

ITEM # 8

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JOHN BURGESS WALSH, JR.
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*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

1-800-229-9510

December 4, 2002

Derrick Berlage, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland

RE: Preliminary Plan No. 1-99100 - Cloverly Commercial

Dear Chairman Berlage:

On behalf of Se Me Hahn Korean Presbyterian Church, I have received a copy of the November 1, 2002 letter from Alfred Blumberg of Site Solutions, Inc., to you regarding the extension of the above-referenced Preliminary Plan. After a review of the proposal with my client, we are joining with the applicant in recommending that the request be granted.

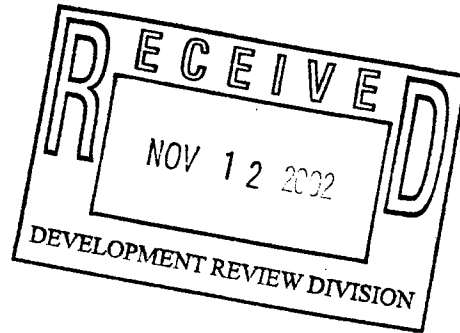
As you may know from the record, the Church owns the parcel of land immediately behind the Vedadi property. Its subdivision plan and the development of the Vedadi property are inextricably related because of the conditions imposed on both properties for joint use of stormwater management and access for pedestrians and vehicles, and underground utilities.

On several occasions, we had appeared before the Planning Board in connection with applications filed on behalf of the Vedadis primarily to assure that the Church's interests were protected with respect to access. After the last hearing at which an extension was granted, we have been able to enter into a dialog with Mr. Blumberg regarding the needs and interests of both parties. It appears that a reasonable solution is now available that will be beneficial to all.

Unfortunately, because of changes in the financial structure of the Church partially due to the delay in obtaining access to construct its facilities at this site, it has acquired another building in the Laytonsville area to serve as its sanctuary

November 1, 2002

Derick Berlage, Chariman
Montgomery County Planning Board
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD. 20910



RE: 1-99100 Preliminary Plan Extension

Dear Chairman Berlage:

The applicant and property owner, DV LLC, hereby requests an 18-month extension of the above referenced Preliminary Plan of Subdivision. The Montgomery County Planning Board approved the Preliminary Plan on September 23, 1999 and the enclosed Opinion is dated October 4, 1999. That Opinion states that "this preliminary plan will remain valid until November 4, 2001...."

This Preliminary Plan has previously been twice extended for 6-month periods. The first extension was approved in November of 2001 and the second in April 2002. The reason for the extensions involve the implementation of the stormwater management related to the property.

The original approval conditions referenced the "Conditions of stormwater management approval dated 07/26/99". That DPS approval, copy attached, states in part: "The stormwater management concept consists of on-site water quantity control via the proposed Se Me Hahn Presbyterian Church pond on the adjacent property and on-site water quality control via a surface sand filter located on the same adjacent church property."

Since Preliminary Plan approval, the applicant has been negotiating with the Se Me Hahn church to implement the combined facility on the Church property. The most recent development affecting negotiations is the Church's acquisition of an existing church building to act as an interim worship facility until the church can afford to build a new worship center. Of course, the church does not want to build its own stormwater management on the church property until it is ready to build the new church.

Chairman Derick Berlage
November 1, 2002
Page Two

Subsequently, we have been in touch with the Montgomery County Department of Permitting Services regarding permission to build an interim SWM facility on the church property, prior to construction of a larger SWM facility combined with the church's SWM structure. MCDPS is agreeable to such an interim facility although they would not consider it a "temporary" facility because the church may never move forward. DPS would therefore require any interim facility to be constructed as though it was the final, permanent facility. That would cost in the neighborhood of between \$50,000 and \$60,000 (our estimate). However, the projected cost of the ultimate, permanent facility (combined with the church's SWM) is in the neighborhood of \$350,000 (church contractor's estimate).

The original agreement in principle was for the church to provide the stormwater management for the subject 0.73-acre property on the larger church site. This would represent only a modest incremental increase in the design and size of the church's SWM facility. In exchange, the subject site would provide appropriate easements for utilities and ingress/egress to New Hampshire Avenue.

As it has turned out, the devil is in the details. No agreement has as yet been reached. Delays in reaching an agreement have caused problems for both parties. Without access to New Hampshire Avenue the church cannot move forward and without access to the church's SWM facility, the subject property can be developed only by utilizing underground SWM storage pipes, at twice the price of an above ground facility.

