “neighborhood” for evaluating the application. In this instance, the Neighborhood selected by the applicant, and agreed to by staff, consists of 28 lots (Attachment G). The neighborhood includes platted lots in the R-60 zone on and in the vicinity of Meadow Lane. The lots share several points of access on Meadow Lane, Oak Lane, Ridgewood Avenue, and Thornapple Street. The designated neighborhood provides an adequate sample of the lot and development pattern of the area. A tabular summary of the area based on the resubdivision criteria is included in Attachment H.

### C. Analysis

#### Comparison of the Character of Proposed Lots to Existing

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

#### **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 two proposed lots have frontages of 100 and 104 feet, respectively. **The proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.**

#### **Alignment:**

Twenty-one of the 28 existing lots in the neighborhood are perpendicular in alignment, and the remaining seven are corner lots. The two proposed lots are perpendicular in alignment. **The proposed lots are of the same character as existing lots with respect to the alignment criterion.**

**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. Proposed Lot 37 will be the largest lot in the neighborhood, and proposed Lot 38 will be larger than all but one of the existing neighborhood lots. This is an unavoidable consequence of the 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 proposed resubdivision into two lots creates smaller lots that are closer in size to existing neighborhood lots. Staff recommends that the Planning Board find that **the proposed lot sizes are in character with the size of existing lots in the neighborhood.**

**Shape:**

Fourteen of the existing lots in the neighborhood are trapezoidal, eight are rectangular, and six are irregular. Two of the proposed lots are irregularly shaped, and one is rectangular. **The shapes of the proposed lots will be in character with shapes of the existing lots.**

**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 proposed lots have widths of 100 feet. **The proposed lots will be in character with existing lots in the neighborhood with respect to width.**

**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. Proposed Lot 37 has a buildable area of approximately 11,684 square feet, and proposed Lot 38 has a buildable area of approximately 10,679 square feet. Proposed Lot 37 will have the largest buildable area in the neighborhood, and proposed Lot 38 will have a buildable area larger than all but one of the existing neighborhood lots. This is an unavoidable consequence of the 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 proposed resubdivision into two lots creates smaller buildable areas that are closer in size to existing neighborhood lots. Staff recommends that the Planning Board find that **the proposed lots will be of the same character as other lots in the neighborhood with respect to buildable area.**

Note: The resubdivision data table submitted by the applicant indicates that proposed Lot 37 has a buildable area of 21,950 square feet, and proposed Lot 38 has a buildable area of 16,065 square feet. These figures include portions of the lots that are not actually buildable because they are behind a building restriction line and within a forest conservation easement that are recommended by staff to protect the steep slopes on the subject property, as discussed in this report. Staff estimated the buildable area figures used in the analysis by measuring on the plan

the remaining buildable area after excluding the area behind the building restriction line and within the forest conservation easement.

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

### **Conformance with Section 50-32(b)**

Section 50-32(b) of the Subdivision Regulations states that “the board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.”

The band of steep slopes, which exceed 25% gradient, that crosses the central portion of the subject property constitutes unsafe land in the meaning of Section 50-32(b). As such, staff recommends that that portion of the subject property be restricted by means of building restriction lines, as authorized by Section 50-32 of the Subdivision Regulations. The preliminary plan submitted by the applicant shows a building restriction line at the bottom of and near the top of the steep slope area. The staff recommendation includes a condition that requires that the building restriction line be shown on the certified preliminary plan and that no building foundation may encroach beyond the building restriction line.

### **Town of Chevy Chase**

The subject property is located within the Town of Chevy Chase. As provided in Article 28 of the Maryland Code, the Montgomery County Planning Board exercises subdivision power within the Town. The Town provided three letters to the Planning Board, dated June 9, 2010, October 28, 2010, and November 15, 2010, respectively, that recommend denial of the application.

However, the applicant worked with the Town and ultimately revised the application to a two-lot subdivision (instead of three lots), and the Town withdrew its recommendation of denial. The Town is now recommending approval of the two-lot subdivision, as stated in its letter of August 25, 2011 (Attachment I). Although the Town recommends approval of the preliminary plan, it continues to express concerns regarding tree preservation, stormwater management, and pedestrian safety.

With regard to tree preservation, the letter states it must issue a tree removal permit before any grading or clearing can take place. Although the letter states that a permit was denied by the Town, subsequent to the date of the letter, a permit was issued by the Town.

