



MCPB
Item No.: 3
Hearing Date: 1/8/15

7206 Meadow Lane, Limited Amendment 12010027A (in response to a violation)

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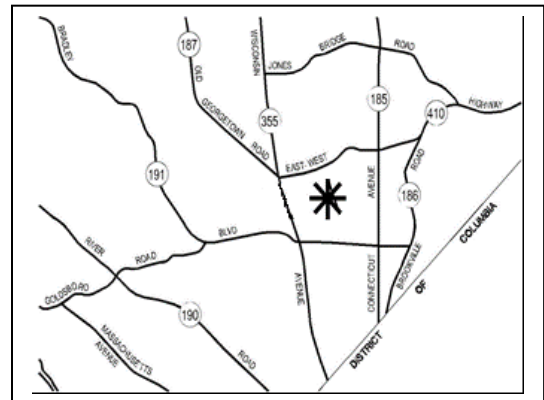
Date of Report: 12/26/14

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

Amendment application to retain an existing paved pathway that otherwise is to be demolished under the existing approved plans and associated terms of the Modified Category I Easement.

Applicant: CC Green Vision, LLC
 Filing date: October 2, 2014



Summary

Staff Recommendation: Approval with Conditions

The original approval of the project specified removal of an existing paved pathway (on the Preliminary Plan and Forest Conservation Plan) but allowed the installation of four new pathways (two per each lot) using mulch and natural stone steps. The terms of the recorded conservation easement for the site specifically precluded pavement. However, the Applicant has refused to demolish the paved pathway and was ultimately issued a Notice of Violation (NOV). The NOV also addressed other violations which have since been rectified. The Applicant has contested the requirement to demolish of the existing paved pathway, and has filed an amendment to allow the paved pathway to remain in place.

RECOMMENDATION: Approval of the amended Preliminary Plan and Forest Conservation Plan regarding changes in plan notes, easement language and associated plat to retain, rather than remove, an existing paved pathway, subject to the following conditions:

- 1) The Applicant must revise and submit the Preliminary Plan and Final Forest Conservation Plan (FFCP) to formally delete the proposed, but unbuilt, northern pathway connection within existing Lot 37 and revise associated notes accordingly.

- 2) The Applicant must comply with the following timeline for the Plan approvals, and implementation of the Plans shall be performed as follows:
 - a. A revised Preliminary Plan and FFCP must be submitted by the Applicant and approved by Staff prior to recordation of the deed of easement;
 - b. The revised Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to March 31, 2015;
 - c. The abandonment of the outdated Category I Easement must be completed no later than April 30, 2015;
 - d. The revised plat reflecting the Liber & folio of the revised Category I Conservation Easement must be submitted by April 30, 2015;
 - e. The re-grading and stabilization of existing fill associated with the demolished retaining walls within the Easement area must begin no later than April 1, 2015, and must be completed to the satisfaction of the M-NCPPC inspector by April 30, 2015.
 - i. The work shall be performed with hand tools and supervised/directed by an ISA Certified arborist;
 - ii. Existing rubble (such as but not limited to bricks) associated with the work shall be properly disposed outside of the Easement area; and
 - iii. The affected Easement area shall be stabilized with mulch and planted with least six native shrubs.

SITE DESCRIPTION

The subject property ("Property"), shown further below, is a platted subdivision covering 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 now two residential buildings on the Property, along with a modified Category I Easement measuring 16,701 SF (0.38 acres) which contains retained and planted forest, and protects the band of steep slopes running north-south through the center of the site. A lawn area and a play structure occupy the lower portion of the site adjacent to Meadow Lane. Surrounding properties to the north, south, east, and west are developed with one-family detached dwellings in the R-60 zone.

The Property is located within the Lower Rock Creek watershed. There are no streams or floodplains on the site.



