



THE LAW OFFICE OF
**Michele
Rosenfeld** LLC

February 17, 2011

Mr. Rollin Stanley
Planning Director
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20190

RE: First Baptist Church of Wheaton
Preliminary Plan No. 120100250
Site Plan No. 820100080
Variance Request: Forest Conservation Plan 820100080/120100250

Dear Mr. Stanley:

Pursuant to the Planning Board Rules of Procedure, Rule 4.12, Dr. David Reile and Dr. Barbara Suddarth (parties of record and adjoining property owners) seek reconsideration of the Board's above-referenced decisions based on the following errors of law:

**I. The Board's "No Longer Appropriate"
Finding With Respect To The Applicability Of The Master Plan Recommendation
Against The Extension Of Public Sewer Is Legally Erroneous As Well As
Unsupported By The Record In This Case.**

The Planning Board makes a surprise finding in the Preliminary Plan Resolution that "events have occurred that render the Master Plan's recommendation against extending public sewer to the subject property no longer appropriate," citing § 50-35(l) of the Montgomery County Subdivision Regulations. Preliminary Plan Resolution at 5. At no time during the Board's deliberations did the Board discuss this provision of law or this finding.¹ The staff report does not discuss or recommend this finding. The first time this legal analysis appears in the record is in the Board's Preliminary Plan Resolution, without the support of legal authority or factual discussion in the staff report or by staff or the Board at the public hearing. As a result, participants had no opportunity to address this issue.

Moreover, it might be reasonable for the Board to adopt this view if the Council Resolution expressly directed the Board to set aside the master plan recommendation, or if the Resolution was silent on the matter. However the Council Resolution explicitly directs the Planning Board to decide whether any subsequent Preliminary Plan for the site is in conformity with the Master Plan. Consequently there is no justification for a Board finding that the Master Plan recommendation is "no longer appropriate." The opposite implication arises from the Council action than the one inferred by the Board, *i.e.*, that the Council was not attempting to neutralize

¹ The Resolution also opines that "[i]f the Master Plan had recommended sewer for the site, there would have been no need for the Applicant to seek the Council's approval of a sewer extension under the PIF policy." Resolution at 5. This also is legally incorrect. The County's Water/Sewer Plan requires Council approval under the PIF policy for a new or relocating PIF independent of any master plan recommendation

the Planning Board's responsibility under § 50-35(l) to find substantial conformance to the Master Plan in any Preliminary Plan brought forward for the site. The Board's finding with respect to this clause of the Subdivision Regulations is beyond the scope of the record and thus is arbitrary, capricious and illegal as a matter of law.

II. The Board Applied The Wrong Master Plan Review Standard In This Case

The Preliminary Plan resolution erroneously states that Council Resolution 16-500 (hereinafter "Council Resolution") requires the Board to find that the preliminary plan is "*consistent with the intent of the master plan.*" Preliminary Plan Resolution at 5 fn. 1. The Council Resolution instead authorizes the sewer category change to advance only upon Planning Board approval of a preliminary plan that "*conforms to the intent of the master plan*" – a more stringent standard of review even than the "substantially conforms" standard imposed by the Subdivision Regulations.²

Compounding the fact that the Board appeared to rely, at least in part, on a less stringent standard of review than the one mandated by the Council Resolution, the Board then expressly did not even make that finding. Instead the Board concluded that it "does not have to decide here whether its findings satisfy the condition of approval established by the Council." Preliminary Plan Resolution at 5 fn. 1. Consequently the Board's Preliminary Plan Resolution fails to provide even a *prima facie* showing that the Council Resolution condition for advancing the sewer category change has been met and the Preliminary Plan Resolution is deficient as a matter of law.³

III. The Planning Board Impermissibly Relied on Prior Board Discussion – And Not Master Plan Zoning Assumptions – In Approving 17 Percent Imperviousness.

As testimony at the hearing indicated, and noted in the Preliminary Plan Resolution, the master plan assumes that impervious surface levels of approximately 8 – 9 percent would be maintained by the RNC zoning imposed in this quadrant of the Olney master plan. The Planning Board approved an imperviousness limit of 17.1 % "*based on the recommendations and discussions of the Montgomery County Council⁴ and the Montgomery County Planning Board*, as well as the language in the Olney Master Plan" Preliminary Plan Resolution at 13 – 14. Nowhere does the Olney Master Plan recommend impervious surface levels even approaching 17%. The Board's approval of nearly double the percentage of imperviousness is *not* based on master plan assumptions of impervious surface coverage, but rather on *prior*

² As noted in *Richmarr Holly Hills v. American PCS, L.P.*, 117 Md. App. 607, 657, 701 A 2d 879, 904 (1996), Maryland cases construing the use of a legislatively-designated criterion of "conformity" denote a mandate with respect to a master plan's recommendation involving subdivision cases (as distinguished from other terms such as "in harmony with")

³ The Board's Resolutions are dated February 9, 2012 and the Rules require submission of this request "within ten days after the date of mailing of the Resolution." Rule 4 12 1. In raising these limited issues as grounds for reconsideration, these parties of record do not waive any other issues raised during the course of the preliminary and site plan hearings for purposes of any subsequent judicial proceedings, including their position that the Council Resolution is invalid in its entirety as it relates to this case.

⁴ It is unclear where the "recommendations of the County Council" with respect to imperviousness are contained anywhere in the record.

Board discussions during the water sewer category change proceedings, pre-dating the Council Resolution. This reliance on Board discussions in lieu of master plan assumptions does not provide a legal basis for the Board's findings of "conformance" to the master plan.

IV. Conclusion

This reconsideration request is grounded in the above three errors of law, and each was not addressed in the staff report or during the course of the public deliberation by the Board, leaving Drs. Reile and Suddarth unable to respond to them before this time.⁵ For these reasons, we respectfully request that the Board grant this request for reconsideration, void the above-reference Planning Board Resolutions, and decide this matter again in light of the standards of review discussed above.

Sincerely,



Michele Rosenfeld

Cc: All parties of record

⁵ Although not part of the public record, based on concerns raised before the hearing by staff, and indirectly in at least one newspaper article, it appears the Board may have based its approvals at least in part on concerns about potential liability under the Religious Land Use and Institutionalized Persons Act (RLUIPA). ("[John] Carter . . . said churches can be very aggressive, and there have been many court cases based on the separation of church and state. "If a government body goes against a church without a very solid reason, they will get sued and will likely lose," he said." *Church approved for Emory Church Road*, Gazette, September 14, 2011.) If this is the case, it is important to note that there is *no* evidence in the record that there is even a threshold question that a potential RLUIPA violation exists in this case.

In relevant part, RLUIPA says that "No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a person, including a religious assembly or institution . . ." 42 U.S.C. § 2000cc-5(a)(emphasis added). A land use regulation imposes a "substantial burden" *only if* it leaves the religious institution at issue "without a reasonable means to observe a particular religious precept." *Trinity Assembly of God v. People's Counsel of Baltimore*, 407 Md. 53, 962 A.2d 404, 429 (2008).

If a zoning restriction does not alter how religious adherents express their religious beliefs then it does not impose a "substantial burden." Absent any "substantial burden," there is not even a threshold question as to whether RLUIPA has been violated. See *Lighthouse Inst. For Evangelism, Inc. v. City of Long Branch*, 406 F.Supp.2d 507 (D.N.J. 2005) (distinguishing a burden on religious exercise from a burden on the use of property), vacated on other grounds, 510 F.3d 253 (3d Cir. 2007). At no time – either in the Planning Board's preliminary and site plan records or in any other public hearing or published statement – has the applicant even suggested that a denial would limit its ability to freely exercise its religious beliefs. "[E]ven when the denial is definitive" there is no RLUIPA violation if denial does not prevent the applicant from expressing its religious beliefs in the manner in which it chooses. *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007) (italics added). See also *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, et al.*, 407 Md. 53, 962 A.2d 404 (2008).

ATTACHMENT 2

FEB 19 2012



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

MCPB No. 11-76
Preliminary Plan No. 120100250
First Baptist Church of Wheaton
Date of Hearing: September 8, 2011

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on March 3, 2010, First Baptist Church of Wheaton ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 14.4 acres of land in the RNC zone, located at 3110 Emory Church Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120100250, First Baptist Church of Wheaton ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated August 25, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 8, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 8, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Anderson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, followed by the date "2/2/12".

8787 Georgia Avenue, N.C. Legal Department, Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100250 to create one lot on 14.4 acres of land in the RNC zone, located at 3110 Emory Church Road, in the Olney Master Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for a 788-seat church. The Subject Property is not approved for any weekday educational or daycare uses that will generate peak-hour trips.
- 2) The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan, dated July 12, 2011. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The final sediment control plan must be consistent with final limits of disturbance as shown on the Final Forest Conservation Plan dated July 12, 2011 and as approved by the M-NCPPC Staff.
- 4) The record plat must reflect a Category I easement over all forest retention and forest planting areas that are located outside of the limits of disturbance and the entire stream valley buffer area.
- 5) Forest retention and forest planting areas must not be designated as a forest mitigation bank to be used by other development projects to satisfy their forest conservation requirements.
- 6) The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easement.
- 7) The Final Forest Conservation Plan must show the approximate location of the in-stream concrete structure and yard waste and proposed methods of removal from the environmental buffer that will minimize disturbance to the stream and other resources.
- 8) Impervious surfaces on the site, including required offsite improvements to Emory Church Road, must not exceed 17.1 percent.
- 9) The Applicant must dedicate and the record plat must show dedication of 30 feet of right-of-way, as measured from the centerline, along the Property frontage for Emory Church Road.
- 10) The Applicant must provide and the Record Plat must show a public improvement easement (PIE) along the Property frontage of Emory Church Road.
- 11) The Applicant must construct frontage improvements along Emory Church Road as required by Montgomery County Department of Transportation (MCDOT) in its letter of June 28, 2011. The improvements must be under permit and bond prior to the approval of the record plat by MCDPS.

- 12) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a five-foot-wide sidewalk along the Property frontage on Emory Church Road, unless construction is waived by MCDPS.
- 13) Prior to recordation of the plat, the Applicant must grant to the M-NCPPC a rural open space easement over no less than 65% of the net lot area of the Subject Property as shown on the Preliminary Plan and record the easement, in a form approved by the Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).
- 14) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 14, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan.
- 15) The Applicant must comply with the conditions of the MCDOT letter dated June 28, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan.
- 16) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 17) No clearing, grading or recording of plats prior to certified Site Plan approval.
- 18) Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at Site Plan.
- 19) Site Plan #820100080 must be approved by the Planning Board and the certified plan signed by Staff prior to the approval of the record plat.
- 20) The record plat must show necessary easements.
- 21) 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 Site Plan review. 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."
- 22) The Applicant must hire a professional traffic engineer to monitor the traffic flow along the entire length of Emory Church Road. Such monitoring should take place for four consecutive weeks before and after church on Sundays and should begin six months after the Use and Occupancy permit has been issued, although the timing may be extended to ensure that the monitoring does not occur in the summer. The Applicant will then be required to present the findings to the Planning Board, which may require the Applicant to hire a traffic official to control the traffic flow or take other reasonable actions.
- 23) Upon issuance of the building permit, the Applicant must send a notification of construction letter to each residential household on Emory Church Road, Norbert

Drive, and Ascot Lane. The letter should include the phone number and email address of a point of contact at the church, who will be available to answer questions and resolve issues.

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

1. *The Preliminary Plan substantially conforms to the Master Plan, except to the extent that the recommendations of the Master Plan are no longer appropriate.*

Under Section 50-35(l) of the subdivision regulations, in order to approve a preliminary plan the Planning Board must find that it substantially conforms to the applicable master plan, "unless the Planning Board finds that events have occurred to render the relevant master plan ... recommendation no longer appropriate." The Olney Master Plan provides general recommendations for the Southeast Quadrant of Olney, and specific recommendations for more than a dozen properties or groups. The Application substantially conforms to the recommendations in the Olney Master Plan, except with regard to the extension of sewer service. However, as described below, the Planning Board finds that the Master Plan's recommendations regarding sewer service are no longer appropriate.

Land Use and Zoning - The Master Plan, followed by the Sectional Map Amendment, established the Rural Neighborhood Cluster (RNC) zone for the Property. The Master Plan did not recommend sewer service for the Property. The maximum residential density for the Property is 0.2 units per acre. In addition to residential development, the RNC zone allows libraries, museums, and houses of worship as permitted uses. The RNC zone also allows, by special exception, a limited number of institutional activities.

