



Mt. Jezreel Baptist Church Preliminary Plan 120150020

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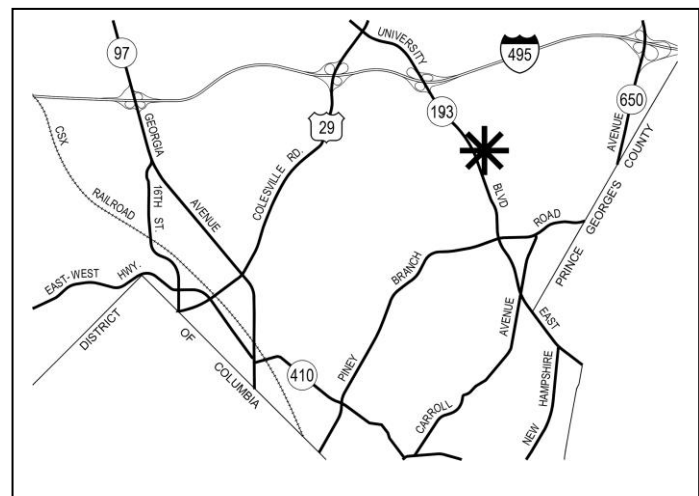
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Staff Report Date: 9/16/2016

Description

- Request: Two lots for an existing 450 seat church and associated school for up to 80 students and housing and related facilities for senior adults and persons with disabilities consisting of up to 75 dwelling units.
- Address: 420 E. University Boulevard
- Size: 9.73 acres
- Zone: R-60
- Master Plan: *2000 East Silver Spring Master Plan*
- Application accepted: September 3, 2014
- Applicant: Mission First Housing Development Corporation
- Review Basis: Section 50, Subdivision Regulations and 2004, Montgomery County Zoning Ordinance



Summary

Staff recommendation: Approval of the Preliminary Plan

- Staff recommends approval of Preliminary Plan (120150020) for two lots. Lot 1 will consist of 3.18 acres and Lot 2 will consist of 6.55 acres.
- Staff recommends approval of the abandonment of 11,945 square feet of Malibu Drive and incorporating this square footage into Lots 1 and 2.
- Staff recommends approval of the Final Forest Conservation Plan for Preliminary Plan 120150020 and the associated variance request.
- The Preliminary Plan was submitted concurrently with the Special Exception Use Application, but could not be reviewed by Staff until after the use was approved.

Staff recommends approval of Preliminary Plan No. 120150020, Mt Jezreel Baptist Church, for two lots subject to the following conditions:

1. Approval is limited to two lots: Lot 1 for housing and related facilities for senior adults and persons with disabilities and Lot 2 for the existing church and associated private school.
2. The Applicant must comply with the Board of Appeals conditions of approval for Special Exception S-2877, as may be amended.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter of January 28, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letters dated December 31, 2014, and July 13, 2016, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. The Planning Board accepts the recommendations of the Maryland State Highway Administration (MD SHA) in its letters dated May 11, 2015, September 1, 2015 and August 3, 2016, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MD SHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Applicant must show on the record plat the following right-of-way dedications, easements, and right-of-way abandonments consistent with the 2000 Approved and Adopted *East Silver Spring Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulations requirements:
 - a. University Boulevard East: Dedication necessary to achieve a 120-foot wide right-of-way along the Subject Property frontage, as shown on the Preliminary Plan.
 - b. A Public Improvement Easement, measuring 10-foot wide, over the shared use path along the University Boulevard frontage.
 - c. A common Ingress/ Egress and Utility easement, measuring 20-foot wide over the full width of the internal shared driveway, to permit access between University Boulevard and the multifamily building.
 - d. Abandonment of the unimproved portion of Malibu Drive. The precise limits of the abandonment should be contiguous with the abandonment associated with Preliminary Plan 11989129.
7. The Applicant must provide four (4) public bicycle parking spaces for short term use on Lot 1. The public spaces must be an inverted U-rack installed at a location convenient to the main entrance, weather protected spaces are preferred.
8. The private school located on Lot 2 is limited to an enrollment of up to 80 students.

9. The Applicant must make a Transportation Policy Area Review (“TPAR”) Mitigation Payment for transit equal to 25% of the applicable transportation impact tax to the Montgomery County Department of Permitting Services (“MCPDS”). The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
10. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.
11. 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 at the time of issuance of building permits. 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.
12. Prior to signature approval of the Certified Final Forest Conservation Plan the Applicant must address the following:
 - a. Rectify graphic and scaling issues.
 - b. Specify signage to properly demarcate the Category I Conservation Easement areas, particularly along adjacent residential backyards.
 - c. Revise invasive control program and plan notes to increase density of supplemental plantings and to specify approximate quantities of plants needed.
 - d. Expand the invasive control program to include onsite areas adjacent to forest setting.
 - e. Provide a native landscape planting area along the northern edge of the new parking lot. The plan shall map out the proposed plant locations within this particular area.
 - f. Update notes and details as needed to eliminate any discrepancies.
13. Prior to demolition, clearing or grading, the Applicant must record a Category I Conservation Easement over the forest conservation area as shown on the Final Forest Conservation Plan. The easement agreement must be in a form approved by the M-NCPPC Office of General Counsel and must be recorded in the Montgomery County Land Records. The Liber Folio for the easement must be referenced on the record plat.
14. Prior to demolition or any land disturbing activities occurring onsite, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.61 acres or as determined by the Certified Final Forest Conservation Plan.
15. The Applicant must, as part of the preconstruction activities occurring on the Subject Property:
 - a. Remove all existing structures, fencing, play equipment and debris from the Category I Forest Conservation Easement areas. This removal shall be coordinated with the M-NCPPC Forest Conservation Inspector.
 - b. Begin the initial treatments for the control of the invasive species, which shall be specified on the Final Forest Conservation Plan and coordinated with the M-NCPPC Forest Conservation Inspector. If necessary, the initial treatment may be delayed until seasonally appropriate.

16. Prior to issuance of any use and occupancy permits:
 - a. The Applicant must provide Staff with certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels of the generator to an interior level not to exceed 45 dBA Ldn.
 - b. The Applicant's consultant must test sound output of the outside generator to meet the sound standards of the County Code and noise guidelines relative to the adjacent existing residential properties and also the affected units within the building. If for any reason, the generator equipment is found not to comply with required County standards, the Applicant must undertake measures needed to bring the sound output of the equipment itself into compliance with the County standards. These measures may include enclosures, insulation material, orientation of the generator or other appropriate measures recommended by the applicants' consultant to address the particular sound problem.
 - c. The Applicant must provide a signed commitment to construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the engineer and Staff in advance of installation.
 - d. After construction is complete, the Applicant must provide staff with a certification from an engineer specializing in acoustics confirming that the dwelling units and the generator enclosure were constructed in accord with the approved specifications for noise attenuation
17. No clearing or grading on either Lot prior to recordation of the plat.
18. Prior to approval of Certified Preliminary Plan, the Applicant must:
 - c. Revise the Preliminary Plan to show the removal of four parking spaces within the rear 20-foot building restriction line on Lot 2.
 - d. Include the stormwater management concept approval letter, MCDOT recommendation letter, MSHA recommendation letter, and Preliminary Plan resolution in plan set or on the cover sheet(s).
 - e. Show the natural surface trail from Malibu Drive through the Subject Property.
19. Prior to the Record Plat, the Applicant must obtain approval from the Board of Appeals showing the location of the natural surface pedestrian trail from Malibu Drive on the approved Special Exception (S-2877) plan.
20. Prior to issuance of the final use and occupancy permit for the special exception use, (S-2877) the natural surface pedestrian trail must be constructed.
21. The record plat must show a common access easement from Malibu Drive through Subject Property necessary to accomplish the natural surface trail.

OVERVIEW

In September 2014, the Applicant, Mission First Housing Corporation, filed two applications: Special Exception S-2877, to construct housing and related facilities for senior adults and persons with disabilities; and a Preliminary Plan of Subdivision (120150020) to subdivide the existing property comprising 9.45 acres into two lots. Because the Applications were both accepted before October 30, 2014, they were reviewed under the 2004 Zoning Ordinance. Additionally, under the 2014 Zoning Ordinance, special exception applications are now known as conditional uses. However, for the purposes of this report, the elderly housing project (S-2877) will continue to be referred to as a special exception.

On December 3, 2015, the Hearing Examiner issued a report and recommended approval of Special Exception (S-2877) to the Board of Appeals (BOA). On December 14, 2015, the BOA approved this special exception use.

Presently, the site is composed of two unrecorded parcels and developed with an existing 450-seat church, surface parking lots and associated school located on the front portion of the property. The existing improvements will remain and become proposed Lot 2. The elderly housing development will be located in the rear portion of the site on proposed Lot 1. The Applicant will abandon an unused portion of the Malibu Drive right-of-way under the subject Preliminary Plan Application. The square footage from the area of Malibu Drive abandonment will be incorporated into both proposed lots.

SITE DESCRIPTION

Site Vicinity

The subject property (“Property”) is located at 420 East University Boulevard (MD 193) approximately 1,625 feet south of its intersection with Franklin Avenue. The surrounding area is developed with one-family detached housing abutting the northern and eastern property lines. Along the southern property lines, the residential development consists of one-family attached and one-family detached dwelling units. Across MD 193 and west of the property, the areas are developed with one-family detached housing.