In order to show some progress and seriousness of intent, the applicant recently submitted a Site Plan application for the subject property. It proposes on-site underground SWM in accordance with one of the alternative MCDPS approvals. However, it does not provide for any easements to the church site.

Clearly, the site plan does not represent the optimal solution for either party. The owners of the Cloverly Commercial property, being good businessmen, do not want to pay twice the price for SWM than is necessary. And the Church needs access to the highway. It is in the mutual best interest of both parties to reach an agreement.

Chairman Derick Berlage
November 1, 2002
Page Three

We therefore request that the Preliminary Plan approval be extended for one year. That will allow enough time to conclude an acceptable agreement with the Se Me Hahn Church and to revise the SWM concept plan to provide for the interim SWM facility. The Site Plan can be revised accordingly and the Record Plat recorded.

The difficulty of joint usage was unforeseen at the time of Preliminary Plan approval. We therefore request the indulgence of the Planning Board to permit additional time to reach some acceptable conclusion that will enable development to proceed on both properties.

Attached for your convenience and edification are copies of our correspondence over the past six months. They reflect the discussions and issues that have arisen. They illustrate the various avenues that have been pursued in our attempts to reach a solution and conclusion in this matter.

Very truly yours,
Site Solutions, Inc. - by



Alfred Blumberg - for
Dariush Vedadi

Enclosures

cc: Kenneth Tecler, Esq. (w/ enclosures)
Dariush Vedadi
Malcolm Shaneman, M-NCPPC (w/ enclosures)

May 22, 2002

Kenneth B. Tecler, Esq.
Chen, Walsh, Tecler & McCabe, LLP
200A Monroe Street, Suite 300
Rockville, MD. 20850

Re: Vedadi – Se Me Hahn Presbyterian Church

Dear Mr. Tecler:

Thank you for sending me a copy the January 2001 Agreement and for your May 15, 2002 letter. I have reviewed the Agreement and met with the Vedadi brothers to discuss them. The Vedadi's were surprised to see that the copy you sent had been signed by representatives of the church. A quick review of their files on this matter revealed that they did not have a copy that had been signed by the church. They were pleased to see that the Agreement had been signed and thereby feel heartened that agreement is indeed possible.

The main concern that I had upon review of the Agreement was that it is geared towards the church completing its construction first and the subsequent impact of Vedadi construction on the Church's facilities. But what happens if Vedadi builds first? Construction of underground utilities would have significant adverse impacts on the parking and driveway on the Vedadi property. However, upon reflection, I think that this issue can be circumvented as discussed in your May 15 letter. If the church can divide its construction into two parts, and install the utilities under the Vedadi property (within the relevant easement areas) plus the Stormwater Management (SWM) facility first, my concern will be addressed.

So much time has passed since the initial discussions on this matter, my client, the Vedadi's want to confirm that the SWM facility has been sized to accommodate the maximum amount of potential development on their property. In order to avoid any further concerns and delays, please instruct or remind the Church's engineers to assume 100% imperviousness on their property.

Kenneth Tecler, Esq.
May 22, 2002
Page Two

Please call me after you have reviewed and discussed this letter with your client. If agreement in principle is within our grasp, we should move quickly. We need to proceed with our Site Plan preparation and Record Plat with all deliberate speed.

Thank you for your assistance in this matter and we look forward to closing this unduly troublesome chapter of the Cloverly land use book. It appears to me that the major problem has been a lack of communication between the parties. Please convey my apology to the church members along with my client's assurances that they bear no ill-will or animosity towards the church or its members. We just want to move forward towards a mutually beneficial conclusion.

Very truly yours,
Site Solutions, Inc. by

A handwritten signature in cursive script that reads "Al Blumberg". The signature is written in black ink and is positioned above the printed name and title.

Alfred Blumberg
Planning Director

cc: David & Dariush Vedadi



19650 Club House Road, Suite 105
Gaithersburg, Maryland 20886-3039
301-947-8900 • FAX: 301-947-7704

August 22, 2002

Kenneth B. Tecler, Esq.
Chen, Walsh, Tecler & McCabe
200-B Monroe Street
Suite 300
Rockville, MD. 20850

Re: Vedadi / Se Me Hahn Church agreement

Dear Mr. Tecler:

This letter is a follow-up to our phone conversation of August 12, 2002, regarding the above-cited agreement. We agreed that the 1/16/01 draft agreement does not need to be revised, but that any revisions can be handled with an addendum or attachment. However, Exhibit D and E attached to the draft agreement should be modified to be titled "30' Utility Easement" rather than "30' Access Easement".