Aerial site photo (prior to construction)

North ↑

The former residence that had occupied the property was demolished before the original subject application was submitted. An associated walkway with steps made of concrete and a partial stone veneer remained. The pathway runs perpendicular to the slope and the location had been known for some time and was labeled as existing concrete steps on the NRI/FSD approved on February 23, 2010. The pathway was partially covered in years of leaf deposits and was not fully mapped out on the plans. The Final Forest Conservation Plan has a note pointing to the area of the walkway (and the associated retaining walls) which clearly states “Ex walls, walks etc. to be removed by hand as directed by arborist”. The approved Preliminary Plans also contain a similar note.

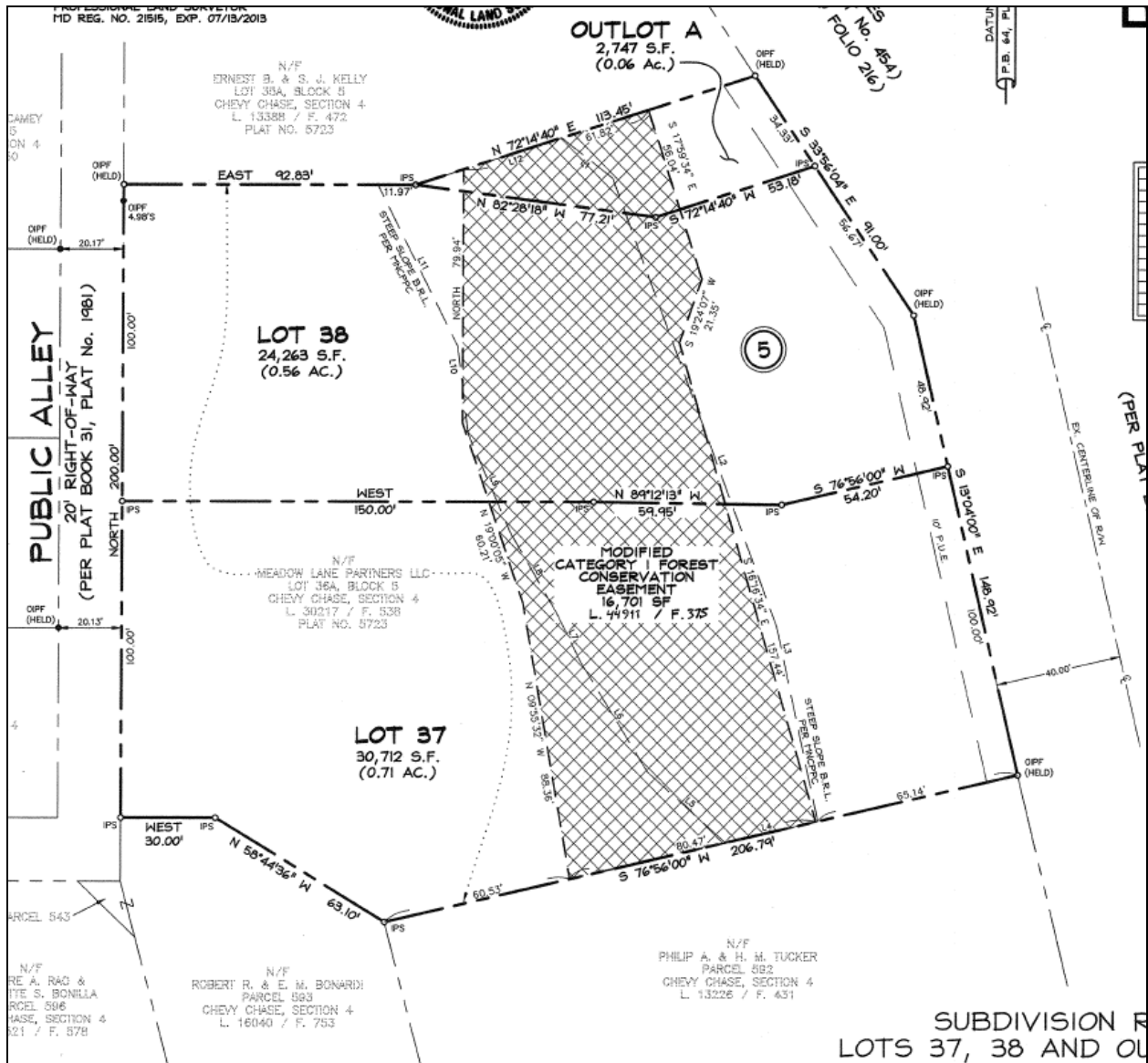
PREVIOUS APPROVAL