In 2007, the Applicant sought approval from the County Council to extend public sewer service to the Subject Property. In 2008, the Council, acting under its Private Institutional Facility (PIF) policy, conditionally approved extending sewer to the site subject to the Planning Board approving a preliminary plan application that conforms to the intent of the Olney Master Plan.

It is undisputed in this case that the Master Plan recommends against extending sewer service to the Subject Property. Therefore, the proposal to develop the subject property on public sewer does not substantially conform to every recommendation of the Master Plan. However, in light of the County

Council's decision to conditionally allow an extension of sewer service to the site under the PIF policy, the Board finds that events have occurred that render the Master Plan's recommendation against extending public sewer to the subject property no longer appropriate. The Board interprets the Council's decision to allow an extension of public sewer if the Board approved a preliminary plan that meets the intent of the Master Plan as superseding the Master Plan's sewer recommendation for the subject property.¹

The nature of the PIF policy supports the Planning Board's conclusion that the Council's conditional approval of a sewer category change superseded the Master Plan's recommendation against extending sewer to the Subject Property. The PIF policy exists to allow the Council to make exceptions for properties that are not recommended for sewer or water service. If the Master Plan had recommended sewer for the site, there would have been no need for the Applicant to seek the Council's approval of a sewer extension under the PIF policy. In that case, the Property would simply be entitled to sewer service. Because the purpose of the PIF policy is to allow the extension of sewer service outside of the recommended sewer service envelope, it would make little sense for the Board to deny the subdivision based on nonconformance with the Master Plan's sewer recommendations.

Some opponents of the proposed development have argued that the Council's conditional approval of the sewer extension was inconsistent with the requirements of the PIF policy itself. Those arguments exceed the scope of what the Planning Board is authorized to consider. The decision to approve or deny a sewer extension under the PIF Policy is for the Council alone to make. The Planning Board does not sit in review of Council actions with respect to sewer extensions, or any other Council actions.

Rural Open Space – The Master Plan's general recommendations for the Southeast Quadrant foster the protection of the existing rural and low density residential character of the area by proposing a zone that requires significant amounts of rural open space, which could preserve existing forest and provide

¹ In finding that the Application substantially conforms to the Master Plan – except with respect to the Master Plan's sewer recommendation, which the Planning Board finds is no longer appropriate – the Board is making the requisite finding for approval of the proposed subdivision under Section 50-35(l) of the subdivision regulations. The Board is of course aware that the Council's approval of a sewer category change for the subject property was conditioned upon the Board approving a preliminary plan that is consistent with the intent of the Master Plan. The Board does not have to decide here whether its findings satisfy the condition of approval established by the Council for a sewer category change, and does not have an opinion on that question.

opportunities to restore forest and wetlands in the sensitive Batchelors Forest tributary of the Northwest Branch. The preliminary plan provides over 65 percent of the Property to be maintained as rural open space with forest cover.

Habitat Protection – For habitat protection, the Master Plan recommends the protection of forest areas on developable properties to prevent fragmentation of upland forest and to preserve stream valley buffers, page 72. The Preliminary Plan protects the buffer areas as an extension of the existing stream valleys to prevent forest fragmentation. These areas will remain in forest.

Environmentally Sensitive Development Techniques – The Master Plan encourages new developments to use environmentally sensitive development techniques that integrate BMPs (best management practices) that maximize stormwater treatment and infiltration, page 75. The Preliminary Plan includes pervious paving for parking areas, the use of dry wells to store rainwater from roof areas, two bio-filters, a sand filter, and two enhanced stormwater management ponds. These environmental features will help to preserve the water quality of the tributaries in the Southeast Quadrant. The Applicant has also reduced the on-site impervious level during the review process from 17 to approximately 16 percent. This impervious level is higher than the level expected in residential development (approximately 9 percent), but the proposed 16 percent imperviousness is significantly less than the impervious levels in other houses of worship and institutional uses. The Master Plan does not provide an impervious cap, however the Planning Board's direction at the time of the sewer category change was to minimize impervious surfaces, which the Applicant has done.

Forest Preservation and Restoration - The Master Plan recommends the maximum forest retention, and new forest planting in the adjacent environmental buffer areas through conservation easements as part of the development process, page 79. The Preliminary Plan retains the forest in all of the stream buffer areas. In addition, the Preliminary Plan will retain forest and provide new planting adjacent to the environmental buffer in addition to the minimum requirements of the Forest Conservation Law.

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

The proposed place of worship is exempt from adequate public facilities review requirements, per Section 50-35(k)(6) of the Subdivision Regulations. Because this Resolution includes a condition that prohibits any weekday educational or daycare uses that will generate peak-hour trips, the potential adverse effects of such uses were not analyzed in approving the Preliminary

Plan. Any establishment of weekday uses in the future would require an amendment to this Preliminary Plan and an adequate public facilities review.

Although this project is exempt from LATR requirements, the Planning Board is concerned about possible traffic flow issues on Emory Church Road, and therefore has required the Applicant to monitor traffic conditions during certain time periods, and to report back to the Board about those conditions to assess the need for traffic control or other mitigation.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed size, width, shape and orientation of the proposed lot are consistent with the surrounding areas, and therefore appropriate for the location of the subdivision.

Moreover, the lot was reviewed for compliance with the dimensional requirements for the RNC zone as specified in the Zoning Ordinance, and will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, and they have recommended approval of the plan.

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

A. Forest Conservation

As required by the County Forest Conservation Law (Section 22A of the County code), a final forest conservation Plan ("FFCP") for the project dated July 12, 2011, was submitted with the preliminary subdivision and Site Plans.

Applicant's FFCP Proposal - The FFCP submitted by the Applicant for approval by the Planning Board proposes to retain 6.15 acres and clear 1.9 acres of existing on-site forest. Approximately 1.05 acres of the 1.9 acres of designated forest clearing is outside of the proposed limits of disturbance, but is counted as forest cleared because the plan does not propose to protect this forest in a Category I conservation easement. The Applicant proposed a Category II conservation easement for 0.93 acres of the 1.05 acres of forest. There is no reforestation requirement. The Applicant proposed to provide 1.20 acres of forest planting within the unforested portions of the environmental buffer. The planting was consistent with both the 2005 Olney Master Plan, and the Countywide

Stream Protection Strategy, which recommends increased forest buffer requirements for areas designated as watershed protection areas.

The entire 1.20 acres of forest and the reduced imperviousness on the Property meets the Master Plan recommendations.

FFCP Proposal Based on Conditions of Approval – The conditions of approval for the FFCP result in the removal of 0.97 acres of forest and the retention of 7.08 acres of forest outside of the proposed LOD. The amount of forest planting would remain unchanged, and will continue to yield 1.20 acres of forest planting in the environmental buffer, of which 0.24 acres of planting will serve to mitigate for the proposed environmental buffer encroachment. The conditions of approval will not result in the remaining 0.96 acres of forest planting being designated as a forest mitigation bank for other development projects, because a minimum of 1.00 acre is required in Section 22A-13b of the Forest Conservation Law.

Table 1: Final Forest Conservation Plan

	Forest Clearing	Forest Retention	Forest Planting
Applicant's Submitted FFCP	1.9 acres – includes 0.12 ac. forest not cleared but not protected in any conservation easement and 0.93 ac. forest not cleared but not protected in <u>Category I</u> conservation easement (Applicant proposes Category II easement)	6.15 acres	1.20 acres, comprised of: <ul style="list-style-type: none"> • 0.24 ac. mitigation for environmental buffer encroachment • 0.96 ac. available as forest bank for other development projects
FFCP with Conditions of Approval	0.97 acres	7.08 acres – all forest not cleared to be protected with a Category I conservation easement	1.20 acres, comprised of: <ul style="list-style-type: none"> • 0.24 ac. mitigation for environ. buffer encroachment • 0.96 ac. To meet Master Plan recommendation and to mitigate for the removal of specimen trees as identified in the variance request

"Forest conservation begins with the preservation of existing trees and forest wherever possible, and ends with planting additional trees to compensate for unavoidable loss" (Trees Approved Technical Manual 1992). To meet this goal of the County Forest Conservation Law on this project, a condition of this approval is that the entire area of forest retention and proposed forest planting that is located outside of the limits of disturbance (LOD) must be protected in a Category I conservation easement. This includes 0.12 acres of existing, high priority forest, which the FFCP shows as "Area of forest outside of LOD to be counted as removed not to be cleared as part of this Application", and not protected in any easement, and 0.93 acres of existing, high priority forest, which the FFCP shows to be protected in a Category II conservation easement. The FFCP does not show these two areas of forest (1.05 acres) to be protected in a Category I conservation easement, so they must be counted as forest cleared. The Olney Master Plan includes recommendations to protect forest areas on developable properties to prevent fragmentation of upland forests, to preserve priority forests intact, and to maximize forest retention and new forest planting in and adjacent to environmental buffer areas through conservation easements as part of the development process. In addition, Section 22A-12(b) of the County Forest Conservation Law states that the primary objective of the FCP should be to retain existing forest and trees and avoid reforestation. Additionally, the Property is zoned RNC, and is in an agricultural and resource area. For such an area, there are special provisions outlined in Section 22A-12(f)(2), which states that *"Forest retention should be maximized where possible..."* Section 22A.00.01.08(B) of the County Forest Conservation Regulations states that if existing forest cannot be retained, the Applicant must show how techniques for retention have been exhausted and why priority forests are not being retained. The FFCP does not demonstrate why these areas of high priority forest cannot be retained and protected in a Category I conservation easement. Therefore, the Applicant's proposal of not protecting the 1.05-acre high priority forest with a Category I conservation easement does not comply with either the provisions of the County Law and Regulations or the recommendations of the Master Plan. Therefore, the Board conditions the approval of the FFCP and preliminary plan on the Applicant placing all retained and planted forest outside of the limits of disturbance in a Category I easement, and reflecting this easement on the plat.

Development in an Agricultural and Resource Area (Sections 22A-12(f)) - The Property, zoned RNC, is in an agricultural and resource area and therefore a minimum amount of forest must be retained onsite. Section 22A-12(f) of the County Forest Conservation Law states:

(1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a

zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.

(2) Retention, reforestation and afforestation. Forest retention must be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:[...]

(A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.

For this site, 25% of the net tract area is 3.7 acres. The Applicant proposes to retain 6.15 acres of forest, and is therefore in compliance with this provision of the County Forest Conservation Law. The additional forest planting is required to meet the recommendations in the Olney Master Plan to enhance the forest and provide additional tree canopy, and to mitigate for the loss of individual specimen trees.

With the conditions of approval, the Application meets the County Forest Conservation Law's requirement to maximize forest retention (Section 22A-12(f)(2)) and also meets the minimum onsite forest requirement for a property located in an agricultural and resource area (Section 22A-12(f)(2)(A)).

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code 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) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require 14 Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact seven Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Planning Board made the following findings necessary to grant the Forest Conservation Variance:

- i. *Granting the Forest Conservation Variance will not confer on the Applicant a*

special privilege that would be denied to other Applicants.

Granting the variance will not confer a special privilege on the Applicant as disturbance and removal of the specified trees are due to the development of the site. The trees and their critical root zones lie within the developable area of the site. The proposed development activities that result in the removal and impacts to trees subject to the variance requirement are concentrated in the most developable area of the site, given the environmental constraints. With the exception of impacts deemed necessary for infrastructure and to meet requirements of outside agencies, the majority of the impacts are to trees located outside of the environmental buffers and high priority, contiguous forest. The removal and impacts to the trees subject to the variance requirement cannot be avoided. Therefore, the granting of this variance is not a special privilege that would be denied to other Applicants.

- ii. *The need for the Forest Conservation Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, required site development and stormwater management best management practices as well as required widening of an existing driveway and offsite roadway that are necessary to achieve an adequate development per existing regulations and requirements.

- iii. *The need for the Forest Conservation Variance 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.