During that conversation we agreed that your office would prepare an attachment to the 1/16/01 draft agreement to address the maintenance of the Vedadi's parking lot and driveway should the Vedadi property develop sooner than the church. The 1/16/01 draft agreement refers only to impacts on Church infrastructure assuming that the Vedadi property would be improved after the church property is developed. In addition, the addendum should include provisions for the installation of 'dry' water and sewer lines under the Vedadi property (within the provided easement area) as well as conduits for other utilities under the Vedadi's parking / driveway area. These should be installed prior to paving that parking / driveway area. That will preclude the necessity to dig up and disrupt that area in the future, should the Church be built after the Vedadi property.

We are almost ready to file the Site Plan application for the Vedadi property with the Montgomery County Planning Board. As a part of that application, we will identify the necessary stormwater management (SWM) provisions to be accommodated in the SWM facility located on the

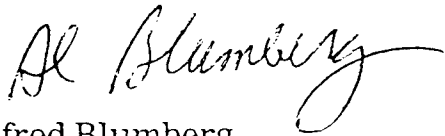
Kenneth B. Tecler, Esq.
August 22, 2002
Page Two

Church property, in accordance with the draft agreement. The county will need to review the agreement between the Vedadi's and the Church to be satisfied that adequate SWM provisions will be made and that the SWM facility will be constructed in a timely manner. Therefore, we would like to conclude negotiations and have the parties sign the agreement at everyone's earliest possible convenience.

The Vedadi's agree to record the access and utility easements identified to enable the Church to proceed in exchange for the provision of SWM facilities on the Church property. In this way, all parties will have what they need to proceed with their respective construction.

Thank you for your assistance in this matter, and we look forward to a satisfactory conclusion to what has been an unnecessarily acrimonious negotiation relating to this matter.

Very truly yours,
Site Solutions, Inc. by

A handwritten signature in cursive script, appearing to read "Al Blumberg".

Alfred Blumberg
Planning Director

cc: David & Dariush Vedadi

September 13, 2002

Kenneth B. Tecler, Esq.
Chen, Walsh, Tecler & McCabe
200-B Monroe Street
Suite 300
Rockville, Md. 20850

Re: Vedadi / Se Me Hahn Presbyterian Church

Dear Mr. Tecler:

This letter is a follow up to our phone conversations of August 23 and August 30, 2002. You indicated to me that the church has purchased an existing church facility at another location to accommodate its needs on an interim basis. Therefore, the church may not build its new facility on the New Hampshire Avenue site for 5 or 10 years, although the New Hampshire Avenue site is still perceived as their long-term home for a new church.

As a consequence, the church is currently spending its money to renovate the newly acquired, older worship facility. As a result, the church does not want to expend any money for "dry pipes" or conduit under the Vedadi property parking lot, as discussed earlier, at this time. More critically, the church does not have the funds to build the stormwater management (SWM) facility on the church site for the combined use by the church and the Vedadi property at this time either.

You indicated, however, that the church would not object to the Vedadi's constructing either the combined stormwater management facility or a separate SWM facility solely for the use of the Vedadi property, on the church property. The church might compensate Vedadi for the construction of that stormwater management facility, but that is not certain. There is also some question as to when such compensation would be forthcoming, and we would like some clarification on that issue.

To be perfectly clear, my client sees the provision of stormwater management on the church property, for the use of the Vedadi property, as a *quid pro quo* for the granting of the access easement to the church site through the Vedadi

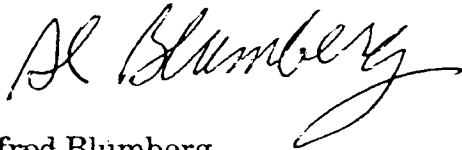
Kenneth B. Tecler, Esq.
September 13, 2002
Page Two

property. The Vedadi's will grant the easement at no cost to the church in exchange for the provision of stormwater management facilities at no cost to the Vedadi's. We believe that such *quid pro quo* provisions are inherent in the 1/16/01 draft

Agreement. Therefore, the entire cost of any interim SWM facility should be borne by the church.

We would like to make sure that we are all on the same page as we proceed through further negotiations on this matter, so we ask that you verify with your client that they agree with regard to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Al Blumberg". The signature is fluid and extends to the right.