On March 15, 2012, the Planning Board approved Preliminary Plan 120200270 (MCPB No. 12-39, dated June 19, 2012) for two lots and one outlot on 1.33 acres of R-60-zoned land. The approval included a modified Category I conservation easement for the steep slope area (rather than a standard Category I easement).

PROJECT DESCRIPTION

The Applicant has submitted the subject amendment request to retain an existing pathway (described above) in response to the Notice of Violation (NOV). Staff supports the proposed amendment to the

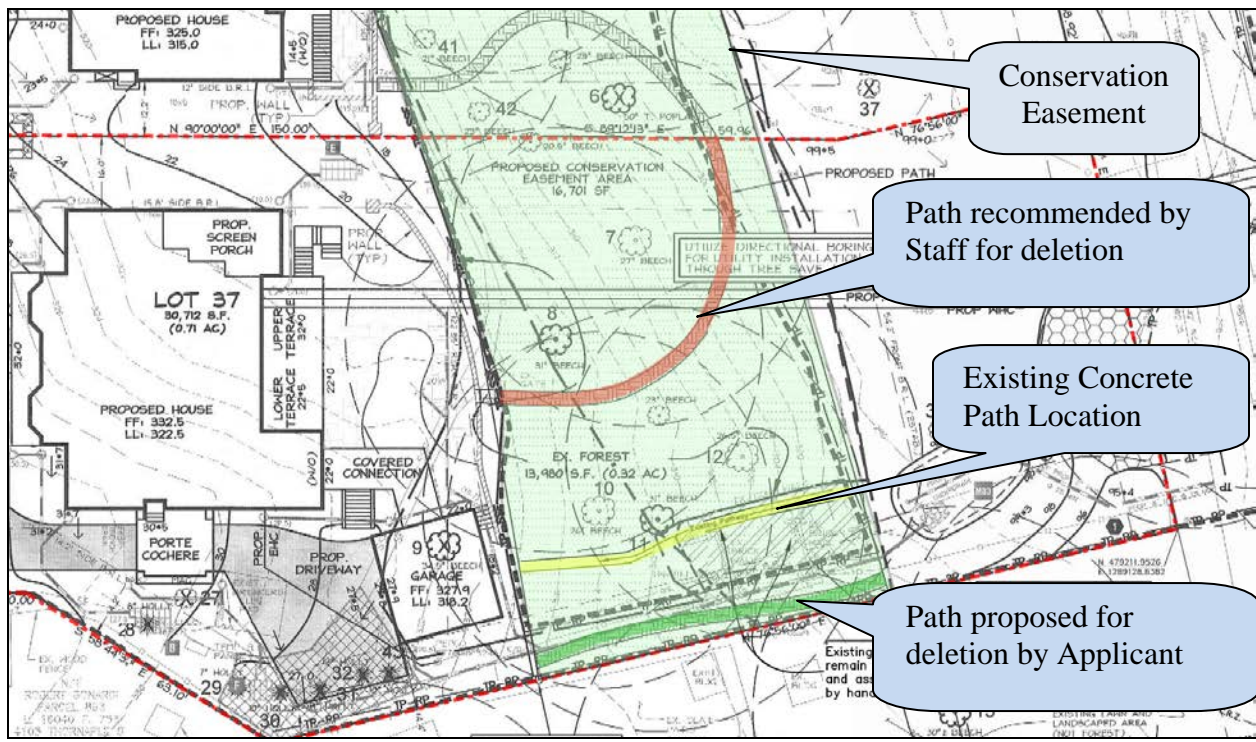
plans on the conditions that modified Category I Easement be further revised to address the retention of the existing concrete pathway that is precluded by the current easement language (which would then need to be re-recorded in the land records). The approved Preliminary Plan also contains a specific note and leader line associated with the existing pathway, reading "Ex. walls, walks, etc. to be removed". Therefore the retention of the walkway as proposed by the applicant requires amendment of both the Preliminary Plan and the Final Forest Conservation Plan.