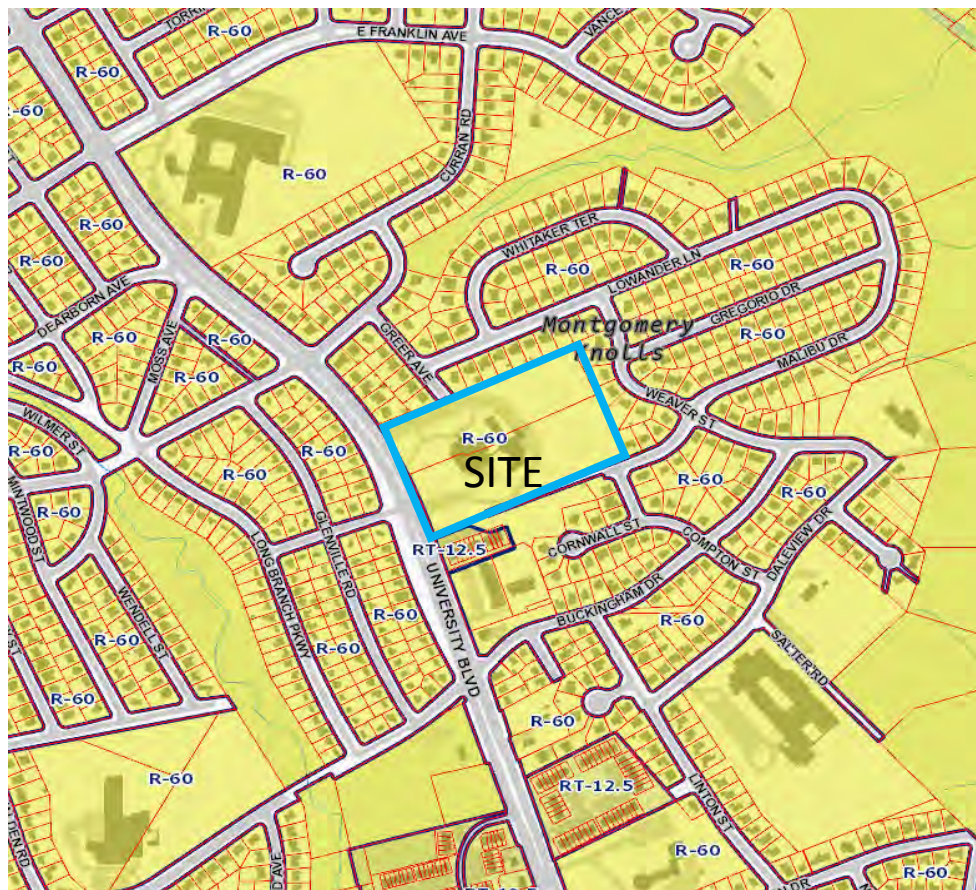


Figure 1: Vicinity Map (Subject Site in Blue)

Site Analysis

The Property consists of two unrecorded parcels, 160 and 213, for a total area of approximately 9.73 acres, including the unimproved area of Malibu Drive proposed to be abandoned along the southern property line. The Property is zoned R-60 and rectangular in shape with approximately 320 feet of frontage along MD 193 and 70 feet frontage along Malibu Drive.

The front portion of the Property is flat and developed with the Mt. Jezreel Baptist Church, a school and surface parking lots. The rear portion of the site is undeveloped, relatively flat and grassy with existing vegetation along the northern, eastern, and southern lot lines. Steep slopes of 15-25% are found along the Property's southern and eastern lot lines.

The primary access to the site is from a one-way looped driveway with two access points on MD 193, at the northwest and southwest corners of the Property. Another, right-in only driveway provides access at the center of the site's frontage.



Figure 2: Aerial View of Subject Property

PROJECT DESCRIPTION

Previous Approvals

On June 4, 2015, the Planning Board held a meeting to review S-2877. Overall, the Planning Board supported the special exception use. However, the Planning Board Chair emphasized that by the time of Preliminary Plan

review the Applicant should study a path at the rear of the site from Malibu Drive connecting the property to MD 193 to improve connectivity from the abutting residential neighborhoods east of the Property to MD 193. The Applicant agreed to examine the potential of adding a pedestrian path during Preliminary Plan review. A copy of the Planning Board's transmittal letter to the Board of Appeals is included as Attachment A.

On December 3, 2015, the Hearing Examiner recommended approval of the special exception use and forwarded this recommendation to the Board of Appeals. On December 14, 2015, the Board of Appeals (BOA) approved Special Exception (S-2877) for housing and related facilities for senior adults and persons with disabilities. A copy of the BOA opinion and conditions of approval is included as Attachment B.

Proposal

Subdivision

The Preliminary Plan will create two lots. Proposed Lot 1 will be 3.18 acres and will be developed as housing and related facilities for the elderly with 75 age-restricted housing units.

Proposed Lot 2 will comprise 6.55 acres and is developed with the existing Mt. Jezreel Baptist Church, surface parking spaces and a private primary school (kindergarten through grade 8, for up to 80 students). The church contains 450 seats and has over 150 surface parking spaces. The existing private school is constructed directly behind the church and is connected by an enclosed walkway.

Access to the both lots will be from the existing circular driveway located on MD 193. The Applicant will record an ingress/egress easement over this driveway which will permit Lot 1 access to MD 193. The existing church is exempt from the parking requirements under Section 59-E.3.7 of the 2004 Zoning Ordinance, because a religious use has been in existence since May 1, 1962 at this location.

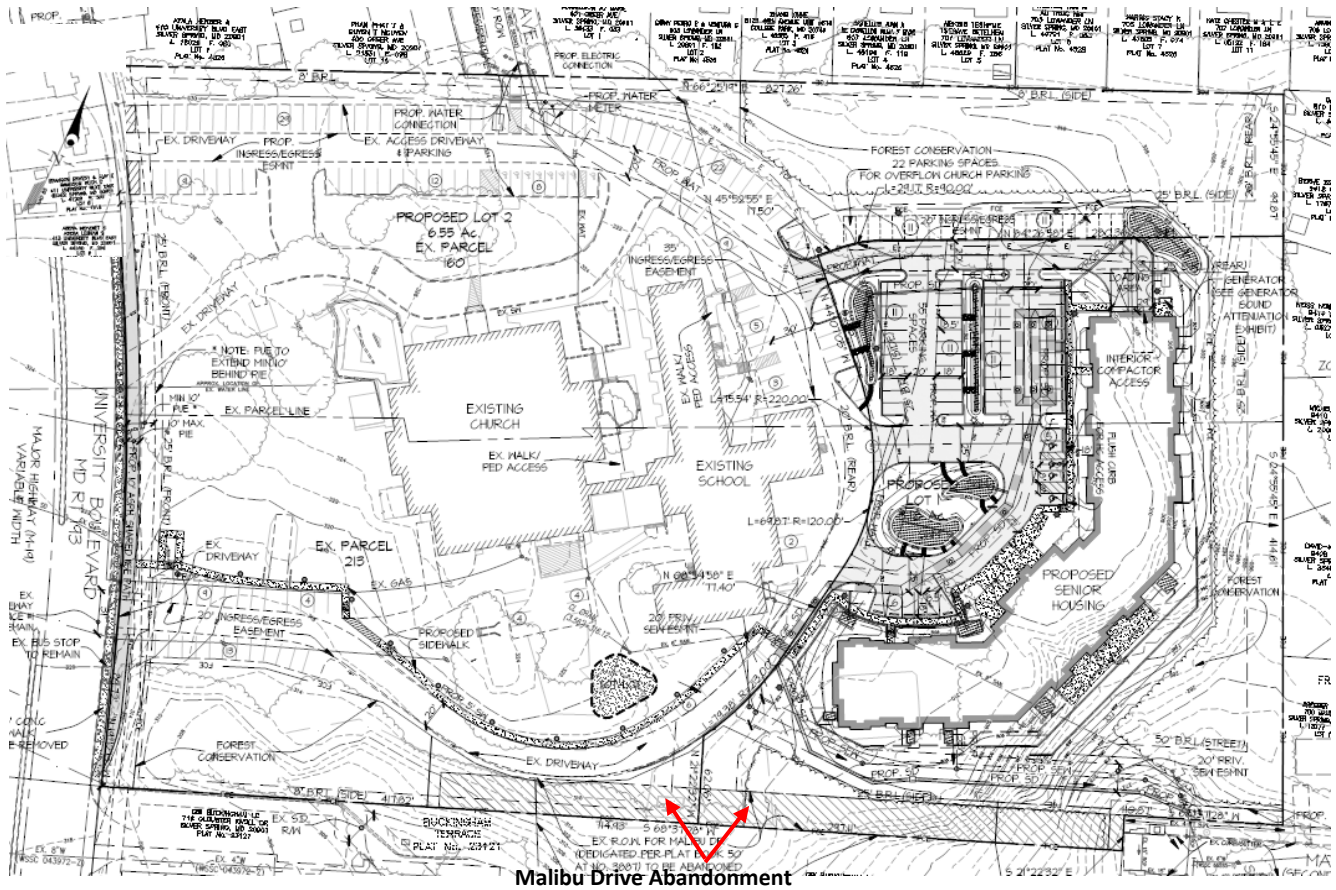


Figure 3: Proposed Preliminary Plan

Abandonment

The Applicant is proposing to abandon the existing but unused Malibu Drive right-of-way along the southeastern property frontage, and incorporate the land into Lot 2 (see Figure 3 above).

PRELIMINARY PLAN ANALYSIS AND FINDINGS

Master Plan

The Preliminary Plan substantially conforms to the 2000 East Silver Spring Master Plan. The Master Plan reconfirmed the existing R-60 zoning for the property. The Master Plan does not provide specific guidance for this site, however, it offers the following general guidance for neighborhood protection, under the themes of Community Preservation, Stability, and Character:

- *The intent of this Plan is to sustain a livable community of neighborhoods in East Silver Spring, by preserving positive attributes and guiding change so that it strengthens the function, character and appearance of the area. (p. 25)*

The continuation of an existing religious use and associated school on the Property and the creation of new affordable elderly housing strengthens the function of the Property, enhances the appearance of the Property and reinforces the image of East Silver Spring as a sustainable livable community.

