



MCPB No. 16-105  
Preliminary Plan No. 120150020  
Mount Jezreel Baptist Church  
Date of Hearing: September 29, 2016

OCT - 4 2016

**RESOLUTION**

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

WHEREAS, on September 29, 2016, Mission First Housing Development Corporation ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 9.73 acres of land in the R-60 Zone, located at 420 East University Boulevard ("Subject Property"), in the Silver Spring Policy Area and East Silver Spring Sector Plan Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150020, Mount Jezreel Baptist Church ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 16, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 29, 2016, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120150020 for two lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Approved as to

Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910

MNCPPC Legal Department

Chairman's Office: 301.495.4605 Fax: 301.495.1320

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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, and September 1, 2015, 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-feet wide, over the shared use path along the University Boulevard frontage.

- c. A common Ingress/ Egress and Utility easement, measuring 20-feet 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:
- a. Revise the Preliminary Plan to show the removal of four parking spaces within the rear 20-foot building restriction line on Lot 2.
  - b. 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).
  - c. 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.

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

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

The Preliminary Plan substantially conforms to the *2000 East Silver Spring Master Plan*. The Master Plan reconfirmed the existing R-60 zoning for the

Subject Property. The Master Plan recommends the following guidance for neighborhood protection.

- *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.*

The continuation of an existing religious use and associated school and the creation of new affordable elderly housing strengthens the function of the Subject Property and helps East Silver Spring to remain a sustainable, livable community.

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

The creation of two new lots on the overall 9.73-acre Subject Property will preserve the residential character of community. Lot 2 will remain unchanged with the existing religious use while Lot 1 supports neighborhood reinvestment through the development of new affordable senior housing. 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.*

The approved special exception use for affordable elderly housing 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 Subject Property. These measures will ensure that approved senior housing development will be compatible with residential character of East Silver Spring.

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

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

#### Vehicular Access

The 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 Lot 1 does not modify 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 Subject Property'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, the Board accepts a 120-foot width 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 Subject Property'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.

#### LATR/TPAR

A Transportation Impact Study ("TIS") was required for the elderly housing use and the private school associated with the existing religious use. The approved elderly housing use generates fewer than 30 peak hour trips while the religious use on the Subject Property is exempt from the Local Area Transportation Review because it has been operational for more than 12 years. The TIS concluded that the study intersections affected by development will continue to operate within the policy area congestion standard of 1,600 CLV.

New developments within the Silver Spring – Takoma Park Policy Area 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. 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

#### Natural Surface Pedestrian Trail

On June 4, 2015, the Planning Board held a meeting on the S-2877 for the senior housing development to be developed on Lot 1 and discussed the potential for a pedestrian path within the potential right-of-way abandonment area of Malibu



Drive. While the Master Plan does not specifically address a connection from the abutting residential neighborhoods east of the Subject Property, it does advocate for neighborhood-friendly circulation and makes general recommendations for improved pedestrian circulation.

The Board finds that a natural surface trail is necessary to meet the Master Plan's recommendations for pedestrian accessibility. Such a trail 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.

#### Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject 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 Subject 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 Subject Property. Electrical, telecommunications, and gas services are also available to serve the Subject Property. The Subject Property is in the Downcounty Consortium school cluster. There will be no school age children generated from either lot, as Lot 2 is developed with an existing church and Lot 1 will be developed as a senior housing complex. Accordingly, this Application will create no impact to local schools.

3. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

#### A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Subject 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 Preliminary Forest Conservation Plan, (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 Subject 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

Extensive control of invasive species along with supplemental native plantings must be undertaken as part of the forest management plan as specified in the FFCP. The forest areas contain piles of debris and rubble that will be addressed by the FFCP. The Subject Property contains numerous native trees, some of which are significant or specimen in size.

#### B. Forest Conservation Variance

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

This Application will require the CRZ impact to two Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The impacts are due to sediment control fencing and the installation of tree protection fencing, which are regulatory requirements that would be required of any applicant.

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

1. *Granting the Variance 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 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 Preliminary Plan. 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. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Variance is based on the need to provide appropriate temporary sediment control and permanent tree preservation measures for the Subject Property.

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

The Variance is a result of the site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

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

The Montgomery County Department of Permitting Services ("MCDPS") approved the Stormwater Management ("SWM") concept for this Preliminary Plan on January 28, 2015. The SWM concept meets the required SWM goals via micro biofilters, planter boxes and structural underground storage that will not exceed the capacity of the downstream existing storm drain. The temporary and permanent fencing triggering the variance are both elements specifically designed to protected water quality and the Category I easement which maintains slope stabilization by protecting the associated forest cover. The variance will not violate State water quality standards or cause measurable degradation in water quality.

- 4. All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

The Montgomery County Department of Permitting Services approved the stormwater management concept (#263675) for the project on January 28, 2015.

No mitigation is required for Protected Trees impacted but retained.

- 4. Abandonment of Platted Right-of-Way*

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 Subject 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.

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. 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 Subject 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 Subject 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.

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, the Board authorizes the abandonment through this Preliminary Plan.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT - 4 2016 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded Commissioner Fani-González, with Chair Anderson and Commissioners Dreyfuss, Fani-González and Cichy voting in favor, and Vice Chair Wells-Harley abstaining at its regular meeting held on Thursday, September 29, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board