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

The Department of Permitting Services has found the stormwater management concept to be acceptable and conditionally approved it on December 14, 2009. The Applicant has proposed additional BMP's including porous pavement and additional dry wells. These measures go beyond the minimum requirements of their approved concept. In addition, the granting of this variance request will not result in the removal of any trees located within the environmental buffers and the impacts to the critical root zones are

minimal. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

C. Forest Conservation Variance mitigation

There are 14 trees proposed for removal in this variance request. There will also be some disturbance within the CRZ of another seven trees, but they are good candidates for retention. The forest planting within the environmental buffers that the Applicant has proposed will mitigate for the loss of these trees and no further mitigation is required. The trees subject to this variance to be impacted but retained are good candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

The Planning Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS's standards.*

The storm water management concept approved by MCDPS on December 14, 2009, and reconfirmed on June 3, 2010, consists of on-site channel protection measures via construction of two detention ponds; on-site water quality control and onsite recharge via construction of a Montgomery County Sand Filter, two Bio Filters, a Dry Well Trench, and other non-structural measures.

6. *The Preliminary Plan provides an appropriate percentage of impervious surface.*

There are numerous recommendations in the Olney Master Plan referring to the minimization of impervious surfaces:

- "Management strategies recommended for watershed protection areas in the Countywide Stream Protection Strategy (CSPS) and employed in this Master Plan include: expanded stream valley park acquisition or dedication, increased forested buffer requirements, expanded protection for wetland recharge and hydrology, and impervious surface reduction strategies." (page 73)

- “The majority of the potential residential development is in the Southeast Quadrant, which contains the headwaters of the Northwest Branch. One of the goals of this Master Plan is to control water quality impacts of new development by adopting land use and zoning recommendations that result in imperviousness levels compatible with the existing water quality in each subwatershed.” (page 75)
- “Recommendations: 1. Encourage new developments to use environmentally sensitive development techniques that integrate BMP’s that maximize stormwater treatment and infiltration, such as: a. Minimization of impervious surfaces; b. Disconnection of runoff, sheet flow to buffers, grass channels; and c. Bioretention.” (page 76)

The Planning Board provided some direction to the Applicant regarding imperviousness for this project at the February 2008 hearing for the water and sewer category change request. The Applicant has provided an informal sketch, dated July 13, 2011, that documents the proposed level of imperviousness for the project. The Applicant was required to demonstrate efforts to avoid and minimize the level of imperviousness. Per a March 8, 2011 letter provided by the Applicant’s engineer, Macris, Hendricks and Glascock (“MHG”), the initial plan prepared for the water and sewer category change hearing had a layout that resulted in 26.4% imperviousness. In response to concerns raised during the water and sewer category change application review, a plan with a revised layout that resulted in 18.9% imperviousness was presented at the February 21, 2008 Planning Board hearing.

The Planning Board indicated that the 9% impervious limitation that Staff at the water and sewer category change hearing had suggested (based on imperviousness levels typically associated with RNC development) should be used as a goal for the Applicant, but also recognized that an institutional use may not be able to fully meet the 9% limitation. The Applicant subsequently received conditional approval for the water and sewer category change from the County Council.

The March 8, 2008 letter from MHG further states that the pre-application plan for the Property was submitted on January 15, 2009 and based on comments, the plans were further revised to reflect an impervious level of 18.0% and then 17.0%.

The letter by Reverend D. Edward Williams, Senior Pastor of the First Baptist Church of Wheaton outlines investigations into alternative means of further reducing imperviousness onsite that include onsite, structured parking, or the use of an existing offsite parking lot with a shuttle service to the church. The

Applicant determined that structured parking was cost prohibitive, and they also felt that it would be contrary to the desires expressed by the community and the County Council to maintain a "low profile". The pastor noted that the church had contact with a representative from a nearby religious institution located across Georgia Avenue regarding the option of offsite parking and shuttle service for overflow needs, but that neither their facility nor their parking is complete so they are not able to commit to that scenario at this time.

A revision to the parking lot layout that is reflected on the Final FCP further reduced the amount of impervious area on the site to 16.0%. An additional 11,446 square feet of impervious surface will be constructed as part of the required improvements to Emory Church Road, resulting in an overall impervious area of 17.1% for the project. Per the Environmental Guidelines (M-NCPPC January 2000), impervious surfaces of public improvements as required by other agencies along the project's frontage are included in the calculation of impervious areas. A condition of approval is included in this Resolution that limits the level of imperviousness on the site to 17.1%. This limitation is based on the calculations included on the informal sketch entitled "Impervious Area Exhibit", as prepared by MHG on July 13, 2011.

Based on the recommendations and discussions of the Montgomery County Council and the Montgomery County Planning Board, as well as the language in the Olney Master Plan (2005), the Applicant has achieved a reduced level of imperviousness that includes, among other things, a redesign from a one-story to a two-story building and a revised parking lot layout. Additional measures have also been provided such as forest retention, reforestation of environmental buffers, and infiltration of stormwater beyond what is required by the MCDPS-approved stormwater management concept plan that would help to preserve the existing high water quality and the broader, high quality environmental resources (e.g., forest) in the watershed.

The Planning Board finds that the recommended imperviousness, forest retention and protection in a Category I conservation easement, additional forest planting areas within the environmental buffer, and the additional stormwater management features provide the appropriate measures to protect the sensitive environmental resources in the southeast quadrant of Olney, as recommended in the Olney Master Plan. The forestation of the stream buffers, and the protection of all retained and planted forest in a Category I conservation easement, maximize the benefits provided by these natural areas.

BE IT FURTHER RESOLVED, that 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; and

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

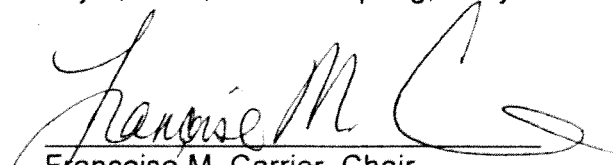
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 19 2012 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

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 Anderson, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, February 2, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board



FEB 19 2012

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

MCPB No. 11-77
Site Plan No. 820100080
Project Name: First Baptist Church of Wheaton
Date of Hearing: September 8, 2011

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on May 5, 2010, First Baptist Church of Wheaton ("Applicant"), filed an application for approval of a Site Plan for a 46,500 SF House of Worship with a maximum capacity of 788 seats ("Site Plan" or "Plan") on 14.4 acres of RNC-zoned land, located at 3110 Emory Church Road ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820100080, First Baptist Church of Wheaton (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated August 25, 2011, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 8, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 8, 2011, the Planning Board approved the Application subject to conditions on the motion of Commissioner Anderson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820100080 for a 46,500 SF House of Worship with a

Approved as to
Legal Sufficiency:

maximum capacity of 788 seats, on 14.4 gross acres in the RNC zone, subject to the following conditions:

Conformance with Previous Approvals

1. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan No. 120100250, or as amended.

Environment

2. Forest Conservation & Tree Save

The development must comply with the conditions of approval for the Final Forest Conservation Plan dated July 12, 2011. The applicant must meet all conditions prior to the recording of a plat(s) or the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.

3. Stormwater Management

- a) The proposed development is subject to the Stormwater Management Concept approval conditions dated December 14, 2009, and reconfirmed on June 3, 2010, unless amended and approved by the Montgomery County Department of Permitting Services.
- b) Show locations and details of proposed porous pavement, stormwater management drywells, and any other stormwater management structures that are not included as part of the MCDPS Stormwater Management Concept plan approval on the Certified Site Plan. The applicant must be responsible for the maintenance of these features.

Transportation & Circulation

4. Transportation

- a) The Applicant must limit development on the property to a 46,500 square-foot church (or a place of worship), with a maximum of 788 seats and no on-site weekday educational institution or daycare that will generate peak-hour trips.
- b) The church will hire a professional traffic engineer to monitor the traffic flow along the entire length of Emory Church Road. Such monitoring should take place for four consecutive weeks before and after church on Sundays and should begin six months after the Use and Occupancy permit has been issued, although the timing may be extended to ensure that the monitoring does not occur in the summer. The church will then be required to present the findings to the Planning Board, which may require the church to hire a traffic official to control the traffic flow or take other reasonable actions.

Site Plan

5. Site Design

- a) Revise the parking lot layout to eliminate the last row of parking spaces and northernmost aisle and extend the remaining rows to the east with the same number of deleted spaces as shown on the Final Forest Conservation Plan dated July 12, 2011.
- b) Provide a vehicular guard rail between the parking lot edge and the retaining wall abutting the parking lot's eastern edge.
- c) Provide fencing with a gate for the play area adjacent to the sanctuary in Phase II in order to address safety concerns.
- d) Provide enhanced architectural treatment, such as fenestration, on the second story of the southeast building elevation.

6. Landscaping

Extend the foundation plantings around the southwest and southeast sides of the building.

7. Lighting

- a) The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b) All onsite down-light fixtures must be full cut-off fixtures.
- c) Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d) Illumination levels shall not exceed 0 (zero) footcandles (fc) at any property line abutting county roads and residential properties.
- e) The height of the light poles shall not exceed 12 feet including the mounting base.

8. Landscape Surety

The applicant shall provide a surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a) The amount of the surety shall include plant material, on-site lighting, and site furniture within the relevant phase of the development. Surety to be posted prior to issuance of first building permit within each relevant phase of development and shall be tied to the development program.
- b) Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial surety amount.
- c) Completion of plantings by phase, to be followed by inspection and surety reduction. Inspection approval starts the 1 year maintenance period and surety release occurs at the expiration of the one year maintenance period.

- d) Provide a Site Plan Surety and Maintenance Agreement that outlines the responsibilities of the applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

9. Development Program

The applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and the M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) On-site lighting must be installed within six months after the parking lot construction is completed. Landscaping associated with the parking lot may wait until the next growing season. All other landscaping must be installed prior to final use and occupancy of the building and may be phased appropriately to reflect the two phases for the buildings.
- c) On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any final use and occupancy permit for the building and may be phased appropriately to reflect the two phases for the buildings.
- d) Pedestrian pathways and seating areas associated with each building and parking area must be completed as construction of each building and parking area are completed.
- e) The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

10. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and information provided subject to staff review and approval:

- a) Include the Final Forest Conservation Plan approval, Stormwater Management Concept approval, development program, inspection schedule, and Site Plan resolution on the approval or cover sheet.
- b) Add a note to the Site Plan stating that the M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading.
- c) Modify the data table to reflect development standards enumerated in the staff report.
- d) Ensure consistency off all details and layout between Site Plan and landscape plan.
- e) Label and dimension setbacks on the Site Plan.

- f) Show and label amenities in the open area adjacent to the southern façade of the building.

BE IT FURTHER RESOLVED, that all site development elements as shown on First Baptist Church of Wheaton drawings stamped by the M-NCPPC on March 28, 2011, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

Development, diagrammatic, schematic development, and project plans were not required for the subject site.

2. *The Site Plan meets all of the requirements of the RNC zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Rural Neighborhood Cluster (RNC) Zone. The intent of the RNC Zone is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large-lot development. The proposed development meets the intent of the zone by preserving environmentally sensitive natural resources including two streams with associated buffers and existing mature forest within the property. The project also preserves rural community character by strategically widening Emory Church Road to maintain the greatest number of existing trees on the north side of this road. The RNC Zone allows the proposed church use.

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the RNC Zone. The following data table sets forth the

development standards approved by the Planning Board and binding on the Applicant.

Data Table for the RNC Zone, Optional Method of Development

Development Standard	Approved by the Planning Board & Binding on the Applicant
Site Area	
Min. Area of Development (acres) 59-C-9.574(a)	14.4 (627,359 SF)
Right-of-Way Dedication (acres)	0.27 (11,783 SF)
Min. Lot Area (SF) 59-C-9.42	14.13 (615,576 SF)
Setbacks (feet)	
Min. Setback from Street 59-C-9.574(d)(ii)	230
Min. Yard Setback	
- East Side yard, abutting lot to the east is zoned RE-2, assume optional method of development	240
- West Side yard, abutting lot to the west is zoned RNC, assume optional method of development	370
- Rear yard, abutting lot to the north is zoned RNC, assume optional method of development	270
Accessory Structures Setbacks, 59-C-9.574(d)(vii)	
- Rear	5
- Side	5
- Street	60
Min. Lot width (feet)	
Along front street line 59-C-9.43	784
Max. Building Height (feet)	
59-C-9.574(d)(v)	35 ^(a)
Max. Lot Coverage (%)	
59-C-9.46	4% (24,500 SF) ^(b)
Rural Open Space (%)	
59-C-9.574(h)	65.4% (402,350 SF)
Common Open Space (SF)	
59-C-9.574(e)	n/a ^(c)
Parking	
Total Parking Spaces	
- Main sanctuary (500 seats)	
- Platform (48 seats)	
- Chapel (24 seats)	

- Overflow seating (216 seats) Total seats 788	197 spaces
Parking Distribution	
- Standard (8.5'x18')	190
- Accessible (8'x18') w/ access aisle	+ 7
Total automobile spaces	197
- Motorcycle spaces (4'x18') (59-E-2.3(d))	4
- Bicycle spaces (59-E-2.3(a))	10
Parking Facility Internal Landscaping (%) (59-E-2.73)	13.6% (10,232 SF)
Parking Setback from adjoining RE-2 land (59-E-2.81(a))	320

- (a) The building height limits do not apply to steeples or belfries per Section 59-B-1.1.
 (b) Calculated as a percentage of the net lot area that is covered by buildings only.
 (c) Required for residential neighborhoods of 10 dwelling units or more.
 (d) The internal area of the surface parking facility is 75,383 SF.