- *Preserve existing residential character encourage neighborhood reinvestment and enhance the quality of life throughout East Silver Spring. (p.21)*

The creation of two new lots on the overall 9.73-acre Property will preserve the residential character of the community. Proposed Lot 2 will remain unchanged with the existing religious use while Proposed Lot 1 supports neighborhood reinvestment through the development of new affordable senior housing. Thus, the quality of life for senior adults and persons with disabilities in East Silver Spring is enhanced by development of new affordable housing.

- *New development infill development and redevelopment and special exception uses should be compatible with the existing residential character. As a result, the existing land use pattern should remain essentially the same. Non-residential special exceptions are discouraged in predominately residential areas to maintain residential character (p.26)*

The approved special exception use for senior adults to be located on Lot 1 will be designed to maintain the existing residential character of the surrounding community by using building materials similar to the surrounding residential community, retaining existing vegetation and trees and adding new landscaping to the overall Property. These measures will ensure that approved senior housing development will be compatible with residential character of East Silver Spring.

This Application complies with the land use recommendations of the Master Plan as it creates new infill residential development, encourages community preservation, retains the residential character, provides a mechanism for neighborhood reinvestment through construction of new housing units.

Transportation

Vehicular Access

The proposed subdivision is located on the grounds of the existing Mount Jezreel Baptist Church, which has vehicular access via three curb cuts on University Boulevard (MD 193). This roadway is classified as a Major Highway (M-19) with three travel lanes in each direction along the site's frontage. All three access points are uncontrolled and operate in the following manner:

1. A right-in/ right-out driveway (at the northwest corner of site)
2. A right-in only driveway (at the center of the site's frontage)
3. A full-movement driveway opposite Schuyler Road (at the southwest corner of site)

The approved special exception on proposed Lot 1 does not propose any modifications to the existing vehicular access points; however, it will modify the site's existing internal circulation by allowing access to the senior adult housing development located at the rear of the site. No adverse impacts will result from this change to the internal circulation as it will continue to be safe, adequate, and efficient.

Pedestrian and Transit Service

The site's frontage on MD-193 has an existing five-foot wide sidewalk. This sidewalk is part of a continuous sidewalk network connecting the subject property with the immediate vicinity and down to Piney Branch Road (MD 320), approximately 0.5 miles to the south. Transit service is available from a bus stop along the site's frontage and along MD 320. Specific transit routes within walking distance to the site include:

1. Metrobus routes: C2 and C4
2. Ride-On route: 14
3. Ride-On routes: 16, 20, and 24 are within a 10 minute (0.5 mi) walk of the site on MD 320

Master-Planned Roads and Bikeways

The *Approved and Adopted 2000 East Silver Spring Master Plan, 2005 Countywide Bikeway Functional Master Plan, and 2013 Countywide Transit Corridors Functional Master Plan (CTCFMP)* make the following recommendations:

- University Boulevard (MD 193) is designated as a Major Highway (M-19), with a 120-foot-wide right-of-way, between I-495 and Prince George's County.
- MD 193 is also identified as a Bus Rapid Transit (BRT) Corridor with a 124-foot-wide right-of-way.
- Dual Bikeway (DB-5), a master planned bikeway that includes a shared-use path, is recommended along the east side of MD 193.

Although the 2013 CTCFMP recommends a 124-foot-wide right-of-way, Staff recommends that only a 120-foot width be required in this location based on: a wider-than-normal right-of-way on the western side of MD 193; the established building lines of existing single family homes adjacent to the site's frontage; and the existence of the ultimate six-lane divided roadway configuration, as recommended in the *2000 East Silver Spring Master Plan*. As a result, any major reconstruction on this roadway would likely be implemented as a one-lane BRT in the median. At the time the median busway is implemented, the roadway should be widened within the existing right-of-way along the west side of MD 193. The required shared use path along the site's frontage should be placed within a Public Improvement Easement.

Abandonment of Malibu Drive

The Planning Board has the authority to abandon previously dedicated rights-of-way that are not improved or in use by the public, through Section 50-15(c)2 of the Subdivision Regulations. This process is governed by the procedures set forth in Section 49-68 of the Montgomery County Code. Malibu Drive, the subject right-of-way of the Applicant's abandonment petition, is an existing dedicated but unimproved 25-foot wide right-of-way along the southeast corner of the property. Currently, this right-of-way is not in public use and is not planned to serve any future public use based on review of the Master Plan and coordination with the parties in interest described in Section 49-68 (b) of the Montgomery County Code. Attachment C contains Montgomery County Code Section 49-68.

Malibu Drive was originally platted in 1954 as part of the Buckingham Terrace subdivision (Plat Book 50, Plat No. 3887) as a 50-foot wide right-of-way. (See Figure 4) The original right-of-way centerline was located on the former property line between what is now known as the Buckingham Terrace Outlot "A" and the southern boundary of the property. The contiguous "half" of Malibu Drive located on the Buckingham Terrace side of the centerline was abandoned in 1990 as part of the Buckingham Terrace Preliminary Plan (119890129) through Planning Board Resolution No. 90-32AB and recorded as Plat No. 18170. Abandonment of the remaining 25-foot wide "half" of the right-of-way along the Mount Jezreel property represents an area of approximately 11,945 square feet or 0.27 acres. This abandonment would extinguish the last remaining portion of this unimproved right-of-way located west of the Compton Street/ Malibu Drive intersection.

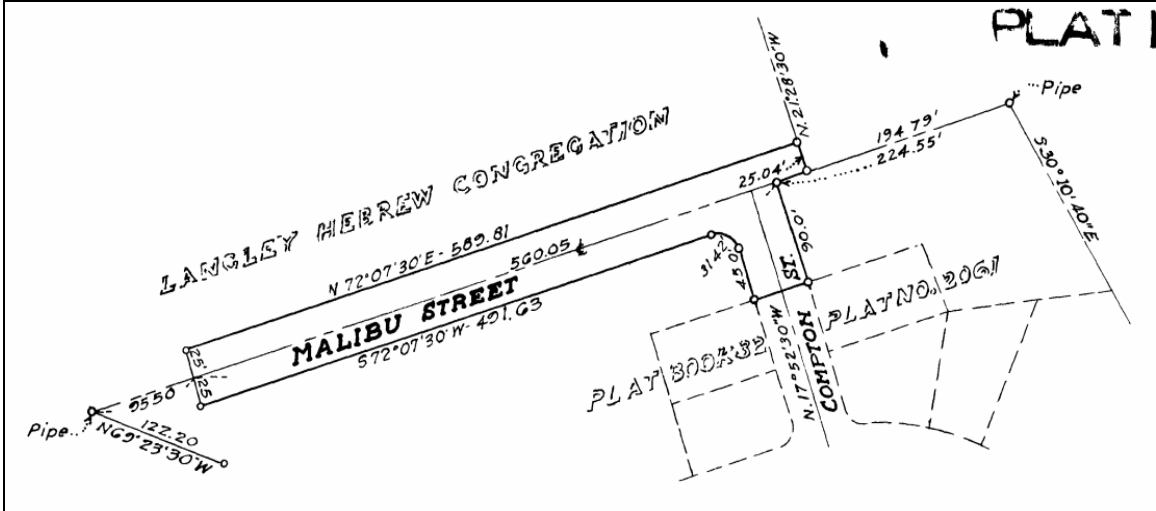


Figure 4: Plat 3887, dated 1954, showing original dedication and limits of Malibu Drive.

In its current configuration, the Malibu Drive right-of-way subject to this abandonment petition is vegetated with steep slopes along the southern boundary of the Property. Based on Section 49-68 (e) of the County Code, to authorize the abandonment of a right-of-way and its incorporation into a subdivision plat, the Planning Board must find *“that the right-of-way of Is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest.”*

Review of the Master Plan indicates that the Malibu Drive right-of-way is not anticipated for future public use. Additionally, there are no utilities or indications of any public use within the right-of-way. The abandoned right-of-way will be incorporated into the record plats for Lots 1 and 2. Therefore, Staff supports the abandonment petition and recommends that the right-of-way be abandoned as part of Preliminary Plan No. 120150020.



Figure 5: Malibu Drive looking southwest from intersection of Compton Street/Malibu Drive

Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR)

Although the approved elderly housing use generates fewer than 30 peak hour trips, the Preliminary Plan review requires that other existing uses on the site also be evaluated for adequate public facilities. The religious use on the site is exempt from the LATR review because it has been in continuous operation for more than 12 years. However, the private school has not previously required review under the LATR and is now included in the LATR required for the approved senior housing development. As a result of the traffic impact associated with both the approved senior housing use and private school, a Transportation Impact Study (TIS) was required. The trip generation associated with these two uses are summarized in Table 1. After review of the TIS, Staff concluded that the study intersections affected by the subject application will continue to operate within the policy area congestion standard of 1,600 CLV, see Table 2.

New developments within the Silver Spring – Takoma Park Policy Area, such as the elderly housing, development, must satisfy the Transportation Policy Area Review (TPAR) test. The TPAR test for the Silver Spring/Takoma Park Policy Area is determined to be “Inadequate” under the transit test and “Adequate” under the roadway test. As a result, the Applicant must satisfy the TPAR requirement by making a one-time TPAR Mitigation Payment for transit equal to 25% of the applicable development impact tax to MCDPS. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
MOUNT JEZREEL PRELIMINARY PLAN 12050020**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour*		
	In	Out	Total	In	Out	Total
Proposed						
75 Senior Adult Dwelling Units	5	10	15	10	9	19
80 Private School Students						
“New” Trips (53%); Diverted (32%)	43	29	72	41	31	72
“Pass-by” Trips (15%)	8	5	13	7	6	13
Total School Trips	51	34	85	48	37	85
Total Net New Peak Hour Trips	56	44	100	58	46	104

Source: TEMOSS traffic study dated January 2015.