Record Plat exhibit North ↑

In exchange for keeping the existing path, one of the approved but unbuilt pathways on the subject lot will be deleted from the plans (refer to exhibit below). The path proposed by Staff to be deleted is a longer and windier path (in the north center of the subject lot) which potentially affects a greater number of trees and shrubs. Its removal from plans compensates for the existing concrete path to be retained.

Recordation of the revised easement will necessitate a number of additional steps on the part of the Applicant and his neighbors. After recordation of the new revised easement, the Applicant must abandon the existing easement language. Furthermore, a corrected plat would be needed to reference the Liber-folio of the revised easement language (the current record plat references the existing recorded deed of easement). The re-platting would create new lot numbers for both of the properties within the subdivision. During a field meeting with the Applicant and two neighbors, the neighbor on the subject property (within the subdivision) expressed concerns over the re-platting/renumbering of his lot which has string of affects related to other deed references outside of M-NCPPC purview (see Citizen Correspondence section further below).



Location of existing concrete path and two approved, but unbuilt pathways North ↑

VIOLATION

The original approval of the project included a unique modified Category I Easement that was designed to protect, among other things, the area of steep slopes occurring within the property. The plans specified the removal of the existing paved pathway and nearby retaining walls, but allowed the installation of four additional pathways (two per each lot) using mulch and natural stone steps. The terms of the recorded conservation easement specifically preclude pavement. However, the Applicant had refused to demolish the retaining walls and the paved pathway. Additionally, the Applicant had not installed three of the required easement boundary markers and had also excessively cut back vegetation within the easement area. Ultimately, an NOV was issued by the M-NCPPC Forest Conservation Inspector on May 2, 2014 (see attachment 2). The Applicant has since addressed all of the issues in the

NOV¹, except for the pavement demolition, which has been contested by the Applicant and is the subject the hearing.



December 2014 photo of exposed vertical soils/rubble remaining after demolition of retaining walls

APPLICANT'S POSTION

The amended FFCP which was uploaded into EPlans on December 8, 2014, includes a note addressing the stabilization of the vertical fill that currently exists on the site today (refer to image above). The submitted plans did not show the deletion of any path in exchange for the retention of the paved pathway (that is specified for demolition under existing approvals). However, Staff determined that the deletion of the northern pathway on the subject lot could be addressed by a condition (rather than an immediate change to the plan submission).

On December 17, 2014, Staff received correspondence from the Applicant in which he proposes to keep the northern pathway on the plans (in addition to the concrete path) and instead delete the southern pathway. He would agree to delete both unbuilt paths from the plans if Staff withdraws the recommended conditions regarding revision and re-recording of the easement agreement and plat. Additionally, the Applicant requested that a plan note appearing on the submitted plan addressing the vertical fill (shown in photo above) be removed from the plans. The request also asks that certain notes regarding previous inspections be added to the plans.

¹ The applicant has not removed the fill associated with the retaining walls that have since been demolished. The resulting conditions are exposed vertical soils up to approximately 3' in height. The applicant has argued that fill does not need to be removed and is not a violation, since the plans only referenced the removal the walls themselves and not the associated fill. (The submitted FFCP amendment has a note more specifically addressing the fill).