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a) Buildings and Structures

The locations of the building and structures are adequate, safe, and efficient. The building is located in the middle of the site, on a cleared ridge, in roughly the same location as the existing house. This location avoids environmental buffers and existing forest onsite. The two-story building with a maximum height of 35 feet is adequately setback from the neighboring properties and Emory Church Road, which effectively minimizes any potential negative impacts due to proximity. The 46,500 SF church with a capacity of 788 seats will be constructed in two phases. The main building encompassing 30,500 SF will be built in Phase I and the adjoining sanctuary of approximately 16,000 SF in Phase II. At completion, the building and sanctuary will cover approximately 4.0% of the net lot area.

The parking lot with 197 spaces is located immediately to the north of the building. This location adequately limits visibility of the surface parking lot from Emory Church Road and avoids environmentally sensitive areas. This location safely and efficiently directs traffic to the interior of the site and avoids conflicts near the intersection with Emory Church Road. As conditioned, the parking lot layout will be revised to have three instead of four driving aisles while maintaining the same number of parking spaces. This is accomplished by eliminating the last row of parking spaces with its access drive aisle and extending the remaining rows to the east to capture the same number of spaces that were deleted. The net total of parking spaces remains the same with the benefit of less impervious

surface and more open space available for church activities and gatherings without the need to encroach into the existing forest.

b) Open Spaces

The open spaces provided are adequate, safe, and efficient. The RNC Zone requirement for Common Open Space is not applicable to this project because this is not a residential development of 10 dwelling units or more. The RNC Zone requirement for Rural Open Space is applicable and the project meets this requirement by providing 9.2 acres (402,350 SF) or 65.4% of the net lot area. Rural Open Space is intended to protect rural features and other sensitive areas and to maximize common boundaries with rural open space on adjacent tracts. The 9.2 acres of Rural Open Space includes all areas outside the limits of disturbance and overlaps with the environmentally sensitive areas on site including the two stream valley buffers. The Rural Open Space adequately meets the intent of the zone by preserving environmentally sensitive natural resources.

c) Landscaping and Lighting

The landscaping provided is adequate, safe, and efficient. The landscaping is limited to the parking lot, access driveway, and areas around the building. The parking lot internal landscaping consists of shade trees and ornamental trees in the parking medians. A mix of shade trees and evergreen trees lines the access drive and efficiently contributes to the screening and delineation of the adjacent stormwater management facilities on both sides of the driveway. Also, this landscaping adequately softens the views of the building from Emory Church Road. Foundation plantings consisting of ornamental trees, deciduous and evergreen shrubs, ornamental grasses and groundcovers add scale to the building and contribute to a sense of arrival. The landscaping of the storm water management facilities will be reviewed, approved and inspected by DPS, Water Resources Section. The remainder of the site is either forested or is being used to meet the afforestation requirements.

As proposed, the lighting consists of pole mounted light fixtures with a maximum height of 20 feet located on the east side of the private driveway leading up to the church building, on the perimeter of the surface parking lot and in the parking lot islands. However, the Planning Board recommended that the lighting be reduced in height to 12 feet, which is more residential in character and reduces visibility from adjacent properties and thus provides compatibility with the neighborhood. The lighting proposed will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. As conditioned, the lighting recommended is adequate, safe and efficient.

d) Recreation Facilities

The Project is not subject to the Recreation Guidelines as this is not a residential development. Nonetheless, the Project proposes a play area adjacent to the sanctuary in Phase II, a lawn area adjacent to the south of the building for children in first grade through the youth group, and an open area north of the parking lot for picnics and open play. The play area adjacent to the sanctuary in Phase II is intended for small children to play after church events while the adults are socializing prior to leaving the site. Given its proximity to the parking lot and lack of setbacks, the Planning Board conditioned that this play area be fenced with a gate in order to address safety concerns. As conditioned, the recreation facilities are safe, adequate, and efficient.

e) Vehicular and Pedestrian Circulation

The pedestrian and vehicular circulation systems are safe, adequate, and efficient. The church, which envisions that the majority of its parishioners will travel by automobile to and from the site, seeks to discourage parking along Emory Church Road. This, combined with the goal of reducing impervious surfaces, has led to not having a sidewalk connecting the public right-of-way to the building. Pedestrian circulation is provided only from the parking lot to the building. A walking aisle is located across all the parking rows that effectively directs pedestrians to the building's entrance and to a sidewalk across the building's frontage.

Vehicular access to the site is limited to one entrance from Emory Church Road, which leads up to the church building and associated parking lot. The applicant worked closely with MCDOT and the M-NCPPC staff to locate the site's access point at a location that would provide adequate sight distance. MCDOT has confirmed that the proposed access point to the site is safe and adequate. The parking lot efficiently allows for vehicular (including emergency vehicles) movement. As conditioned, the layout will continue to maintain safe, adequate, and efficient pedestrian and vehicular circulation.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses proposed are compatible with other uses and Site Plans, and with existing adjacent development. The church use is compatible with existing residential uses and places of worship surrounding the site. An existing church, Oakdale Emory United Methodist Church, is located 1,000 feet to the west on Emory Church Road. The location of the proposed building in the middle of the site allows for maximizing the setbacks from all four property boundaries, and preserving sensitive environmental resources. The setbacks, ranging from 230 feet on the south side, 240 on the east, 370 on the west, and

270 on the north side, reduce the visual impact of the proposed building and establish compatibility with the surrounding uses. In addition, significant areas of forest will be retained along all property lines to further screen the project from adjacent properties. The entrance to the site is proposed to be heavily landscaped, which integrates this site into the surrounding natural setting. The height of the proposed building at 35 feet (or 2 stories) is generally compatible with the surrounding building heights. The RE-2 Zone adjacent to the site to the east allows a maximum height of 50 feet under the standard method of development.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

This site is subject to the County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420080900 was originally approved on March 19, 2008, and recertified on June 28, 2010. As conditioned, the FFCP will result in the removal of 0.85 acres of forest and the retention of 7.20 acres of forest outside of the proposed LOD. The amount of forest planting will yield 1.20 acres of forest planting in the environmental buffer, of which 0.24 acres of planting will serve as mitigation for the proposed environmental buffer encroachment. As conditioned, the remaining 0.96 acres of forest planting will not be used as no longer result in a forest mitigation bank for other development projects.

This application requires a variance to the Forest Conservation Law, granted under the provisions of Section 22A-21, because this site did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, and it proposes to remove and impact trees greater than 30 inches DBH. The Applicant has requested a variance to remove fourteen (14) trees greater than 30 inches DBH, and to impact, but retain, eight (8) others that are considered high priority for retention (the variance for tree impacts is required for seven of the eight trees included in the request because one of the trees (Tree # 75) is dead. Based on the findings described in the Preliminary Plan Resolution, the M-NCPPC Staff and the County Arborist in the Montgomery County Department of Environmental Protection recommend approval of the variance request from the Forest Conservation Law with mitigation. As conditioned, the 0.96 acres of forest planting will not be used by the applicant as a forest mitigation bank.

The project, as amended by staff's conditions of approval, meets the County Forest Conservation Law's requirement to maximize forest retention (Section 22A-12(f)(2)) and also meets the minimum onsite forest requirement for a property located in an agricultural and resource area (Section 22A-12(f)(2)(A)).

The proposed storm water management concept approved on December 14, 2009, and reconfirmed on June 3, 2010, consists of on-site channel protection measures via construction of two detention ponds; on-site water quality control and onsite recharge via construction of a Montgomery County Sand Filter, two Bio Filters, a Dry Well Trench, and other non structural measures.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

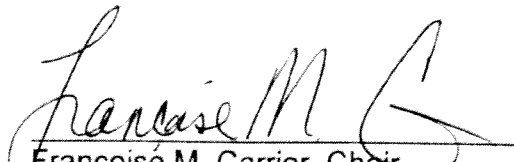
BE IT FURTHER RESOLVED, that the date of this Resolution is FEB 9 2012 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

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 Anderson, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, February 2, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

ATTACHMENT 3

LAW OFFICES OF

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DAVID W. BROWN

February 22, 2012

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park
& Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: **First Baptist Church of Wheaton
Resolution MCPB No. 11-76 (Preliminary Plan No. 120100250; Site
Plan No. 820100080; Variance Request: Forest Conservation Plan
820100080/120100250)**

Dear Chair Carrier:

On behalf of the Greater Olney Civic Association ("GOCA"), I write in support of the petition for reconsideration filed in the above-captioned matters on February 17, 2012 by Dr. David Reile and Dr. Barbara Suddarth ("Petitioners"). GOCA, though a party entitled to do so, is not filing its own petition; it is simply supporting the one filed by Petitioners.

Petitioners present three grounds for reconsideration, all of which are directed at the substance of Preliminary Plan Resolution MCPB No. 11-76 ("the Resolution"). Implicit in the petition is that if reconsideration is warranted on the Resolution, the Site Plan resolution and the variance approval necessarily must also be voided. GOCA concurs; these additional actions by the Board are dependent upon the viability of the Resolution.

While GOCA is in agreement with Petitioners' Grounds II & III for reconsideration, it is Ground I to which GOCA wishes to add its supporting views. This should not be viewed as lack of support for the additional Grounds; rather, GOCA simply does not have unlimited resources to devote to this matter. GOCA believes it can be most helpful in providing "chapter and verse" background to Petitioners' Ground I. The

Resolution, in attempting to support its “no longer appropriate” finding, is replete with legal and factual error, as detailed below.

1. The Resolution misstates the purpose of the PIF Policy.

The Resolution at 5 states that “[t]he purpose of the PIF policy is to allow the extension of sewer service outside the recommended sewer service envelope.” The Resolution at 5 also states that “[t]he PIF policy exists to allow the Council to make exceptions for properties that are not recommended for sewer or water service.” These observations, made in support of the Board’s “no longer appropriate” finding under § 50-35(l), are incorrect, as becomes clear upon examining the source documents themselves.

Council Resolution 15-1234 adopts “specific policies for the provision of community water and/or sewer service which create exceptions to the general service policies.” Section II.E., 2003-2012 Comprehensive Water Supply and Sewerage Systems Plan (“Plan”). One of these “exceptions” is “4. Community Service for Private Institutional Facilities.” **Attachment A.** It is limited to PIF’s that qualify as tax-exempt organizations under 26 U.S.C. § 501. The general service policy, as applicable to “[a]reas zoned for lower-density residential development (RE-1, RE-2, etc.)” is that they are “intended to be served by individual systems.” Plan § II.E.2. **Attachment B.**

Accordingly, the Plan provides that “[t]he provision of community water and/or sewer to such [PIF] facilities shall be addressed on a case-by-case basis by the following policies:” Plan § II.E.4. What follows in the Plan is a delineation of the policies that will apply in differing PIF circumstances, including who will decide the water/sewer question in each case. Hence, the purpose of the PIF Policy is to articulate the manner and circumstances under which community water/sewer service will, or will not, be extended to PIF’s. It does not exist solely “to allow the extension of sewer service outside the recommended sewer service envelope.” Resolution at 5.