Alfred Blumberg

cc: Daruish & David Vedadi

October 2, 2002

Kenneth B. Tecler, Esq.
Chen, Walsh, Tecler & McCabe
200-A Monroe Street
Suite 300
Rockville, Md. 20850

Re: Vedadi / Se Me Hahn Presbyterian Church

Dear Mr. Tecler:

This letter is a follow up to our phone conversation of September 30, 2002, regarding Stormwater Management on the combined properties. I indicated to you that, based on preliminary discussions with Mark Ethridge at Montgomery County Department of Permitting Services, their office would permit the Vedadi stormwater management facility to be located on the Church property, on a temporary basis. He indicated that they would treat the design and location as permanent because there is no guarantee that the church will be built or that the larger facility will ever be implemented. However, if and when such larger SWM facility is constructed, that new facility could be sized to accommodate the Vedadi commercial site, and the "temporary" facility could be replaced at that time. Be advised that the Church would need to allow the recordation of an easement for the temporary SWM facility, but that easement could be extinguished if and when it is replaced with a new, larger SWM facility serving both properties.

As I indicated, we will be submitting a Site Plan for the Vedadi site to Park & Planning shortly. That site plan will, of necessity, show the Vedadi SWM as an on-site underground storage area. Due to time constraints, we must file the site plan as quickly as possible. We must have an approved SWM concept Plan in order to submit a Site Plan. We do not have time to have a new concept plan approved prior to submission. Therefore, we will continue to show the approved Concept Plan with on site storage. We will, however, work to submit to MCDPS and have approved a new SWM Concept Plan with a facility on the Church site before the Planning Board acts on the Site Plan.

Kenneth B. Tecler, Esq.
October 2, 2002
Page Two

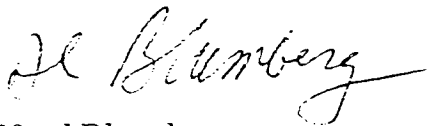
Likewise, the Site Plan will not indicate the access easement to the church property across the Vedadi property. Since SWM and access are dependent on one another, the plan will be revised to add the ingress – egress easement to the plan once the new SWM concept plan utilizing the church property is approved.

At this point, we anticipate that the cost of a “temporary” SWM facility will be much, much less than the cost of the combined, larger SWM facility that was approved for the church property, combined with the Vedadi commercial site. And even though it is “temporary,” the Vedadi’s expect that cost to be borne by the Church, in exchange for which the Vedadi’s will provide the ingress – egress easement at no cost to the Church.

Finally, we will of necessity request a further extension of the Preliminary Plan of Subdivision. Assuming that the church is in agreement with the above approach, we would ask that the church support the extension request and testify at the Planning Board Hearing on that matter. Clearly, we need to reconcile and agree to a reasonable approach to SWM on the combined properties. Until this is resolved, we do not want to finalize the Site Plan or Record Plat for the Vedadi Commercial property.

We would like to make sure that we are all on the same page as we proceed through further negotiations on this matter, so we ask that you verify with your client that they are in agreement with this letter. Once we reach an agreement in principle, we should endeavor to get everyone to sign a written agreement.

Very truly yours,



Alfred Blumberg

cc: Dariush & David Vedadi



MAY 22 2002
BY: _____

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

May 16, 2002

Amy Dunning
Site Solutions
19650 Club House Road, Suite 105
Gaithersburg, MD 20886

Re: Stormwater Management **CONCEPT** Request
for Cloverly Commercial
Preliminary Plan #: 1-99100
SM File #: 205196
Tract Size/Zone: 0.8 Ac/C-1
Total Concept Area: 0.8 Ac
Tax Plate: JS562
Lots/Block: Lot 2, Block D
Parcel(s): N915
Liber/Folio: 16693/146
Montg. Co. Grid: 31F1
Watershed: Northwest Branch

Dear Ms. Dunning:

Based on a review by the Department of Permitting Services Review Staff, the **revised** stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept revision consists of on-site water quantity control via underground detention and on-site water quality control via infiltration.

The previously approved stormwater management concept, dated July 26, 1999, will continue to be considered an approved stormwater management alternative.

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

1. This stormwater management concept revision was submitted as an alternative to the previously approved concept. The previous approval and all its conditions, dated July 26, 1999, remain a valid approval and is considered to be an equal alternate to the revision hereby approved. Prior to submittal of any detailed plans for review by this office, including any "rough grading" plans, a decision must be made as to which stormwater management concept will be pursued.
2. The underground detention must be designed to provide 2 and 10-year control. All stormwater management facilities must be designed per the most current MCDPS design specifications.
3. Review of the stormwater management computations will occur at the detailed plan review stage.