Staff does not support the Applicants' December 17, 2014, requests. The southern pathway proposed for deletion is associated with a utility corridor area that was recently disturbed by heavy equipment for the installation of the new utilities serving the development. The pathway was designed to coincide with area of disturbance thereby minimizing further environmental impacts potentially associated with path construction. By contrast the northern path is longer and winds through areas that were generally undisturbed by the development. Furthermore, Staff notes that the revision to the easement language and plat are needed simply because the paved path is expressly precluded by the existing Modified Category I Easement language. The existing fill/rubble (although not specifically addressed by the NOV) should have been previously removed by the applicant; the proposed plan notes will clarify the need to address the unstable fill and rubble. Finally, the additional notes regarding inspections that have occurred on the site have already been independently issued in writing by the M-NCPPC inspector. Therefore the notes would unnecessarily complicate the plans.

THE TOWN OF CHEVY CHASE AND CITIZEN CORRESPONDENCE

The Applicant has posted the site with notice signs. In addition, written notice of the amendment submittal and the public hearing dates was given by the Applicant and Staff. Citizen correspondence was received relative to the current hearing as described further below.

The Town of Chevy Chase is aware of the amendment and is not expressing any formal comments or input. In a recent conversation between Planning Staff and a Town official, the Town representative stated that they will let the application play out through the M-NCPPC process and then act accordingly as applicable. For example, if the path were to be demolished, coordination with the Town Staff and Arborist would occur per their existing protocols.

An onsite field meeting was held on June 18, 2014, with Planning Staff, the Applicant and his two neighbors in attendance. The meeting was held to observe the site conditions and discuss potential options and their associated process. Ed Albert, the neighbor who resides within the subject subdivision expressed concern on the potential of re-platting of the property, since there a number of deeds in existence (including ones outside of the purview of M-NCPPC) that reference the existing plat and therefore would need to be updated to reference a new plat. Mr. Albert later followed up with brief e-mail stating:

... I would certainly appreciate a simple and sensible solution that would minimize disruption to the existing forest while allowing the needed utility of the steps. Leaving them in place vs. replacement with much wider, allowable stepping stones seems like a sensible win/win for the use, protection and intent of the easement all around...

The other neighbor (immediately adjacent to the subject application) Mr. Jim Lawson had written a very brief e-mail indicating that he prefers that path appearing on the plans adjacent to his property not be installed.

Although Staff supports the proposed amendment with conditions as noted, Staff acknowledges that keeping the paved path triggers a number of other steps described above. Staff also acknowledges that re-platting required by the proposed amendment will cause an inconvenience to the Applicant's neighbor (Mr. Albert). However, in response to the concerns from the Applicant and his neighbor regarding the re-platting, Staff noted during the field meeting (and on a number of other occasions) that simply demolishing the existing concrete pathway and installing the stone step as originally approved

would not require the plan amendment, change in the easement language, or re-platting and offer the following additional benefits:

- the stone stairs would be more aesthetically pleasing than the concrete, and is more compatible with the easement setting;
- the new stairs would be safer since the existing stairs have sudden and significant changes in the height of the risers, an unsafe condition;
- the required work could be completed in just a few days and likely cost less than the total fees associated with consulting, plan preparations and applications;
- the M-NCPPC inspector is confident that the removal of the existing concrete walkway could be performed without adversely impacting the adjacent trees;
- appropriate removal of the concrete path will provide long-term benefits for the roots of an affected 31” beech tree which are being constrained by the existing paving;
- the approved plans and associated easement language include permission allowing a new pathway to be constructed with natural stone steps;
- the new stone steps could largely follow the existing pathway but should be shifted from the area close to the base of the affected tree; and
- since there is no requirement to install either of the unbuilt paths currently appearing on the plans, the path next to Mr. Lawsons’ Lot need not be built.

CONCLUSION

Staff recommends approval of the amendment to the Preliminary Plan and Final Forest Conservation Plan with the conditions listed in the front of this report.

Exhibits

- Exhibit 1 – Planning Board Resolution
- Exhibit 2 – Notice of Violation (NOV)
- Exhibit 3 – Applicants’ response to NOV
- Exhibit 4 – Staff Response to Applicant
- Exhibit 5 – Submitted Forest Conservation Plan
- Exhibit 6 – Applicants’ December 17, 2014 email