Nor is it the case that the Council is the final arbiter on all water and sewer category changes for PIF’s. PIF’s located **within** acknowledged water/sewer envelopes may have service area category changes “approved by DEP through the administrative delegation process . . .” Plan § II.E.4.a. PIF’s located **outside** these envelopes -- either existing or proposed—are decided by the County Council. Plan § II.E.4.b. In other words, some service area category changes may take place without their ever having been a decision on it by the County Council.

2. The Resolution misstates the role the Master Plan plays in a Council decision on a sewer category change.

The Resolution at 5 states that the Board has concluded that the Council's decision in this case is an action that "superseded the Master Plan's recommendation against extending sewer to the Subject Property." This misstates the role of the Master Plan in the Council's decision, both generally and as applied to this particular case.

Where a Council decision is needed, the PIF Policy sets out decisional criteria that in only some instances require consideration of what the applicable Master Plan says about certain undeveloped properties. The first criterion for obtaining Council approval of a service area category change is an existing or proposed PIF site that abuts or will abut existing or approved water or sewer mains. Plan § II.E.4.b.i. The Master Plan is irrelevant to whether this criterion is satisfied. The second criterion for Council approval depends upon whether the PIF is (a) existing, or (b) new or relocating. For new or relocating PIF's, which is the instant case, a change is allowed only when a needed main extension would abut only properties eligible for community service under the general policies of the Plan. Again, the Master Plan is irrelevant to the criterion.¹

Because the criteria for a category change do not require consideration of what the Master Plan says about the PIF property itself, as detailed above, approval of the change should not be read as in any way affecting the Planning Board's determination of whether the Preliminary Plan for the PIF meets the requirement for substantial conformance with the Master Plan. Petitioners acknowledge that if, in deciding whether to grant the category change, the Council's decision document makes explicit reference to something in the Master Plan, such statements could certainly be considered by the Planning Board in connection with any future development plan before it, if pertinent. GOCA agrees, but notes that even in this case, any such Council statement cannot be considered an amendment to the Master Plan, as the Council does not have the authority to amend the Master Plan except through the designated public hearing and notice process, which is quite distinct from the process leading to review and action on a water or sewer category change.

¹ For existing PIF's, the needed main extension must not threaten to open up to development land for which the Master Plan recommends otherwise. Since the PIF is an existing use in this situation, this is about other properties that would be in the ambit of the extension. In this situation, and only in this situation, which is not relevant to this case, what the Master Plan has to say about these undeveloped properties is quite relevant. But even in this case, what the Master Plan has to say about the PIF property itself is not relevant.

The Resolution at 5 also opines that “[i]f the Master Plan had recommended sewer for the site, there would have been no need for the Applicant to seek the Council’s approval of a sewer extension under the PIF policy.” As detailed above, however, this is plainly wrong. It is quite clear from the PIF Policy in the Plan that, unless the change can be accomplished administratively, Plan § II.E.4.a., which is not the case here, an affirmative Council decision is required to effectuate a change. In fact, a Master Plan sewer category change recommendation is just that – a recommendation. It becomes an approved change only when the Council says it is.

3. The Board has improperly inferred from the Council action how the Master Plan is to be interpreted in this case.

As explained above, the criteria for grant or denial of a water or sewer category change for a PIF have nothing to do with whether or not the Master Plan is for or against or silent on such a change for the PIF site. As the criteria listed in the Plan are intended to be the decisional criteria for grant or denial of the change, they should be applied without being overridden by any criterion external to those stated in the Plan. Therefore, negative Master Plan language relating to a particular PIF should, as a matter of law, play no role in the Council decision on the application for a water or sewer category change. Hence, Council action on an application does not carry with it any sort of legal inference of an effect on how the Master Plan should be interpreted.

That is not to say, however, that negative Master Plan language regarding the PIF site is of no moment. It should play a role in the PIF’s determination whether to seek the category change in the first place. This is because Council approval of the change may be only a pyrrhic victory. If the Council, as it should, ignores the negative Master Plan language, and decides the application on the basis of Plan criteria, an approval will be of no use, since plans for the project submitted to the Planning Board in the wake of the approved water or sewer category change will be unapprovable in light of the negative Master Plan recommendation. The plans should be disapproved because they fail to meet the criteria of substantial conformance to the Master Plan under § 50-35(1).

The Resolution attempts to avoid this problem with the novel, suddenly emerging conclusion that here it is appropriate to move beyond the “substantial conformance” criterion to consider the “no longer appropriate” criterion of § 50-35(1). Surprise or not, the appropriateness of this switch depends on the details of what the Council did. In this case, it is decidedly inappropriate to justify compliance with § 50-35(1) on this basis. In the Council’s April 1, 2008 deliberations on the matter, there is no acknowledgement by the Council that it was acting contrary to the Master Plan. **Attachment C.** Rather, quite the opposite is clear: in Resolution 16-500, the Council approved the change in a way that explicitly left to the Planning Board the task of deciding whether any subsequent

Françoise M. Carrier, Chair
Montgomery County Planning Board
February 22, 2012
Page 5

Preliminary Plan for the site is in conformity with the Master Plan. Specifically, the Council Action for this PIF site was as follows: "Maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned upon the Planning Board's approval of a preliminary plan **that conforms to the intent** of the Olney Master Plan. Id. at page 2 of the Resolution Attachment (emphasis added). **Attachment D.** Hence, the Council's own wording, in acting on the sewer category change in this case, is tantamount to an explicit repudiation of a finding by the Board that the Master Plan recommendation is "no longer appropriate." In other words, contrary to the Resolution, the Council action is properly to be viewed as an express acknowledgement that the Council was not contradicting the Master Plan or attempting to neutralize the Planning Board's responsibility under § 50-35(l) to find substantial conformance to the Master Plan in the Preliminary Plan.

Your consideration of GOCA's views in acting on Petitioners' request is appreciated.

Sincerely yours,



David W. Brown

/attachments

cc: David Lieb, Esquire
Michele Rosenfeld, Esquire
Stan Abrams, Esquire
Barbara Falcigno, President, GOCA

Adopted by the County Council November 18, 2003 (CR 15-396)
Revised by the County Council November 29, 2005 (CR 15-1234)

II. POLICIES FOR THE PROVISION OF WATER AND SEWERAGE SERVICE

E. **Special Policies for Water and Sewer Service** – In addition to the preceding general service policies, the County Council has adopted specific policies for the provision of community water and/or sewer service which create exceptions to the general service policies. The Council has also adopted service recommendations in local area master plans which create exceptions to the general service policies.

4. **Community Service for Private Institutional Facilities** – This Plan defines private institutional facilities (PIFs) as buildings constructed for an organization that qualifies for a federal tax exemption under the provisions of Section 501 of Title 26 of the United States Code (Internal Revenue Service). The provision of community water and/or sewer service to such facilities shall be addressed on a case-by-case basis by the following policies:

a. **Facilities Located Within the Community Service Envelopes** – For private institutional facilities located within the acknowledged water and/or sewer envelopes, service area category changes may be approved by DEP through the administrative delegation process (Section V.F.1.a.: Consistent with Existing Plans). For a specific site, the acknowledged water and sewer service envelopes may differ due to the general water and sewer service policies (Section II.D.) included in this Plan.

b. **Facilities Located Outside the Community Service Envelopes** – For existing or proposed PIF uses located outside the acknowledged water and/or sewer envelopes, the County Council shall consider requests for the provision of community service for PIF uses according to the following criteria:

i. **Sites Abutting Existing Water and/or Sewer Mains** – For cases where existing or approved water or sewer mains abut or will abut a property, service area category amendments may be approved for sites with an existing PIF use and for sites proposed for a new or relocating PIF use, excluding those zoned RDT (see subsection iii).

ii. **Sites Requiring New Water and/or Sewer Mains Extensions** – For cases where the provision of community service for a PIF use requires new water and/or sewer mains, the following criteria shall apply:

- For existing PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) only where required water and/or sewer main extensions do not threaten to open undeveloped land to development contrary to the intent of the relevant local area master plan.
- For new or relocating PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) where required water and/or sewer main extensions will abut only properties which are otherwise eligible for community service under the general policies of this plan.

iii. **Sites Zoned Rural Density Transfer** – To help preserve the integrity of the land-use plan for the County's agricultural reserve, neither community water nor sewer service shall be used to support existing or proposed PIF uses within the Rural Density Transfer (RDT) Zone. This prohibition shall apply to all PIF cases regardless of whether public service requires either new main extensions or only service connections to an existing, abutting main. The only exception allowed to this prohibition is to allow for community service to relieve health problems caused by the failure of on-site systems, as documented by the Department of Permitting Services (DPS). In the case of a public health problem, DEP and DPS staff will need to concur that the provision of community service is a more reasonable alternative to a replacement of the failed on-site system, either by standard or alternative/innovative technologies. WSSC and DEP staff will need to concur that the provision of community service is technically feasible.

6

c. **Main Extensions for PIF Uses** – Main extensions outside the acknowledged community service envelopes, where required, shall be designated "Limited Access" consistent with the Limited Access Water and Sewer Mains policy (see Section III.A.2). Where community sewer service for a PIF use will be provided by low-pressure mains, those mains shall be dedicated only to that PIF use and generally not eligible for additional service connections. The County and WSSC may make limited exceptions to this requirement to allow for the relief of failed septic systems, where such service is technically feasible.

PIF uses may receive service from limited access water or sewer mains where the Council has specifically approved access to those mains. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Under its Systems Extension Permit (SEP) process, WSSC now requires that all commercial and institutional service applicants construct and pay for the community systems main extensions needed to serve their projects. In cases where more than one PIF use proposes to locate on a site requiring a pump and low-pressure main extension, WSSC requires that each institutional facility have a separate pump and pressure main system. The County and WSSC shall not support the provision of community sewer service for a PIF use where that service will require a WSSC-owned and operated wastewater pumping station which does not also support community sewer service for other non-PIF uses consistent with the service policies of this Plan.

d. **PIF Uses in Existing Residential Structures** – The Council may deny service area category amendments for PIF uses located outside the acknowledged water and/or sewer envelopes where main extensions are required for private institutional facilities seeking community service for existing residential structures. This could result in the extension of community water and/or sewer service for structures which would not otherwise be eligible for such service, and which could return to residential use.

e. **PIF Policy Directions** – The Council originally adopted a Water and Sewer Plan service policy addressing PIF uses with three primary goals in mind:

- To continue to support, where the provision of community service is reasonable, the county's private institutional facilities, which the Council recognized as having an important role in their communities and for their residents;
- To provide more objective and consistent criteria in evaluating PIF cases; and
- To limit the potential impact of water and sewer main extensions outside the community service envelopes to support PIF uses.

The PIF policy has accomplished the preceding goals, at least to some extent. However, it has also created unintended concerns, involving complex relationships between differing public policies and affecting private institutions needing space to locate and grow within an often fiercely competitive Real Estate market. This makes less costly land, usually located outside of the community water and sewer service envelopes and zoned for lower-density development, more attractive to institutional uses. Among the concerns which have come to the attention of both the County Council and County agency staff are the following:

- The policy has resulted in the clustering of PIF uses at the edge and outside of the acknowledged community water and/or sewer service envelopes.
- The policy has facilitated the siting of PIF uses on properties where the institutional use and its ancillary needs, especially parking, can create imperviousness far in excess of that normally resulting from residential uses, leaving little open space and creating water quality problems.
- The policy has facilitated the siting of PIF uses within the county's RDT-zoned agricultural reserve areas.

- The policy has promoted speculative interest in sites because of their potential ability to satisfy the PIF policy requirements, not because a specific private institution has a need for that site.
- The policy does not provide guidance concerning institutional subdivisions, where two or more PIF uses subdivide and locate on an existing property approved for community service.
- The policy can not address issues beyond the scope of the Water and Sewer Plan, such as community compatibility, traffic congestion, and alternate facility uses.

An interagency PIF policy working group has reviewed the PIF policy and other County regulations and ordinances, with particular attention to the preceding issues. The PIF policy as amended in this Water and Sewer Plan contains changes from the original PIF policy which address some of these concerns. Among these are a policy preventing publicly-funded support for community service to PIF uses where WSSC pumping facilities would be required, and a prohibition against providing community service to PIF uses in the Rural Density Transfer (RDT) Zone. In addition, the working group has recommended to the County Council impervious area limits for most land uses in lower-density rural and rural estate zones to help limit the environmental impacts often associated with institutional development within these zones.