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

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



Amy Dunning
May 16, 2002
Page 2

This letter, **and the previous approval letter dated July 26, 1999**, must appear on the sediment control/stormwater management plan at its initial submittal. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at 240-777-6338.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:enm.CN205196.mce

cc: M. Shaneman
S. Federline
SM File # 205196

QN - ON; Acres: 0.8
QL - ON; Acres: 0.8



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

Action: Approved staff recommendation

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Motion of Comm. Bryant, seconded by Comm. Wellington with a vote of 5-0; Comms. Bryant, Wellington, Perdue, Holmes and Hussmann voting in favor.

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-99100

NAME OF PLAN: CLOVERLY COMMERCIAL

On 06/25/99, DARIUSH VEDADI submitted an application for the approval of a preliminary plan of subdivision of property in the C-1 zone. The application proposed to create 1 lot on 33,105 square feet of land. The application was designated Preliminary Plan 1-99100. On 09/23/99, Preliminary Plan 1-99100 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-99100 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-99100.

Approval, pursuant to the FY 2000 Annual Growth Policy (AGP) Alternative Review Procedures for Expedited Development Approval ("Pay and Go"), subject to the following conditions:

- (1) Prior to recording of plat, applicant to submit an Adequate Public Facilities (APF) agreement with the Planning Board limiting development to a maximum of 7,800 square feet of general retail space
- (2) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate
- (3) Terms and conditions of access and improvements, as required, to be approved by MDSHA prior to issuance of building permit
- (4) Landscape, lighting and parking facilities plan to be reviewed and approved with site plan
- (5) No clearing, grading or recording of plat prior to site plan approval
- (6) Conditions of stormwater management approval dated 07/26/99

- (7) Record plat to reference common ingress/egress and utilities easement with adjoining Preliminary Plan 1-97083
- (8) Other necessary easements
- (9) In accordance with the provisions of the expedited development approval excise tax (EDAET) of the FY 2000 AGP, this preliminary plan will remain valid until November 4, 2001 (25 months from the date of mailing, which is October 4, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded. In order for the approval to remain valid, all building permits must be issued within two years of the recordation of the associated plat(s).

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

October 23, 2001

Casper Management
C/o Dariush Vedadi
19110 Montgomery Village Avenue
Suite 300
Gaithersburg, MD 20886

Preliminary Plan No. 1-99100E
Request for an extension of the validity date for the **CLOVERLY COMMERCIAL**

This is to inform you that the Montgomery County Planning Board considered your request for an extension to the validity period of the above-mentioned plan at its regularly scheduled meeting of **October 1, 2001**. At that time, the Planning Board voted 5-0 to grant an extension to **May 4, 2002**. (Commissioner Bryant made the motion; Commissioner Wellington seconded; Commissioners Bryant, Holmes, Robinson and Wellington voted in favor. Commissioner Perdue absent).

Please give me a call at 301/495-4587 if you have any questions concerning this Planning Board action.

Sincerely,

A. Malcolm Shaneman
Development Review Division

cc: Goozman, Bernstein & Markuski



RECEIVED
MAY 22 2002

BY:.....

May 17, 2002

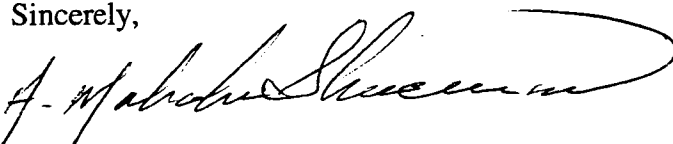
Casper Management
C/O Dariush Vedadi
19110 Montgomery Village Ave.
Suite 300
Gaithersburg, MD 20886

Preliminary Plan No. 1-99100E
Request for an extension of the validity date for the **Cloverly Commercial**

This is to inform you that the Montgomery County Planning Board considered your request for an extension to the validity period of the above-mentioned plan at its regularly scheduled meeting of **May 09, 2002**. At that time, the Planning Board voted 4-0 to grant an extension to **November 09, 2002**. (Commissioner Bryant made the motion; Commissioner Robinson seconded; Commissioners Bryant, Perdue, Robinson and Wellington voted in favor (Commissioner **Holmes** necessarily absent).

Please give me a call at 301/495-4587 if you have any questions concerning this Planning Board action.

Sincerely,



A. Malcolm Shaneman
Development Review Division

cc: Alfred Blumberg