**TABLE 2
SUMMARY OF CAPACITY CALCULATIONS
MOUNT JEZREEL PRELIMINARY PLAN 120150020**

Intersection	Traffic Conditions					
	Existing ¹		Background		Total	
	AM	PM	AM	PM	AM	PM
University Blvd E./ East Franklin Ave	1215	1086	1216	1086	1224	1097
University Blvd E./ North Driveway	751	566	751	566	772	588
University Blvd E./ South Driveway	767	583	767	583	826	644
University Blvd E./ Buckingham Dr/ Wayne Ave	874	712	874	713	879	714

¹Excludes existing 33 Private School Students
Source: TEMOSS traffic study dated January 2015.

Pedestrian Path Discussion Item

On June 4, 2015 the Planning Board held a meeting on the S-2877, for the senior housing development to be developed on Proposed Lot 1 and the Board discussed the potential for a pedestrian path within the potential right-of-way abandonment area, Malibu Drive. The discussion weighed the benefits of improved connectivity between the residential communities located east of the Property to MD 193 against the feasibility of constructing the path within the site’s constraints. Subsequent to the Board’s discussion, the Applicant agreed to evaluate the engineering associated with such a pedestrian path at the time of Preliminary Plan review.

According to the Applicant the proposed path within the abandoned portion of Malibu Drive is infeasible due to existence of steep slopes, disturbance to the proposed conservation easement and the accompanying loss of trees and vegetation, and estimated construction costs for a path in this location.

As part of the Preliminary Plan review, the Applicant’s attorney submitted a letter documenting their efforts to explore the feasibility of the pedestrian connection, within an existing sanitary sewer easement along the Malibu Drive ROW. The Applicant developed two alternative designs, one that meets American with Disabilities Act (ADA) requirements, and one that does not.

Given the steep topography, the existing grade drops from 312 feet to 266 feet within 275 feet. The ADA-compliant path relies heavily on switchbacks and requires the user to transverse over a significantly longer distance. This path also includes significant impervious areas and retaining walls. See Figures 6 and 7.

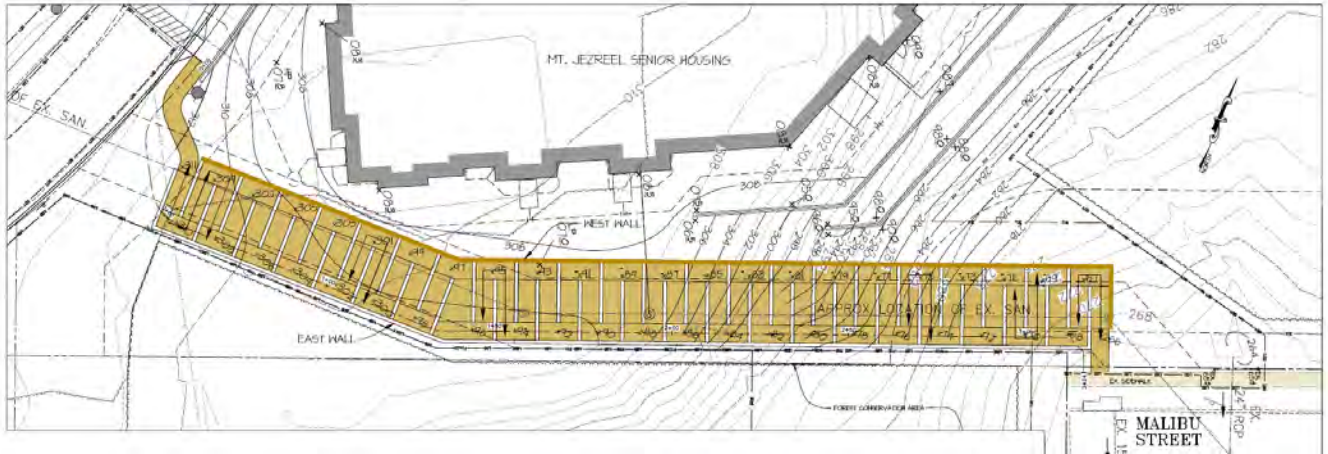


Figure 6: Alternative One Plan View of Proposed ADA Compliant Path from Malibu Drive (prepared by Applicant)

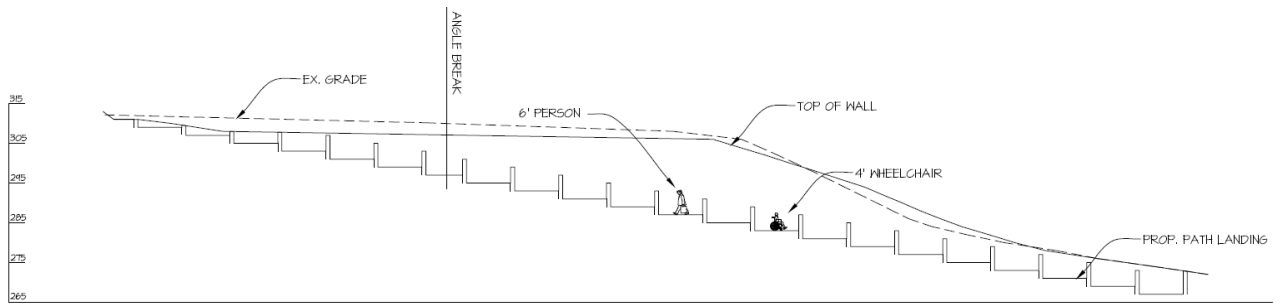


Figure 7: Alternative One; Profile of West Retaining Wall for Proposed ADA Compliant Path from Malibu Drive (prepared by Applicant)

The second alternative uses a “wood chips and rail ties” approach for the proposed path. See Figures 8 and 9.

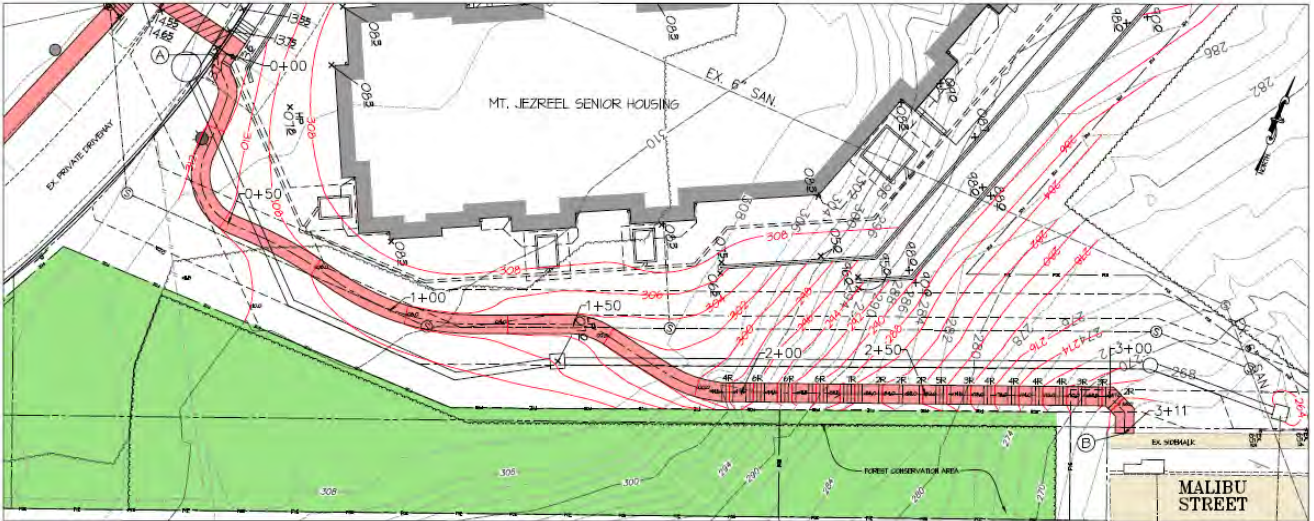


Figure 8: Alternative Two Plan View of Proposed Non ADA Compliant Path from Malibu Drive (prepared by Applicant)

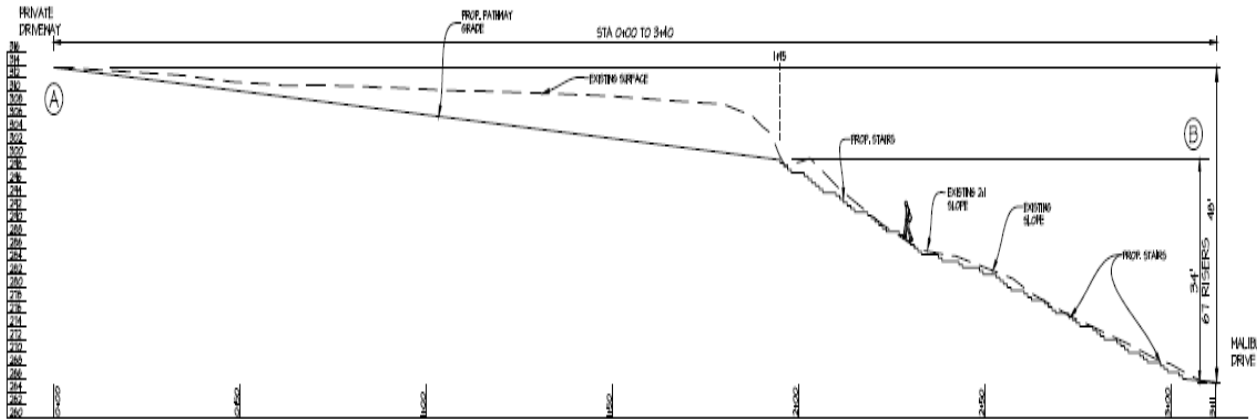


Figure 9: Alternative Two, Profile of Proposed Non-ADA Compliant Path from Malibu Drive (prepared by Applicant)

The Applicant has stated they would prefer not to build either alternative, citing existing topography, projected construction costs, and security issues. The Applicant states that existing sidewalks in the neighborhood already provide a suitable alternative for connectivity for residents to MD 193. (Attachment D).