The preceding policies focus on community water and sewer service for institutional uses. The working group also recognized that a prohibition on community service in the RDT Zone could result in an increase in PIF project proposals using multi-use on-site systems. The County needs to ensure that these on-site systems can provide long-term, sustainable service for their users in order to avoid the need to provide community service to relieve on-site system failures (see Section III.B.2.).

Water and Sewer Plan Recommendation

The County needs to recognize that the recommendations from the PIF Working Group represent the first efforts in addressing the community and environmental effects of large commercial and institutional land uses, especially those [[which]] that locate with the rural part of the county. At the least, the working group will need to follow up periodically to consider 1) the effectiveness of these recommendations, 2) public and development industry concerns with regard to the County's policies, and 3) the need for additional or alternative actions.

V. PROCEDURES FOR ADOPTING AND AMENDING THE WATER AND SEWER PLAN
D. Filing Individual Service Area Category Change Requests

2. Application Requirements for PIF Category Change Requests – In cases involving service area category amendments for private institutional facilities (PIFs – see Section II.C.4.), the institution seeking to use the property must act as the category change applicant. If a site is proposed for two or more PIF uses, then at least one of the proposed institutions must act as the applicant. PIF applicants need to include a confirmation of their tax-exempt status as part of their category change request.

This plan intends that community water service shall be extended in concert with community sewerage service, unless specific limitations of the community water system make it unreasonable to provide such service. The provision of community water service without community sewer service to areas zoned for two or more units per acre (R-200) density is discouraged wherever possible; in cases where such service is approved, the development plan must provide adequate protection for ground and surface waters as discussed in Subsection e. of this policy.

2. General Policies for Community Sewer Service – Land zoned for moderate to high development densities of two or more units per acre (R-60, R-90, R-200, etc.) is intended for sewer service from community sewerage systems. Where local area master plans recommend cluster-option development in zones with lower average lot yields (i.e., RE-1 or RE-2C Zones), and where clustered lot sizes are generally comparable to those in moderate and high-density zones, the provision of community sewer service is consistent with this plan. In the County's Zoning ordinance, two cluster-option zones also specifically call for the provision of community sewer service: the Low-Density Rural Cluster (LDRC) and Rural Neighborhood Cluster (RNC) Zones. Development occurring within these zones using the appropriate cluster option is intended to use community sewer service. The requirements of the RNC Zone allow for the consideration of community service for larger "conservancy" lots within the clustered subdivision where DEP and M-NCPPC staff concur that such service is appropriate, generally due to its proximity to community service. Where the provision of community sewer service is contingent upon the use of a cluster development option, service area changes will generally be conditioned on the approval of subdivision plans using those cluster options.

This plan recognizes that some rural areas of the County with moderate-density zoning (R-200, RMH-200, etc.) may be beyond the logical and economical reach of existing or planned community service. These areas will be served by individual systems. Areas zoned for lower-density residential development (RE-1, RE-2, etc.) are also intended to be served by individual systems.

Local area master and sector plans may recommend exceptions to the general policies contained in this Section (see Section II.E.1.).

3. Water and Sewer Service Policies for Non-Residential Zoned Areas – The preceding sections focused on policies related to residential zoning and development densities. For areas zoned for commercial and industrial development, the provision of community water and sewer service or the use of individual on-site systems shall be generally consistent with the type of service used for adjacent or nearby residential development.

Areas zoned for rural development, the five-acre (Rural or RC/non-cluster) and twenty-five acre (Rural Density Transfer (RDT) zones, are generally not intended to be served by community systems. However, case-by-case exceptions can be considered where community service is logical, economical, environmentally acceptable, and does not risk extending service to non-eligible properties. Subsequent policies included in Section II.F. identify the conditions under which these exceptions can be considered, including public health problems, public facilities, properties abutting existing mains, etc..

4. Consistency with Comprehensive Planning Policy – Water and/or sewer service should be extended systematically in concert with other public facilities along the corridors as defined in the General Plan, to accommodate growth only in areas covered by adopted local area master or sector plans. Guidance for the type, amount, location and sequence of growth is contained in the comprehensive planning policies of the County as adopted by the County Council. These policies are expressed in detail in the General Plan and the various master and sector plans which constitute amendments to the General Plan. Various functional plans, such as the Water and Sewer Plan, should be consistent with these comprehensive planning policies. In addition, the Water and Sewer Plan should consider other adopted or proposed policies of various agencies affecting land use, including guidelines for the administration of the Adequate Public Facilities Ordinance.

This Plan intends that water and sewer service decisions should follow and implement the land use and development guidance established in the County's General Plan and local area master plans. A variety of factors influence policy decisions concerning the density or type of development for a particular area: overall land use guidance; transportation and school capacity; environmental protection; local and county-wide

April 1, 2008



**TRANSCRIPT
April 1, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

**Councilmember Michael Knapp, President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal**

**Councilmember Phil Andrews, Vice President
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg**

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1

April 1, 2008



1 Deferral assumes that it would come back within a year. That's the.

2
3 Councilmember Floreen,
4 Yeah.

5
6 Keith Levchenko,
7 Water and sewer plan policy regarding deferrals. A denial would mean the applicant
8 would have to wait at least a year before coming back but a denial also obviously sends
9 a message that this Council opposes it. Absent change in the master plan or a change
10 in the Council, the applicant probably would not come back.

11
12 Councilmember Elrich,
13 And I don't believe this is going to be any more consistent with the master plan a year
14 from now than it is now.

15
16 Councilmember Floreen,
17 That's certainly a point of view. We have had this issue with Peoples, we have had this
18 issue with the Lutheran, I think it's a Lutheran church there and I guess the
19 [INAUDIBLE]. This is a regular issue in this neck of the woods.

20
21 Councilmember Berliner,
22 I would just like to make my thought known that I would support a denial as well.

23
24 Councilmember Floreen,
25 Okay. Next one is the First Baptist Church of Wheaton. This is one where we also got
26 the County Executive's comments on this recommending approval of public water and
27 sewer conditioned upon approval of a preliminary plan that conforms to the intent of the
28 Olney master plan. This was the recommendation of the Planning Board and the
29 Committee and the County Executive. It is located on Emery Church Road just east of
30 Georgia in Olney.

31
32 Council President Knapp,
33 Councilmember Elrich?

34
35 Councilmember Elrich,
36 I mean, again, with this one, I mean, I appreciate the Executive's recommendation, but I
37 note that both of the civic associations, [inaudible] and what is the other one, Sirocco,
38 right, both were in opposition to this and, you know, I don't believe that their concerns,
39 at least I don't see any evidence yet that their concerns with this project have been
40 addressed, either the water table issues and the imperviousness issue, or whether it is
41 appropriateness for the master plan. So I would prefer at least with this one to stay in
42 deferral until there's some evidence that the communities are more comfortable that this
43 is moving in the right direction.

44



April 1, 2008

1 Councilmember Floreen,
2 Well that, what the Committee, everyone's recommendation on this is that it be basically
3 resolved based on the submittal of an appropriate plan to the Planning Board but that it
4 would not come back to us.

5
6 Council President Knapp,
7 Councilmember Leventhal.

8
9 Councilmember Leventhal,
10 I guess I would just like to comment that it seems to me that those who attend church
11 also are part of a community. So that when we use the term community, community is
12 not necessarily limited to those civic associations who communicate with us on their
13 letterhead. Community is a very broad term and the community has many voices
14 including those who need a place to pray.

15
16 Council President Knapp,
17 So the recommendation we have before us is approval.

18
19 Councilmember Floreen,
20 Basically, it is a conditional approval dependent upon.

21
22 Council President Knapp,
23 Site plan.

24
25 Councilmember Floreen,
26 Preliminary plan that conforms to the intent of the Olney master plan. I am not sure if
27 they would have a site plan but they would have to have what is known as a preliminary
28 plan that has, shows where things would be, would include imperviousness, limitation,
29 driveways and the like. As I recall, isn't this, is this the one with the road?

30
31 Alan Soukup,
32 Yes. There is a notation in there.

33
34 Councilmember Floreen,
35 What we heard from the community which was very interesting is that one of the biggest
36 issues here was the feeling that DPWT was going to require some major roadway
37 construction here simply, that would affect the community character in this
38 neighborhood and we were very clear in our direction that that not indeed be the case.
39 Have we communicated that sufficiently to the private parties?

40
41 Keith Levchenko,
42 We can certainly note that in the resolution for the conditional approval the Council
43 intent, direction to the Planning Board.

44

April 1, 2008



1 Councilmember Floreen,
2 Minimize roadway improvement requirements in this case.
3
4 Alan Soukup,
5 And that is something that we can comment on as well through the subdivision process.
6
7 Councilmember Floreen,
8 Yeah.
9
10 Alan Soukup,
11 If it's adopted in the Council resolution.
12
13 Council President Knapp,
14 Okay. So we, so.
15
16 Councilmember Floreen,
17 So it's a very charming access point which is, was really, I think, the biggest, well
18 certainly, a driving factor in the Committee's concern.
19
20 Council President Knapp,
21 So our approval is conditional upon preliminary plan and so we don't see it again.
22
23 Councilmember Floreen,
24 Right.
25
26 Unidentified
27 Right.
28
29 Council President Knapp,
30 How do we, how do we then assure conformance or compliance with the master plan?
31 We just assume.
32
33 Councilmember Floreen,
34 That would be the guardians of the Committee.
35
36 Alan Soukup,
37 That would be the responsibility of the Planning Board.
38
39 Councilmember Floreen,
40 Yeah. Yeah.
41
42 Council President Knapp,
43 Okay. And so.
44

April 1, 2008



1 Keith Levchenko,
2 That's obviously the difference between conditional approval versus deferral. Deferral
3 would come back to the Council. Conditional approval, the Council is saying we're going
4 to rely on the Planning Board to determine those conditions are met.
5
6 Councilmember Floreen,
7 Yeah. And frankly, at that case, they have far more detail.
8
9 Council President Knapp,
10 Right.
11
12 Councilmember Floreen,
13 Than we would ever have.
14
15 Council President Knapp,
16 Right. And then you've – DPWT for the roadway.
17
18 Councilmember Floreen,
19 So, all the, and all these.
20
21 Keith Levchenko,
22 And we can include that note in the resolution regarding the Council's concern about
23 Emery Road or broader road improvements in that area related to this. You'll see that
24 you can see that in the resolution next week.
25
26 Councilmember Elrich,
27 I think they raise serious questions about the water quality issue too. And I, and that
28 needs to be addressed as well. I mean, if a lot of these people are dependent on the
29 ground water there, then, and if they have, if they're, I mean, I'll note just from their
30 letter, they talk about the impact on the water just from the building of a golf driving
31 range. If that's had an impact, this church is most certainly, you know, not likely to have
32 less of an impact. It's going to have a rather large footprint. And I think it is necessary to
33 address both of those issues. And I guess I share some of the concerns of the
34 community about having this go straight back to the Planning Board rather than having
35 the Council take a look at it. And the community, Sirocco asked for a deferral not a
36 denial. Sirocco asked for a denial.
37
38 Councilmember Floreen,
39 Okay well.
40
41 Council President Knapp,
42 Council Vice-President Andrews?
43
44 Councilmember Elrich,

April 1, 2008



1 I'll just say we had a huge amount of. Sure.
2
3 Councilmember Floreen,
4 Correspondence on this item, from the, primarily from the church members.
5
6 Councilmember Andrews,
7 Yeah. I would support a deferral on this rather than a conditional approval.
8
9 Council President Knapp,
10 All right. Is there a motion?
11
12 Councilmember Elrich,
13 I'll move for deferral?
14
15 Unidentified
16 Second.
17
18 Council President Knapp,
19 Moved and seconded. Discussion on deferral versus denial or versus conditional
20 approval. Sorry.
21
22 Councilmember Floreen,
23 Well, I'll just say that the reason I said that with respect to what the Planning Board
24 would see is that they will see all the elements of the project at that stage. We, you
25 know, we're not really the arbiters of that kind of thing, we would see a more general
26 thing. We wouldn't see the soup to nuts project that the applicant would be required to
27 submit and have vetted down at Park and Planning. So, I'll just make that, I think they
28 will actually have more relevant and all the information on which a final decision might
29 be made. And as you know, that is an extensive negotiation process down there. It is
30 really not that way here.
31
32 Councilmember Elrich,
33 It appears that we're the ones who make the final decision.
34
35 Councilmember Floreen,
36 Well, we make the policy decision.
37
38 Councilmember Elrich,
39 On the category. And it seems to me that I would like to hear, I mean, one of the issues
40 the community raised is their feeling of being, of a late or minimal involvement in the
41 discussion to the point that it was brought forward. I would like to at least let the
42 community know that before we pass this back to Park and Planning, that before we
43 make the decision to whether a change is even appropriate or not, that the community
44 has been adequately heard. And since we're body that has to make the decision as to



April 1, 2008

1 whether the change should be made, it seems to me we ought to be the body to make
2 sure the citizens feel they have at least been heard and that they feel that whether, how
3 they feel about how the church has accommodated their concerns. And I think a deferral
4 better than denial opens the door to that possibility but it leaves us making the decision
5 as to whether or not the grounds for making that change have been satisfied. Otherwise
6 we make the change and Park and Planning is basically doing design decision.