With regard to stormwater management, the letter states that the applicant must comply with Section 28 of the Town Code, which requires the installation of stormwater management facilities. The applicant has received approval of stormwater concept from MCDPS, and the applicant will obtain any necessary Town stormwater approvals prior to the Town’s issuance of building permits.

With regard to pedestrian safety, the Town is concerned that the proposed lots will greatly increase vehicular traffic in the alley, putting pedestrians at risk. However, the addition of two one-family detached dwellings will not generate a significant amount of traffic. The alley provides primary vehicular access apparently to six existing lots; with the two proposed lots the total would be eight. The



Planning Board has approved other preliminary plans for subdivisions on streets with no sidewalks, based on a determination that the low traffic volume allows pedestrians to safely travel in the roadway. Many of these subdivisions have been on streets with more dwellings accessing them than the eight lots that will access the alley if this subdivision is approved. Moreover, the alley is posted with a maximum speed of ten miles per hour, further ensuring pedestrian safety. Finally, the applicant has agreed to work with the Town to address pedestrian safety concerns.

### **Citizen Correspondence and Issues**

The applicant conducted a pre-submission community meeting on February 27, 2010. No significant subdivision issues were raised at the meeting. In addition, written notice of the plan submittal and the public hearing dates was given by the applicant and staff. As of the date of this report, no citizen correspondence has been received relative to the current, two-lot preliminary plan.

### **CONCLUSION**

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

### **Attachments**

Attachment A – Vicinity Development Map  
Attachment B – Proposed Preliminary Plan and Preliminary Forest Conservation Plan  
Attachment C – MDE Wetland Letter  
Attachment D – Arborist Report  
Attachment E – Applicant’s Variance Request  
Attachment F – County Arborist Letter  
Attachment G – Resubdivision Neighborhood Map  
Attachment H – Resubdivision Data Table  
Attachment I – Recommendation of the Town of Chevy Chase  
Attachment J – Agency Correspondence Referenced in Conditions

Table 1: Preliminary Plan Data Table and Checklist

<b>Plan Name: 7206 Meadow Lane</b>				
<b>Plan Number: 120100270</b>				
<b>Zoning: R-60</b>				
<b># of Lots: 2</b>				
<b># of Outlots: N/a</b>				
<b>Dev. Type: Residential</b>				
<b>PLAN DATA</b>	<b>Zoning Ordinance Development Standard</b>	<b>Proposed for Approval by the Preliminary Plan</b>	<b>Verified</b>	<b>Date</b>
Minimum Lot Area	6,000 sq. ft.	24,210 sq. ft. minimum	NB	1/20/12
Lot Width	60 ft.	100 ft. minimum	NB	1/20/12
Lot Frontage	25 ft.	100 ft. minimum	NB	1/20/12
Setbacks				
Front	25 ft. Min.	Must meet minimum <sup>1</sup>	NB	1/20/12
Side	8 ft. Min./18 ft. total	Must meet minimum <sup>1</sup>	NB	1/20/12
Rear	20 ft. Min.	Must meet minimum <sup>1</sup>	NB	1/20/12
Height	35 ft. Max.	May not exceed maximum <sup>1</sup>	NB	1/20/12
Max Resid'l d.u. per Zoning	9	2	NB	1/20/12
MPDUs	N/a		NB	1/20/12
TDRs	N/a		NB	1/20/12
Site Plan Req'd?	No		NB	1/20/12
<b>FINDINGS</b>				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	NB	1/20/12
Road dedication and frontage improvements		Yes	Agency letter	6/18/10
Environmental Guidelines		Yes	Staff memo	1/10/12
Forest Conservation		Yes	Staff memo	1/10/12
Master Plan Compliance		Yes	Staff memo	12/15/10
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Yes	Agency letter	9/8/11
Water and Sewer (WSSC)		Yes	Agency comments	9/30/10
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	5/24/10
Well and Septic		N/a	Agency letter	5/24/10
Local Area Traffic Review		N/a	Staff memo	5/24/10
Policy Area Mobility Review		N/a	Staff memo	5/24/10
Transportation Management Agreement		No	Staff memo	5/24/10
School Cluster in Moratorium?		No	NB	1/20/12
School Facilities Payment		Yes	NB	1/20/12
Fire and Rescue		Yes	Agency letter	6/16/11

<sup>1</sup> As determined by MCDPS at the time of building permit.