Staff’s review indicates that while the Master Plan does not specifically address a connection from the abutting residential neighborhoods east of the site, it does advocate for neighborhood-friendly circulation and offers the following general recommendations for improved pedestrian circulation.

- Support a hierarchy of sidewalks, paths, and bikeways connecting to parks, schools, shops, and other public facilities (p. 9).

- *Enhance pedestrian and bicycle access to shops, transit, schools and other community facilities by providing a safe and attractive continuous systems of sidewalks and paths throughout area. Provide connections from neighborhoods to parks and trails. (P.9)*
- *Walking is an important part of life in east Silver Spring. This plan provides guidance for a pedestrian system in both recreational routs and commuter or errand routes. This plan recognizes that existing conditions must be considered (right-of-way availability, trees, topography, and the interests, of adjacent property owners) when designing new sidewalks. The recommendations of this Plan should be implemented by existing County and State agencies and by private developers. (p. 67)*

This path will facilitate pedestrian movement from residential communities to the east and connect these communities to the Subject Property and to commercial and residential areas along MD 193. The path will terminate on MD 193, the Subject Property's, the western property line, adjacent to an existing bus stop. Given the Master Plan recommendation and the Board's interest, Staff supports recommending construction of a soft-surface pedestrian connection between Malibu Drive and the internal ring road over the sanitary sewer easement. Such a path could be constructed of timbers, wood rails and wood chips with periodic maintenance to ensure its usability. Prior to record plat, the Applicant must obtain approval from the Board of Appeals showing the location of the natural surface pedestrian trail from Malibu Drive on the approved special exception plan. The record plat must show the natural surface trail from Malibu Drive through the Subject Property. This natural surface trail must be constructed prior to issuance of the final use and occupancy permit for the special exception use.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the proposed development. 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 determined that the Property will have appropriate and 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. Electrical, telecommunications, and gas services are also available to serve the property. The property is in the Downcounty Consortium school cluster. There will be no school age children generated from either proposed lot, as Lot 2 is developed with an existing church and Lot 1 will be developed as a senior housing complex. There will be no school impact from this subdivision

Environment

Previous Forest Conservation and Environmental Guidelines Reviews

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # [420141620](#) approved for the Property on July 22, 2014. The approve NRI/FSD shows there are 2.97 acres of forest onsite. The forest area is contiguous with *off-site* forest which is protected within an existing Category I Conservation Easement along the southern property line. This off-site existing Category I Conservation Easement was approved with the adjacent Preliminary Plan (120040470) for the Buckingham Terrace Townhouses abutting the southern property line.

Man-made steep slopes exist within the onsite forest areas along the eastern portion of the property. The property does not contain highly erodible soils, wetlands, or stream valley buffer. Four ephemeral channels located within the forest areas only convey water in direct response to rainfall. These ephemeral channels do not meet the definition of a stream and therefore do not have an associated stream valley buffer. The Property is located within the Northwest Branch watershed, which is a Use IV watershed. The on-site forest stand is rated

as moderate-priority for retention due to lack of buffer areas and the presence of invasive species, such as, Japanese knotweed.

Extensive control of invasive species along with supplemental native plantings will need to be undertaken as part of the forest management plan as specified in the Final Forest Conservation Plan (FFCP) approval. Additionally, the forest areas also contain piles of debris and rubble that will also need to be addressed by the FFCP. The Property contains numerous native trees, some of which are significant or specimen in size. As discussed in further detail in the following paragraphs, the Planning Board approved a number of impacts along with a removal of particular specimen sized trees and additional impacts are requested as part of the current application.

During the June 4, 2015, Planning Board meeting for the special exception application, the Board expressed concerns for tree preservation and screening to increase compatibility for neighboring properties to the south. In response to the Board's concerns the size of the patio and the terracing in the retaining walls were reduced. The design changes allowed greater amount of trees/forest to be preserved and also allowed space for planting areas. These revisions maximized the screening to the extent possible without a major redesign of the project.

The Preliminary Plan is subject to the Chapter 22A of the County Code. A Final Forest Conservation Plan (FFCP) was submitted through Eplans on June 14, 2016, for approval as part of the Preliminary Plan application. The plan is similar to the Preliminary Forest Conservation Plan (PFCP) which was previously approved by Board except for revisions to enhance and enlarge screening and tree preservation as requested by Board.

The entire Property contains 2.97 acres of existing forest. The Final Forest Conservation Plan (FFCP) shows 1.50 acres of on-site forest clearing (0.06 acres *less* than shown on the PFCP) and the protection of 1.47 acres of retained forest (0.06 acres *more* than shown on the PFCP). The changes have reduced the planting requirements for the project to 1.25 acres. The Applicant will plant 0.64 acres of forest on the property and together with 1.47 acres of retained forest a total of 2.11 acres of onsite forest to be placed within Category I Conservation Easement. The remaining 0.61-acre reforestation requirement will be satisfied by the purchase of equivalent credits in an off-site Forest Conservation Bank

Tree Save and Forest Conservation Variance

Section 22A-12(b) (3) of the 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 critical root zone (CRZ), requires a 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 no impact to trees that measure 30 inches 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 to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The earlier variance submitted under the special exception application sought to remove one tree > 30" DBH and to disturb but retain three other trees. The Board recommended approval of this variance request. The current application includes disturbance of trees that are ≥ 30" DBH, beyond those included in the previous variance approval. Therefore, another variance was required. The Applicant submitted a variance request on June 28, 2016, for the impacts to the subject trees. The Applicant's request is to impact, but retain two additional trees each of which is ≥ 30" DBA and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Attachment E

**TABLE 3
TREES PROPOSED TO BE IMPACTED BUT RETAINED**

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	PROPOSED STATUS
8	Tulip Tree	42"	4%	SAVE
9	Red Oak	53"	14% ¹	SAVE

¹ 3% impact to Tree #9 was previously approved for work on the north side of the driveway. Newly proposed trenching for sediment control fencing (and footer installation of permanent tree protection fence) will increase the previous impacts by 11% for a total of 14% impact.

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. In addition to the required findings discussed below, Staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship because of the impacts from sediment control fencing and footer installation of permanent tree protection fence that are regulatory requirements under this proposed development.

Variance Findings

The Board made the following determination based on the required findings for granting of the requested variance:

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

The tree impacts are associated with the installation of sediment control fencing and to a lesser extent, the footer installation of a permanent tree protection fence. The proposed features are located as far from the trees as possible, along the edge of an existing driveway where minimal impact would occur, and are required elements under this proposed development. The fencing and associated impacts would be required of any Applicant in a similar situation; granting the requested variance would not confer a special privilege.

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

The requested variance is based on proposed development allowed under the existing zoning and the need to provide appropriate temporary sediment control and permanent tree preservation measures for the subject site. The variance can be granted under this condition if the impacts are avoided or minimized and any necessary mitigation is provided. The fencing is located as far from the trees as possible and will have only minor impact to the trees. Root pruning will be performed along the affected areas to further minimize extent of any impacts.

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.*

Montgomery County Department of Permitting Services (MCDPS) staff approved the stormwater management concept for the project on January 28, 2015. The SWM concept proposes to meet the required SWM goals via micro biofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing storm drain. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met. Additionally, the temporary and permanent fencing triggering the variance request are both elements specifically designed to protect water quality and the Category I easement that in turn maintains slope stabilization by protecting the associated forest cover. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendation

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 (MCDEP) for a recommendation prior to acting on the request. The Applicant's request was forwarded to the County Arborist on June 28, 2016. The County Arborist issued a response to the variance request on July 29, 2016 and recommended that the variance be approved and that appropriate mitigation should be based on the number of square feet of critical root zone lost or disturbed. These mitigations methods can be met using any currently acceptable under method under Chapter 22A. Attachment F.

Mitigation for Trees Subject to the Variance Provisions

Staff does not recommend mitigation plantings for variance trees that are not removed or overly impacted. Therefore, no further mitigation plantings are recommended over and above what is already required the FCP. The removal for one 30" DBH Norway maple under the earlier variance will be appropriately mitigated with three 3" caliper trees.

Variance Recommendation

As a result of the above findings, Staff recommends that the Planning Board approve the Applicant's request for a variance from the Forest Conservation Law to impact and retain two additional specimen trees. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

The Applicant submitted a noise study for the proposed outdoor generator located on Lot 1. Based on the information submitted the generator enclosure appears sufficient to mitigate any noise impacts for abutting residential uses to the north and east of the property. However, the submitted materials show that the testing of the proposed model of generator/enclosure was based only on the front side of the generator and that noise levels may be louder from other sides of the generator. Furthermore, no information was provided to address the potential noise impacts to the residential units in the new building. Therefore, Staff has recommended a condition of approval regarding noise testing and mitigation.