7
8 Councilmember Floreen,

9 Well, I will just say in response we did ask the church to meet with the community and I
10 believe those conversations are continuing. But again, we are not the best equipped, I
11 think, to manage those conversations, to resolve, to find and to apply regulatory
12 standards the way Park and Planning is. So we're really, you know, it's fine if you, I
13 don't support this motion but I'll just say there will be far better detail for the community
14 to respond to and for the church to know what was involved or not, along with the
15 expertise relevant to making that decision at the Park and Planning level.

16
17 Alan Soukup,

18 There is an option in this process and I will ask Mary Dolan to make sure I am not
19 stepping off a very big ledge.

20
21 Councilmember Floreen,
22 I think she's.

23
24 Council President Knapp,
25 She comes to help you.

26
27 Councilmember Elrich,
28 To step off?

29
30 Councilmember Floreen,
31 To pull the cane there.

32
33 Council President Knapp,
34 Pull him back, one or the other.

35
36 Alan Soukup,
37 The applicant does have the option of submitting a pre-application plan to Park and
38 Planning. In fact, they can ask for it to go before the Planning Board for the Planning
39 Board to comment on specific issues such as imperviousness, road impacts, water
40 quality impacts, things like this. The Board will give them a non-binding commentary as
41 to whether or not they think they should proceed with what they're doing or they need to
42 modify it. That could be part of the process here under a deferral.

43
44 Council President Knapp.

100

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for its form or content. Please note that errors and/or omissions may have occurred.



April 1, 2008

1 Councilmember Leventhal.

2

3 Councilmember Leventhal,

4 Well, I'm going to comment a second time on the use of what I think is a polarizing
5 vocabulary and I am afraid a number of Councilmembers have used it now. It's clear
6 that there are residents opposed to the application and there are also residents in favor
7 of the application. To suggest that those opposed to the application constitute the
8 community and that somehow the church is not part of the community or that those
9 opposed to the applications are the citizens and those who belong to the church are not
10 the citizens, I just object to that vocabulary and terminology. I do not think that is an
11 accurate description of the role the church plays in the community or the status of the
12 church's members. So I try to be very careful about my words. We have supporters and
13 opponents of the application.

14

15 Council President Knapp,
16 Council Vice-President Andrews.

17

18 Councilmember Andrews,

19 Thank you President Knapp. And I certainly agree there are many segments to the
20 community. It's a community, there are many communities of interest. But I did note that
21 the memorandum that we received through the Council President from Maryland
22 Department of Planning commenting on this item said this property, commented this
23 property is not within the sewer envelope provision. A community sewer to this property
24 is inconsistent with the Olney master plan. The provision of community water service is
25 consistent with the plan. So, we have that opinion at least from the Maryland
26 Department of Planning about this. It gives me caution which is why I support deferral.

27

28 Councilmember Floreen,
29 Where is that?

30

31 Councilmember Andrews,
32 I think on, I think that's the correct reference.

33

34 Keith Levchenko,
35 Yeah, the Maryland Department of Planning submitted a letter commenting on all of the
36 requests.

37

38 Council President Knapp,
39 Was that in the packet?

40

41 Keith Levchenko,
42 It's not in, I just got it myself today.

43

44 Council President Knapp,

101

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April 1, 2008



1 Oh.
2
3 Keith Levchenko,
4 Now, their comments at this point are just advisory. They will formally review it with
5 MDE after the Council action.
6
7 Council President Knapp,
8 Do we all have copies of that?
9
10 Councilmember Elrich,
11 No.
12
13 Councilmember Floreen,
14 No.
15
16 Keith Levchenko,
17 I literally just got it about a hour ago.
18
19 Council President Knapp,
20 That would be helpful.
21
22 Keith Levchenko,
23 But, once again, MDP is advisory to MDE. MDE makes the final decisions. So, I don't
24 think we necessarily want to predict up front, based on what MDP says, that that is what
25 the state position is. This is purely advisory at this point. And I think a lot of times they
26 do tend to echo what the Planning Board says about master plan recommendations.
27
28 Councilmember Leventhal,
29 The Planning Board staff.
30
31 Keith Levchenko,
32 And staff.
33
34 Councilmember Leventhal,
35 The Planning Board recommended conditional approval of this.
36
37 Keith Levchenko,
38 Ironically in this case, the Planning Board recommended approval, somewhat
39 surprisingly to staff.
40
41 Council President Knapp,
42 Okay. Councilmember Berliner.
43
44 Alan Soukup,



April 1, 2008

1 I am not sure that MDP has had the benefit of the Planning Board and staff positions on
2 this issue.

3
4 Councilmember Berliner,
5 I guess I was wondering whether or not the suggestion that you just made previously
6 with respect to going to the Planning Board for an advisory opinion, is that what I
7 understood?

8
9 Alan Soukup,
10 Yes.

11
12 Councilmember Berliner,
13 Is a middle path here by which the process can go forward that we can combine that
14 explicitly in the deferral options that so that if in fact we get this back from the Planning
15 Board staff and Planning Board with these issues having been reviewed and given their
16 blessing, then we would be good to go. So, it seems to me.

17
18 Alan Soukup,
19 There's a.

20
21 Council President Knapp,
22 Say that one more time.

23
24 Alan Soukup,
25 There is always a need in the deferral to state what you are deferring for.

26
27 Councilmember Berliner,
28 Yes.

29
30 Alan Soukup,
31 So that was one of the issues I was going to bring up. But that would be, that certainly
32 can be part of it. You could also add communication with the community, local
33 residents, something along those lines. We would have to work out the language on
34 that.

35
36
37 Councilmember Berliner,
38 I would be in favor of that particular approach. And if you'd like to say it again, what I
39 took from what you were observing was that this would allow the community, the entire
40 community, both the church community as well as the residents, to have a better
41 understanding of the impact of this proposal on water issues that the Planning Board
42 could issue an advisory opinion with respect to those matters and then it would come
43 back to us with those recommendations in mind.

44



April 1, 2008

1 Alan Soukup,
2 Essentially, yes. You would defer it pending a, the Planning Board's review of a pre-
3 application subdivision plan for this project, and would ask that the Board transmit their
4 commentary on the application back to the Council.
5

6 Council President Knapp,
7 And then, I guess, I would ask Ms. Dolan as to what the differential there would be. I
8 mean, what would, so we would get this pre-application, and we would look at what, just
9 make sure that everyone had spoken to everyone?
10

11 Mary Dolan,
12 Well, you would certainly have, Mary Dolan, Park and Planning, you would certainly
13 have more information. You wouldn't have the level of detail that Councilmember
14 Floreen was talking about. You wouldn't have a fully formed storm water management
15 plan. You wouldn't have a lot of detail but you would have more information than you
16 have now. In fact, the plan that they presented to the Board they said, in fact, was only
17 illustrative and they really didn't mean what they had on paper. So, I also want to
18 correct, I misstated, the Planning staff's position was for deferral, not for approval. So, I
19 apologize.
20

21 Council President Knapp,
22 The Planning Board voted to.
23

24 Mary Dolan,
25 The Planning Board voted to conditional approval, with looking at a preliminary plan and
26 determining at that time whether or not it's consistent with the master plan. They would
27 make that determination based on the more detailed information Ms. Floreen was
28 talking about.
29

30 Councilmember Floreen,
31 I'll just say, I mean, basically what the proposal that is now on the table is to have them
32 go through it twice.
33

34 Mary Dolan,
35 Yes.
36

37 Councilmember Floreen,
38 As opposed to.
39

40 Mary Dolan,
41 It certainly, it's an option if you feel strongly.
42

43 Councilmember Floreen,
44 At one point.

April 1, 2008



1
2 Mary Dolan,
3 Right.
4
5 Councilmember Floreen,
6 I mean, you put yourself as the arbiter of the Planning Board's decision at that point and
7 we're just saying, well, they would decide with respect to the master plan compliance.
8
9 Council President Knapp,
10 I guess one of the biggest frustrations I have had with this, all of these types of issues
11 since I've been here is the amazing inconsistency we have had in an application of how
12 we try and do these things, which is why we ended up putting different policies in place,
13 and tried to clarify that. I guess, to the extent that we are having organizations, be it the
14 individuals, churches, nonprofit organizations, whomever, come forward and go through
15 a process, I think we have to let that process operate. We keep giving the Planning
16 Board the regulatory authority, I am sensitive to the concerns raised by the
17 communities, as obviously I represent the community, by the same token, if we do
18 things like this that basically says well we are not really sure the Planning Board can get
19 it right so it's got to come back to us. And I have great concern about taking that kind of
20 an approach especially at a time when we are saying the Planning Board does do these
21 things, this is in their domain, this is what they are supposed to be doing and I think we
22 can in the resolution provide as much guidance as possible, and say here are the
23 concerns that have been raised and do that, but I think we have to let the Planning
24 Board do their job. That's why we have a Planning Board. Otherwise we're the Planning
25 Board and I'm pretty sure I don't want to be in that role.
26
27 Councilmember Floreen,
28 It's much harder. [laughter].
29
30 Councilmember Elrich,
31 But oddly this, but this winds up in our lap although I, I mean, this isn't the Planning
32 Board that's making this decision about the category change, they are not the ones that
33 make that decision, it's the Council. So apparently somebody thought we were the right
34 place to make that decision.
35
36 Council President Knapp,
37 To make the category change but then to actually make sure that the elements of the
38 master plan are applied appropriately is clearly within the domain of the Planning Board
39 to try and do that because they're doing that with every other application that comes
40 forward. And so I think that is important, that if, and to make sure there is effective
41 community input, to make sure that all the parties are at the table, to make sure that
42 issues like water quality are addressed. If our Planning Board's not addressing issues
43 like that, we have got bigger problems, in my perspective. Further discussion, we have
44 a motion before us. I don't see any further discussion. Motion before us to defer.