Stormwater Management

The MCDPS Stormwater Management Section approved a stormwater management concept plan (#263675) on January 28, 2015. Based on the approval letter, this concept plan meets stormwater management requirements via through the use of micro-biofilters, planter boxes and structural underground storage. Attachment G

Compliance with Zoning Ordinance and Subdivision Regulations

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections and the Zoning Ordinance requirements for the R-60 Zone as shown in Table 4. The application substantially complies with the land use recommendations for the property outlined in the Master Plan as well as the applicable transportation and environmental recommendations.

**Table 4
Preliminary Plan Data Table for R- 60**

PLAN DATA	Zoning Ordinance Development Standard	Proposed by Preliminary Plan Lot 1	Proposed by Preliminary Plan Lot 2
Lot Area, min.	6,000 sq. ft.	3.18 acres 138,520 sq. ft.	6.55 ac 285,318 sq. ft.
Lot Frontage, min.	25 ft.	70 ft.	320 ft.
Lot Coverage, max.	35%	18 %	12%
Building Setbacks, min.			
Front	50 ft..	Must meet minimum ¹	180 ft.
Side	8ft. Min./18 ft. total	Must meet minimum ¹	134 ft. (south) 139 ft. (north)
Rear	20 ft..	Must meet minimum ¹	29 ft.
Height, max.	35 ft.	May not exceed maximum ¹	35 ft.
Maximum Density	7.26 du/ac	NA ²	NA ²
MPDUs required?		No	
TDRs Required?		No	
Site Plan Required?		No	

¹ As determined by MCDPS at the time of building permit.

² Lot 1 to be developed as housing and related facilities of senior adults and persons with disabilities (1 multi-family building with 75 units) approved Special Exception. Lot 2 is developed as 450-seat church and associated school.

Community Outreach

The Applicant has complied with all the submittal and noticing requirements. To date, Staff has not received any correspondence on the subject Application.

CONCLUSION

The project substantially conforms with the recommendations of the *2000 East Silver Spring Master Plan* and the development standards of R-60 Zone and the Subdivision Regulations. Therefore, Staff recommends approval of Preliminary Plan No. 120150020 and abandonment of Malibu Drive with the conditions specified at the beginning of this report.

ATTACHMENTS

Attachment A: Planning Board Transmittal Letter to Hearing Examiner

Attachment B: Board of Appeals Opinion S -2877

Attachment C: Montgomery County Code Section 49-68

Attachment D: Applicant's Justification Letter Opposing Proposed Path

Attachment E: Applicant's Variance Request

Attachment F: County Arborist Letter

Attachment G: MCDPS Stormwater Management Approval Letter



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

OFFICE OF THE CHAIR

June 24, 2015

Mr. David K. Perdue
Chair
Board of Appeals
Council Office Building, Room 217
100 Maryland Avenue
Rockville, Maryland 20852

SUBJECT: Special Exception S-2877

Dear Mr. Perdue:

At its regular meeting on June 4, 2015, the Planning Board reviewed Special Exception (S-2877) for Mount Jezreel Baptist Church, for housing and related facilities for senior adults and persons with disabilities, located at 420 East University Boulevard, in Silver Spring in the R-60 zone. The application was reviewed under the requirements of the 2004 Montgomery County Zoning Ordinance.

The Applicant, Mount Jezreel Baptist Church, is proposing to construct the special exception use on a 3.18-acre site that is part of a larger property of 9.73 acres. The larger property is composed of two unrecorded parcels and is developed with an existing church, an associated school and surface parking lots located on the front portion of the property. Since the proposed use cannot be developed across two parcels, the Applicant has filed a Preliminary Plan of Subdivision to subdivide the two parcels into two lots. The subdivision can be processed after the special exception use is approved by the Board of Appeals.

Under a Preliminary Plan of Subdivision, the existing improvements will remain and become proposed Lot 2. The special exception use will be located in the rear portion of the site on proposed Lot 1. As part of the Preliminary Plan process, the Applicant is also seeking to abandon an unimproved portion of Malibu Drive and incorporate this area into both subdivided lots. The Malibu Drive abandonment comprises approximately 11,950 square feet. The abandonment of Malibu Drive will be reviewed at the same time that the Preliminary Plan of Subdivision is heard by the Planning Board.

The Applicant also requested the following waivers from the parking facility standards, as allowed under Section 59-E-4.5 of the 2004 Zoning Ordinance:

- o for the 25 foot waiver of rear-yard setbacks for a parking facility adjacent residential property under Section 59-E-2.81 of the 2004 Zoning Ordinance; and
- o for the 25 foot waiver of rear-yard setbacks for a parking facility drive aisle in the R-60 Zone under Section 59-E 2.83 of the 2004 Zoning Ordinance.

Additionally, the Board reviewed the Forest Conservation Plan and associated tree variance submitted with this special exception application.

During the hearing, the Planning Board heard testimony from staff, the Applicant and the Applicant's attorney, and an adjoining property owner. The Planning Board consisting of Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley and Fani-Gonzalez recommended APPROVAL of the Special Exception subject to conditions.

The Board raised questions related to the parking waiver requests. Commissioner Dreyfuss questioned the need for the parking waiver request along the northern property line. The Applicant's attorney stated that the waiver was needed in this location because the drive aisle for the proposed use's parking facility will be located entirely within the required 20-foot rear-yard setback for the R-60 Zone. In addition to the proposed use's parking facility, the drive aisle would also provide vehicular access to 22 parking spaces on the adjoining proposed Lot 2, to be used by the church. Commissioner Dreyfuss commented that the 22 parking spaces sited on the adjacent proposed Lot 2 should be relocated elsewhere on that lot, to create a larger buffer area between the proposed special exception use and the abutting residential neighborhood north of the property.

Chair Anderson recommended a pedestrian connection from the end of Malibu Drive extending to University Boulevard to serve the nearby residential community. The Applicant's attorney stated that the possibility of such a connection, either within the Malibu Drive right-of-way or a public access easement, was not examined during the project's development phase. However, the Applicant would not be averse to examining this issue at the time of Preliminary Plan review. Chair Anderson agreed with this recommendation that a new pedestrian connection should be examined during Preliminary Plan review.

Commissioner Dreyfuss also recommended that the applicant study opportunities to reduce the depth of the recreational terrace along the southeast building face. He suggested that reducing the depth of the terrace would allow the retaining walls facing the neighborhood to the southeast to be shorter, reducing their potential visual impact.

On a motion by Commissioner Dreyfuss and seconded by Commissioner Presley and with Chair Anderson and Commissioners Wells-Harley and Fani-Gonzalez in agreement with the motion, the Planning Board recommended that the special exception application be **APPROVED**, including the requested waivers from Sections 59-E. 2.81 and 59-E-2.83 of the 2004 Zoning Ordinance for setbacks for parking facilities in the R-60 zone, subject to the following conditions:

- 1) The maximum allowable number of units must not exceed 75 units (56 one-bedroom units and 19 two-bedroom units).
- 2) The maximum number of residents may not exceed 86 persons.
- 3) The maximum number of employees associated with this use will be four with no more than three on-site at any one time.
- 4) Trash pick-up is to be after 9:00 a.m. on weekdays.
- 5) The Applicant must obtain two waivers of 25 feet each from the Board of Appeals for rear yard parking facility setbacks from the abutting residentially zoned property on proposed Lot 2 and for the parking drive aisle on proposed Lot 1.
- 6) The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the subject application.
- 7) At the time of Preliminary Plan, the Applicant must submit a noise study to measure potential noise impacts to the site. Potential mitigation measures will be determined during review of the Preliminary Plan.
- 8) At the time of Preliminary Plan submission, the Applicant must show a Public Access Easement, measuring at least 20 feet wide over the entire full width of the existing looped driveway, to permit access between the MD 193 and the special exception use.
- 9) The Applicant must provide a shuttle service for residents.

Sincerely,



Casey Anderson
Chair

cc: Martin Grossman, Hearing Examiner

CA:kar

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2877

PETITION OF MOUNT JEZREEL BAPTIST CHURCH

OPINION OF THE BOARD

(Worksession Date: November 18, 2015)
(Effective Date of Opinion: December 14, 2015)

Case No. S-2877 is an application by Mt. Jezreel Baptist Church, under Section 59-G-2.35 of the 2004 Montgomery County Zoning Ordinance, for a special exception for housing and related facilities for senior adults. The subject property is located at 420 E. University Boulevard, Silver Spring, Maryland, 20901 in the R-60 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on August 17, 2015, closed the record in the case on October 20, 2015, and on November 5, 2015, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception Granted.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on November 18, 2015. After careful consideration and review of the record in the case, the Board makes a slight revision to Condition No. 11 below, adopts the Report and Recommendation and grants the special exception, subject to the following conditions:

1. The Petitioner shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in the Hearing Examiner's report and in this opinion.
2. All development on the property must comply with the approved site plan (Exhibits 51(c) through (e)), Landscape Plan (Exhibits 51(f) and (g)) and Lighting Plan (Exhibit 51(h)).
3. The facility is limited to a total of 75 units (56 one-bedroom units and 19 two-bedroom units) and 103 residents.

4. The maximum number of employees is four with no more than three on-site at any one time.
5. Trash pick-up must occur after 9:00 a.m. on weekdays.
6. The facility must provide a shuttle service to transport residents to medical services, shopping areas, recreational and other community services frequently desired by senior adults.
7. Minimum unit sizes must comply with the relevant standards of Chapter 26, titled "Housing Standards," of the Montgomery County Code, as amended.
8. The Petitioner must obtain approval of a preliminary plan of subdivision under Chapter 50 of the Montgomery County Code.
9. At the time of Preliminary Plan, the Petitioner must submit a noise study to measure potential noise impacts to the site. Noise emanating from the property must comply with the requirements of Chapter 31B of the Montgomery County Code.
10. At the time of Preliminary Plan, the Petitioner must show a Public Access Easement measuring at least 20 feet in width over the entire length of the existing driveway to provide access from the subject property to University Boulevard.
11. Residents must be limited to adults 62 years of age or older or the spouse of an adult 62 years of age or older, with incomes meeting the requirements of §2.35(a) of the 2004 Zoning Ordinance. Age restrictions must at all times comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto.
12. The Final Forest Conservation Plan must incorporate the revisions to the retaining wall shown in Exhibit 51(i).
13. Prior to demolition or any land disturbing activities occurring onsite, the Petitioner must receive approval from the M-NCPPC Office of the General Council for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.57 acres or as determined by the Final Forest Conservation Plan.
14. Petitioner must obtain and maintain all appropriate licensing from Montgomery County and the State of Maryland for continuing operation of an age-restricted, rental housing facility for independent seniors.
15. Petitioner must construct, staff and operate this senior housing facility in accordance with all federal, state and local requirements.

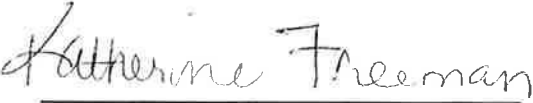
16. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Stanley B. Boyd, seconded by John H. Pentecost, Vice-Chair, with Edwin S. Rosado and Carolyn J. Shawaker, Chair, in agreement, and Bruce A. Goldensohn necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 14th day of December, 2015


Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter

by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Sec. 49-68. Abandonment of previously unused rights-of-way.

(a) If any right-of-way, except a right-of-way located entirely in a municipality which has independent zoning and subdivision authority, has not been in public use, one or more abutting property owners may petition the Planning Board to abandon the right-of-way. The petition must take the form of a preliminary plan for the subdivision of land, and must state the reason for the proposed abandonment and show any proposed relocation or realignment of the right-of-way, where applicable.

(b) The petitioner must notify:

- (1) each person with a recorded financial interest in land abutting the right-of-way;
- (2) the Department of Transportation;
- (3) the County Fire and Rescue Service;
- (4) the Police Department;
- (5) the Washington Suburban Sanitary Commission, when applicable;
- (6) each public utility operating in the area;
- (7) the governing body of each incorporated municipality or special taxing district which adjoins the right-of-way sought to be abandoned; and

(8) Any grantee of a franchise under Article 2, if the franchise authorizes the grantee to install or use any facility in, over, or under the affected right-of-way.

(c) The Planning Board must solicit the comments of each notice recipient, and then promptly determine whether:

(1) the right-of-way previously was improved or used for the purposes for which it was intended or dedicated; and

(2) the right-of-way is necessary for anticipated public use.

(d) If a recipient of notice under subsection (b) does not respond within 60 days after the notice is sent, the Planning Board must presume that the recipient does not oppose the proposal.

(e) If the Planning Board finds that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision. The amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses. (1982 L.M.C., ch. 46, § 4; 1989 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 4, § 1; [2007 L.M.C., ch. 8, § 1](#); [2008 L.M.C., ch. 5, § 1](#).)

Editor's note—[2008 L.M.C., ch. 5, § 3](#), states: Sec. 3. Any regulation in effect when this Act takes effect that implements a function transferred to another Department or Office under Section 1 of this Act continues in effect, but any reference in any regulation to the Department from which the function was transferred must be treated as referring to the Department to which the function is transferred. The transfer of a function under this Act does not affect any right of a party to any legal proceeding begun before this Act took effect.

Section [49-68](#), formerly Section 49-67A, was renumbered, amended and retitled pursuant to 2007, ch. 8, § 1.

Former Section 49-68, applicability of article, derived from 1975 L.M.C., ch. 26, § 1; 1985 L.M.C., ch. 31, § 31, was repealed by [2007 L.M.C., ch. 8, § 1](#).

Cross reference—applicability of County legislation within municipal corporations, § [2-96](#).

Editor's note—Former Section 49-68A, relating to application filing fee, derived from 1975 L.M.C., ch. 26, § 1, 1984 L.M.C., ch. 24, § 48, and 1984 L.M.C., ch. 27, § 31, was repealed by 1996 L.M.C., ch. 29, § 1.



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June 10, 2016

Ms. Kathy Reilly
Area 3 Planning Team
M-NCPPC
8787 Georgia Avenue, Third Floor
Silver Spring, MD 20910

Re: Preliminary Plan No. 120150020,
Mt. Jezreel Senior Housing

Dear Kathy:

As we have discussed a number of times, during the special exception review by the Planning Board, the Chair mentioned that he would like to have an explanation about why a pedestrian pathway from Malibu Drive to University Boulevard could not be provided through the Mt. Jezreel property. In order to address the Chairman's interest in this subject, you asked us to provide you with detailed information about any difficulties or hardships the Applicant might encounter in constructing such a pathway. Accordingly, Mt. Jezreel provides the following information for review and for presentation to the Planning Board through your Staff Report on the pending preliminary plan of subdivision.

1. Malibu Drive.

Mt. Jezreel wants to begin this explanation by pointing out that the abandonment of part of Malibu Drive as part of the preliminary plan application does not inhibit pedestrian access from residential neighborhoods to the east and the south that was contemplated when Malibu Drive was originally dedicated to public use.

If you look at the attached record plat of subdivision that created Malibu Drive, you will note that the street was never planned or platted to extend all the way from subdivisions to the east of the Mt. Jezreel property through to University Boulevard. While the applicant understands the planning rationale for connectivity and access to pedestrian and public transportation options along University Boulevard, there never was going to be an ability to

connect a public sidewalk to University via Malibu Drive because it was never platted all the way through to University Boulevard.

2. Topography.

What may appear to be an opportunity to make an easy pedestrian connection from Malibu Drive to University Boulevard is actually a very difficult engineering exercise due to very steep terrain between these two features. There is a change in elevation of over 47 feet in height from the level of Malibu Drive where it abuts the Mt. Jezreel property and the point where the sidewalk could "level off" on the Mt. Jezreel property. This height difference, which is the equivalent of a four story building, would require at least 80 vertical risers (steps) and would therefore not be accessible by the handicapped or even by some ambulatory persons.

Our engineer will provide a drawing showing a first class walkway that satisfies ADA requirements. This pathway is very convoluted and, as the design suggests, is very expensive. Estimated costs for implementation of the attached, including design time and fees, are beyond the ability of this applicant to provide such a feature.

It is true that a less sophisticated pathway could be created that would be less circuitous in its routing and less expensive to build. The materials for construction of such a pathway would be wooden rails or retaining walls, and a mulch surface. However, the pathway would not meet ADA requirements, and because of the grade, would be both steep and possibly subject to periodic "washout" of materials due to the slope of the pathway. But even a more informal pathway would still be extremely expensive.

3. Construction in wooded area.

The hillside on which the pathway would have to be constructed is wooded and installation of the pathway would result in removal of numerous trees.

Additionally, installation of a pathway through existing woods creates a situation where users on the pathway are not visible from the residences to the south and the east, nor to the church and senior housing facility to the north. Accordingly, there is a security issue for both the users of the pathway (since there will be no lighting along the pathway) and for the residents of the senior living facility who are not comfortable with close by presence of persons from outside of their close knit community.

Finally, the lack of visibility, or the absence of "eyes on the street," for the pathway provides opportunities for congregation of persons for improper activities which the applicant does not want to have on its property occurring close to its building nor does it wish to encourage such activities in the rear yards of houses backing up to the subject property.

4. Suitable alternative.

An alternative to this path is currently available and exists along the public streets of Buckingham Drive, Cornwall Street and Content Street leading to University Boulevard at a point connection just south of the pathway to be constructed on the Mt. Jezreel property neighborhood to University Boulevard.

5. Affordable housing for seniors.

Mt. Jezreel and Mission First Housing Group are partners in the development of the proposed affordable senior living rental facility to be constructed on the Mt. Jezreel property. This senior living project will provide sorely needed, affordable homes for seniors with incomes between 30% and 50% of area median income (AMI) and will also include some market rate units.

The cost to build such an expensive pedestrian connection will complicate the applicant's ability to deliver its project in an affordable manner which would be a shame given that the original street layout and platting never anticipated a direct pedestrian connection to University Boulevard.

Mt. Jezreel Baptist Church and Mission First Housing Group hope that the information set forth above demonstrates that a pedestrian connection from Malibu Drive to University Boulevard across the subject property is both an engineering challenge and should not be implemented due to safety concerns, environmental concerns and costs which cause a significant hardship to the proposed affordable housing development.

Thank you for your consideration of these comments.

Sincerely Yours,

Miller, Miller & Canby

A handwritten signature in black ink that reads "JODY". The signature is written in a bold, blocky, sans-serif style. Above the signature is a thick horizontal line that spans the width of the signature.

Jody S. Kline

JSK/dlc

cc: Elza Hisel-McCoy
Marco Fuster
Donna Creedon
Paul Rowe
James Louviere
Dan Henson
Sara Constant
Todd Redden

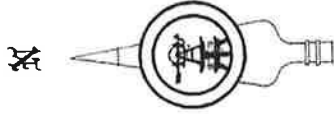
PLAT No 3887

ENGINEERS CERTIFICATE

We hereby certify that the plan shown hereon is correct; that it is a subdivision of part of the lands described in a conveyance from Myrtle Bell to Harold B. Jones, et ux, by deed dated August 14, 1946 and recorded in Liber 1032 at Folio 349, also part of the lands described in a conveyance from Elsie E. Oliff, et al, to Langley Hebrew Congregation, Inc. by deed dated October 20, 1953 and recorded in Liber 1853 at Folio 160, both among the Land Records of Montgomery County, Md., and that stones marked thus Φ and iron pipes marked thus \circ and in place where shown.