105

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April 1, 2008



1
2 Councilmember Elrich,
3 With his recommendations.
4
5 Council President Knapp,
6 With the language as provided, as amended, with the language provided by
7 Councilmember Berliner. All in support of deferral? Councilmember Berliner, Council
8 Vice-President Andrews, Councilmember Elrich. All in support of the Committee
9 recommendation? Councilmember Leventhal, Councilmember Ervin, Councilmember
10 Floreen and myself. The motion fails 3-4. Okay.
11
12 Councilmember Floreen,
13 Okay. Next one, Bethel World Outreach Ministries. Some of you were not here for their
14 time with us several years ago where this Council, I think we denied their application.
15
16 Alan Soukup,
17 2005.
18
19 Councilmember Floreen,
20 They are out in the Ag reserve, I think it's RDT property on Brink Road just east of
21 Wildcat, and basically, just east of Route 27. The recommendation here is to, they are
22 requesting a multi use system, approval for their property. There is a lot of history here
23 about what kind of, some of you weren't here for these conversations some years ago
24 with respect to the size of acceptable multi use systems within the Ag reserve. And in
25 the meantime, we also approved a Zoning Text Amendment since they were before us
26 the last time which basically limits the uses in RDT zoned properties where TDRs have
27 been removed from the property. That in fact, is the case for the Bethel property. So,
28 right now, they are down to a very constrained use on this property. And that does not
29 include a church. We all recommend deferral of this decision pending submittal by the
30 applicant of a proposal that is consistent with that Zoning Text Amendment.
31
32 Council President Knapp,
33 I see no comments.
34
35 Councilmember Floreen,
36 Finally, well, another decision not to be made, that's the Travilah Oak property. This
37 was, we had heard a lot from all sides on this issue. It's one of these anomalous C1
38 properties in the middle of the countryside, basically, at the corner of Glen Road and
39 Travilah Road. They have the, what is the oak, the Travilah Oak.
40
41 Alan Soukup,
42 Yes.
43
44 Councilmember Floreen,

Resolution No.: 16-500
Introduced: January 29, 2008
Adopted: April 8, 2008

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Amendments to the Comprehensive Water Supply and Sewerage Systems Plan

Background

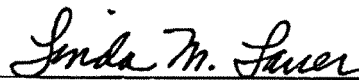
1. Section 9-501 et seq. of the Environmental Article of the Maryland Code, requires the governing body of each County to adopt and submit to the State Department of the Environment a comprehensive County Plan, and from time to time amend or revise that Plan for the provision of adequate water supply systems and sewerage systems throughout the County.
2. Section 9-507 of the Environmental Article of the Maryland Code provides that the Maryland Department of the Environment (MDE) has 90 days to review a county governing body's action to amend the County's Water and Sewer Plan. Upon notice to the County, MDE may extend that review period for another 90 days, if necessary. At the conclusion of this review, MDE must either approve or reject the Council's action on each of these amendments, or the action is confirmed by default. Any action approved or taken by this resolution is not final until that action is approved by the MDE or the period for final MDE action has expired.
3. In accordance with the State law on December 30, 1969, by Resolution No. 6-2563, the County Council adopted a Comprehensive Ten-Year Water Supply and Sewerage Systems Plan which was approved by the State Department of the Environment.
4. The County Council has from time to time amended the Plan.
5. On, January 17, 2008, the County Council received recommendations from the County Executive regarding 12 Water and Sewer Plan amendments.
6. Recommendations on these amendments were solicited from the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission Staff, and affected municipalities.
7. A public hearing was held on February 26, 2008.

8. The Transportation and Environment Committee discussed these amendments on March 13, 2008 and made recommendations to the Council.
9. The County Council held a worksession on April 1, 2008.

Action

The County Council for Montgomery County, Maryland approves the following amendments to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan as shown in the attachments to this resolution.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

**COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN
January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments**

Montgomery County uses water and sewer service area categories, in part, to identify those properties that should use public water and/or sewer service versus those that should use on-site systems, usually wells and/or septic systems. Categories 1 and 3 identify properties approved for public service. Categories 4 and 5 identify properties that currently should use on-site systems, but are proposed for public service in the future. Category 6 identifies properties that should use on-site systems, where public service is not planned for at least the next ten years. Property owners file category change map amendment requests in seeking to move their property from one category to another, usually based on anticipated development plans. The following chart presents the County Council's actions on water/sewer category map amendment requests filed with DEP and transmitted to the Council for consideration in January 2008.

Cloverly - Norwood Planning Area										
Property Information and Location Property Development	Applicant's Request County Council Action									
WSCCR 07A-CLO-05: Julian Patton, et al. (Proposed PIF User: Sts. Constantine & Helen Greek Orthodox Church)										
<ul style="list-style-type: none"> • 701 Norwood Rd., Cloverly • Pt. Parcel P915, Snowdens Manor Enlarged (dist.-acct. no. 05-00273546) • Map tile – MD: JS42; WSSC: 222NW01 • North side of Norbeck Rd. (MD 28) east of Norwood Rd. • Cloverly Master Plan (1997) • Northwest Branch Watershed (MDE Use IV) • RE-2 Zone; approx. 27 ac. • <u>Existing use:</u> vacant • <u>Proposed use:</u> place of worship, Sts. Constantine & Helen Greek Orthodox Church relocating to Mont. Co. from Wash., DC 	<table border="0"> <tr> <td>Existing –</td> <td>Requested –</td> <td>Service Area Categories</td> </tr> <tr> <td>W-3</td> <td>W-3 (no change)</td> <td></td> </tr> <tr> <td>S-6</td> <td>S-3</td> <td></td> </tr> </table> <p>County Council Action</p> <p>Defer action on the request for S-1, pending interagency and County Council review of a development plan for this specific site provided by the church.</p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	Existing –	Requested –	Service Area Categories	W-3	W-3 (no change)		S-6	S-3	
Existing –	Requested –	Service Area Categories								
W-3	W-3 (no change)									
S-6	S-3									
WSCCR 07A-CLO-07: Marc Schrecengost & Spring Lawn Farm Homeowners' Association										
<ul style="list-style-type: none"> • 17518 Country View Way, Ashton • Lot 22, Ashton Manor (dist-acct. no. 08-03134305) – owner: M. Schrecengost; and Oulot F, Ashton Manor (dist-acct. no. 08-03129536) – owner: Spring Lawn Farm HOA • Map tile – MD: JT41; WSSC: 223NW01 • South side of Country View Way opposite Country View Ct. • Sandy Spring – Ashton Master Plan (1998) • Northwest Branch Watershed (MDE Use IV) • RE-2 Zone; 4.00 ac. • <u>Existing use:</u> one single-family house (c. 1997) & vacant outlot. • <u>Proposed use:</u> two single-family houses (existing house to remain) 	<table border="0"> <tr> <td>Existing -</td> <td>Requested -</td> <td>Service Area Categories</td> </tr> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-1*</td> <td>S-1: allow two (2) sewer hookups</td> <td></td> </tr> </table> <p>* Restricted to one (1) sewer hookup only</p> <p>County Council Action</p> <p>Deny the request for an additional sewer hookup; maintain S-1 for one sewer hookup only.</p> <p><i>Note: The applicant may not file a new request for this property before April 8, 2009, without prior approval from DEP.</i></p>	Existing -	Requested -	Service Area Categories	W-1	No Change		S-1*	S-1: allow two (2) sewer hookups	
Existing -	Requested -	Service Area Categories								
W-1	No Change									
S-1*	S-1: allow two (2) sewer hookups									
WSCCR 07A-CLO-09: Neil and Laura Pullen										
<ul style="list-style-type: none"> • 1300 Harding La., Cloverly • Parcels P317, Snowdens Manor Enl (dist./acct. no. 05-00252203) and P332, Family Cemetery (no. 05-00280484) ¹ • Map tile: MD – KS22; WSSC – 221NE02 • North side of Harding La., west of Pamela Dr., either side of Spotswood Dr. at east end • Cloverly Master Plan (1997) • Paint Branch Watershed (MDE Use III, Mont. Co. Special Protection Area (SPA)) • RE-1 Zone; 3.67 ac. • <u>Existing use:</u> 1 single-family house (c. 1933). • <u>Proposed use:</u> 3-lot residential subdivision (existing house to be replaced); preappl. plan no. 7-20070210 "Pullen Property". <p>¹ This 2,600 sq. ft. parcel, owned by Edith Turner, contains a cemetery enclosed by the Pullen's parcel. DEP has included it with this request for general sewer planning purposes. No new development is expected on this property.</p>	<table border="0"> <tr> <td>Existing -</td> <td>Requested -</td> <td>Service Area Categories</td> </tr> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-6</td> <td>S-3</td> <td></td> </tr> </table> <p>County Council Action</p> <p>Approve S-1 for one sewer hookup only. ² Defer action on unrestricted approval for S-1 pending further M-NCPPC and DEP evaluation of the applicants' subdivision plans in light of the master plan's sewer service recommendations.</p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year. Subsequent administrative delegation action is possible upon agency agreement on a revised plan.</i></p> <p>² This connection/hookup cannot be used for a private institutional facility without subsequent review and approval by the County Council.</p>	Existing -	Requested -	Service Area Categories	W-1	No Change		S-6	S-3	
Existing -	Requested -	Service Area Categories								
W-1	No Change									
S-6	S-3									

COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN
January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments

Goshen – Woodfield – Cedar Grove Planning Area							
Property Information and Location Property Development	Applicant's Request County Council Action						
WSSCR 07A-DAM-08: Bethel World Outreach Ministries							
<ul style="list-style-type: none"> • 10725 Brink Rd., Clarksburg • Parcel P999, Thomas Hog Pasture Case (dist.-acct. #02-00028903) • Map tile – MD: FV122; WSSC: 230NW11 • North side of Brink Rd., opposite Glendevon Ct. • Preservation of Agriculture and Rural Open Space Master Plan (1980) • Middle & Upper Great Seneca Creek Watersheds (MDE Uses I & III³) • RDT Zone; 119.37 ac. • <u>Existing use:</u> farm. • <u>Proposed use:</u> 800-seat place of worship; Bethel World Outreach Church, relocating from downtown Silver Spring; plan no. 7-20070240 "Bethel World Outreach Center". <p>³ A 10.3-acre portion of the northwest corner of the site lies within the Wildcat Branch subwatershed (MDE Use III) of Upper Great Seneca Creek.</p>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-6</td> <td>W-6 w/multi-use water system approval</td> </tr> <tr> <td>S-6</td> <td>S-6 w/multi-use sewerage system approval</td> </tr> </tbody> </table> <p>County Council Action</p> <p>Defer action on the request for multi-use water and sewer system approval, pending the applicant's submittal of a proposed use that is consistent with ZTA 07-07.</p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	Existing	Requested – Service Area Categories	W-6	W-6 w/multi-use water system approval	S-6	S-6 w/multi-use sewerage system approval
Existing	Requested – Service Area Categories						
W-6	W-6 w/multi-use water system approval						
S-6	S-6 w/multi-use sewerage system approval						
WSSCR 08A-GWC-01: Kirk Canaday							
<ul style="list-style-type: none"> • 8300 Block⁴, Warfield Rd., Gaithersburg • Parcel P554, Williams Range Near Goshen (dist.-acct. #01-00010841) • Map tile – MD: GU123; WSSC: 228NW08 • North side of Warfield Rd., west of Doubleland Rd. • Preservation of Agriculture and Rural Open Space Master Plan (1980) • Middle Great Seneca Creek Watersheds (MDE Use I) • RE-2 Zone; 2.71 ac. • <u>Existing use:</u> vacant • <u>Proposed use:</u> one new single-family house <p>⁴ The applicant's reported street address, 8333 Warfield Rd., does not yet appear in the State's property tax account records.</p>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-3</td> <td>W-3 (no change)</td> </tr> <tr> <td>S-6</td> <td>S-3</td> </tr> </tbody> </table> <p>County Council Action</p> <p>Deny the request for category S-3; maintain S-6. DEP and DPS need to consider a sewer sanitary survey for this area to determine the extent of septic problems.</p> <p><i>Note: The applicant may not file a new request for this property before April 8, 2009, without prior approval from DEP.</i></p>	Existing	Requested – Service Area Categories	W-3	W-3 (no change)	S-6	S-3
Existing	Requested – Service Area Categories						
W-3	W-3 (no change)						
S-6	S-3						

Olney Planning Area							
Property Information and Location Property Development	Applicant's Request County Council Action						
WSSCR 07A-OLN-02: The First Baptist Church of Wheaton*							
<ul style="list-style-type: none"> • 3110 Emory Church Rd., Olney • Parcel P077, Chas & William (dist./acct. #08-00705848) • Map tile: WSSC - 223NW03; MD - HS563 • North side of Emory Church Rd., west of Norbrook Dr. • Olney Master Plan (2005) • Northwest Branch Watershed (MDE Use IV) • RNC Zone; 15.0 ac. • <u>Existing use:</u> single-family residence. • <u>Proposed use:</u> place of worship (500-seat sanctuary, fellowship hall, classrooms, offices); First Baptist Church of Wheaton, relocating from its existing site on Georgia Ave. in Wheaton • <u>Original owner/applicant:</u> Frances Doherty Estate. The church acquired the property on 7/1/07. 	<table border="1"> <thead> <tr> <th>Existing --</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-6</td> <td>W-1</td> </tr> <tr> <td>S-6</td> <td>S-1</td> </tr> </tbody> </table> <p>County Council Action</p> <p>Maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan.</p> <p><i>Note: In its review of the applicant's preliminary plan, the Planning Board is asked to ensure that potential road improvements (such as to Emory Road) are minimized as are any deleterious environmental impacts (such as reductions in ground water quality).</i></p>	Existing --	Requested – Service Area Categories	W-6	W-1	S-6	S-1
Existing --	Requested – Service Area Categories						
W-6	W-1						
S-6	S-1						