Date: Nov. 17, 1954 --- **Maddox & Hopkins**

Stephen R. Maddox
 Registered land surveyor



AREA OF STREET TO BE DEDICATED
 Harold B. Jones 18.7416
 Langley Hebrew Congregation 14.7648

OWNERS DEDICATION

We, Harold B. Jones and Helen J. Jones, his wife, and Langley Hebrew Congregation Inc., a Maryland Corporation, by Harry M. Shoeman, President, and Belle Cole, Secretary, owners of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines, and dedicate the street to public use. There are no suits of action, leases, liens or fruits on the property shown in this plan of subdivision.

Date: Nov. 6, 1954
Harold B. Jones
 Witness

Helen J. Jones
 Witness
 (Helen J. Jones is wife)

Date: November 5, 1954

Langley Hebrew Congregation

Belle Cole
 Belle Cole, Secretary

Harry M. Shoeman
 Harry M. Shoeman, President

THE MARYLAND NATIONAL PARK & PLANNING COMMISSION
 APPROVED NOVEMBER 18, 1954
John S. Wickham
 Chairman
 SECRETARY TREASURER
 MARYLAND PUBLIC FILE NO. 148-40

FILED
 DEC 2 - 1954

STREET DEDICATION
BUCKINGHAM TERRACE
 MONTGOMERY COUNTY, MARYLAND
 Scale: 1" = 100' November 1954

Maddox & Hopkins
 Civil Engineers
 Silver Spring, Md.

GLW GUTSCHICK, LITTLE, & WEBER, P.A.
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

June 29, 2016

Forest Conservation Program Manager
Maryland National Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Mount Jezreel Senior Housing - Variance Request
Preliminary Plan 120150020

On behalf of our client, Mission First Housing Development Corporation, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:*
- (i) 30 inches or more; or*
 - (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.*

The Subject Property, Mount Jezreel Baptist Church, Parcels 160 and 213, is located 400 feet south from the intersection of East Melbourne Avenue and University Boulevard East (MD Route 193) in Silver Spring, Maryland. The existing site contains a Church and Private School on the western portion of the site adjacent to University Boulevard, and the rear or eastern portion of the property is unused and contains an open grass area and “Early Successional” forest stand (see NRI/FSD). Existing single family homes abut the property to the north, east, and part of the southern property boundary and across University Boulevard to the west. An existing townhouse development and associated forest conservation easement make up the remaining area adjacent to the southern property line. The applicant had previously requested Special Exception approval for a 75 unit senior apartment facility including parking, pedestrian and vehicular access, landscaping, storm water management, utilities and passive recreation areas, and this was approved on December 4, 2015 by the Montgomery County Board of Appeals (S-2877). As part of the ongoing entitlement process and development of the Subject Property to implement the approved Special Exception, the applicant is now requesting Preliminary Plan and Final Forest Conservation Plan approval.

As part of Final Forest Conservation Plan approval on the Subject Property, the applicant is requesting an additional variance, not previously acted on by the Planning Board, to affect the following trees that measures 30” or greater in diameter at breast height (dbh).

Request to impact the critical root zones of two trees:

Tree #8 – 42” Tulip Poplar, poor condition (trunk damage)

Tree #9 – 53” Red Oak, good condition

<u>TREE #</u>	<u>TREE TYPE</u>	<u>% DISTURBED</u>	<u>REASON</u>
8	Tulip Poplar	4%	Permanent tree protection fence footers, and temporary silt fence installation.
9	Red Oak	14%*	Permanent tree protection fence footers, and temporary silt fence installation.

*NOTE: 3% impacts previously approved for work on the north side of the driveway. New trenching for installation of the proposed temporary silt filter fence and proposed footers for permanent tree protection fence will increase CRZ disturbance by 11%.

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:

Impacts to Critical Root Zones (CRZ) of Tree #8 & #9

The proposed senior housing development on the Subject Property will require on-site forest conservation. Based on the location of the existing wooded areas, proposed development and vehicular and pedestrian circulation, the area uphill from Tree #8 & Tree #9 was determined to be a suitable area for reforestation. Although there is no disturbance in the critical root zone of Tree #8 based on the limits of disturbance shown on the plan, there will be minimal disturbance to the critical root zone for the installation of the permanent tree protection fence posts required along the edge of the proposed reforestation area. Also Montgomery County Department of Permitting Services was concerned with possible construction sediment leaving the site and requested temporary silt fence be located on the downhill side of the entry drive, within the critical root zone (CRZ) of Tree #8. Tree #9 had previous approval for disturbance within the critical root zone (CRZ) for installation of a sidewalk, and now with the installation of the proposed permanent tree protection fence there will be minimal additional disturbance to the critical root zone (CRZ) for the installation of the permanent fence posts as well as the temporary silt fence required by the Montgomery County Department of Permitting Services along the entry drive.

Both types of fencing impacting the specimen trees, the silt fence and the permanent tree protection fence are regulatory requirements and both will actually provide additional protection of the subject trees and the environmental resource. The permanent tree protection fence will provide a physical barrier which will deter against future impacts typically associated with forest conservation areas such as illegal dumping and equipment access or mowing. The required temporary silt fence is designed to minimize and or avoid impacts to the water quality of the site during construction. The silt fence keeps otherwise

potential silt deposits off the remaining portion of the specimen tree's critical root zone, thereby avoiding potential harm associated with root death caused by oxygen deprivation from sediment deposits. The proposed disturbance is at the edge of the pavement and also near the fringes of the critical root zone (CRZ) where the roots are generally diminished in quantity or even absent. Not allowing the minimal disturbance to install the permanent tree protection fence and silt fence required to protect the associated reforestation area would cause the applicant to be unable to comply with the minimum on-site forest conservation requirements and sediment control plans and would therefore deny the applicant the ability to obtain plan approval. This would clearly be an undue hardship on the applicant and owners of the property not to enjoy the full and customary use of their property.

2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:

The subject specimen trees are located on the southern portion of the site. With the configuration of the existing development on the Subject Property including the church buildings, school building, parking areas and driveway access in the central portion of the site and existing forest along the rear of the property, the remaining potential development area for a senior housing facility was very limited to the rear central portion of the site. The proposed development has been specifically designed to utilize as much of the existing site development as possible, including the existing site/driveway access, existing utility lines, and site grading to limit the overall impacts to the site. Great care has been taken to locate development to minimize impacts to significant and specimen trees, but as discussed above, impacts to specimen trees were very minimal and were for the installation of protection measures for the specimen trees themselves.

Not allowing the minimal disturbance to install the permanent tree protection fence and silt fence required to protect the associated reforestation area would cause the applicant to be unable to comply with the minimum on-site forest conservation requirements sediment control plans and would therefore deny the applicant the ability to obtain plan approval. This would clearly be an undue hardship on the applicant and owners of the property not to enjoy the full and customary use of their property. By enforcement of this chapter, it will deprive the landowner the full rights to build on the property compared to similar properties. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner.

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:

The variance will not violate state water quality standards or cause measurable degradation in water quality. The required temporary silt fence that is proposed to impact specimen tree #8 & #9 is designed to minimize and or avoid impacts to the water quality of the site during construction. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. Storm Water Management Concept Plans (SM File #263675) was approved on January 28, 2015 by Montgomery County Department of Permitting Service. The approval of these plans confirms that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filter, planter boxes and structural underground storage, and therefore verify that State water quality standard will not be violated or that a measurable degradation in water quality will not occur.

4. Provide any other information appropriate to support the request:

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant has taken great care to locate development in the buildable area of the site while trying to minimize disturbance to the significant and specimen trees along the southern property line. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to impact the critical root zone of two specimen trees on the subject property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Kevin Foster, ASLA, AICP



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

July 29, 2016

Casey Anderson, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Mt. Jezreel Senior Housing, ePlan 120150020, NRI/FSD application accepted on 4/25/2014

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department (“Planning Department”) has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the



variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

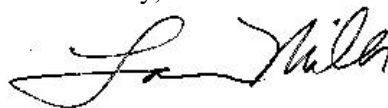
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Marco Fuster, Senior Planner



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

RECEIVED
Dean R. Schwartz Jones
Director

January 28, 2015

FEB 02 2015

Mr. Todd Reddan
Gutschick, Little and Weber, PA
3909 National Drive
Burtonsville, MD 20866

Gutschick, Little & Weber, P.A.

Re: Stormwater Management **CONCEPT** Request
for Mt. Jezreel Senior Housing
Preliminary Plan #: 120150020
SM File #: 263675
Tract Size/Zone: 9.2 acres/ R-60
Total Concept Area: 2.89 acres
Lots/Block: Proposed lots 1 and 2
Parcel(s): Existing Parcels 160 and 213
Watershed: NW Branch

Dear Mr. Reddan:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via micro biofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing storm drain.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
5. The structural underground storage computations must be approved by the DPS Right of Way section to ensure proper attenuation to the existing storm drain at the detailed design stage.

This list may not be all-inclusive and may change based on available information at the time.

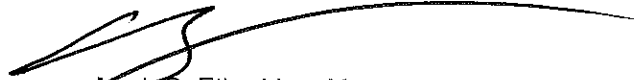
Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

Mr. Todd Reddan
January 28, 2015
Page 2 of 2

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact William Campbell at 240-777-6345.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: wrc

cc: C. Conlon
SM File # 263675

ESD Acres:	2.89
STRUCTURAL Acres:	3.76
WAIVED Acres:	0