



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

MCPB No. 17-019  
 Preliminary Plan No. 120160040  
 RCCG Jesus House  
 Date of Hearing: March 30, 2017

MAY 17 2017

**RESOLUTION**

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

WHEREAS, on August 17, 2015, Jesus House DC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 15.55 acres of land in the RE-2 zone, located at 15730 New Hampshire Avenue (“Subject Property”), in the Cloverly Policy Area and 1997 Cloverly Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160040, RCCG Jesus House (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 17, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and


WHEREAS, on March 30, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Vice-Chair Wells Harley, by a vote of 4-0, Commissioners Fani-Gonzalez, Wells Harley Anderson, and Commissioner Cichy voting in favor; with Commissioner Dreyfuss being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160040 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

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

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Approved as to  
 Legal Sufficiency:   
 8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman’s Office: 301.495.4605 Fax: 301.495.1320  
 www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- 1) This approval is limited to one lot for a religious assembly with up to 1,600 seats and an associated private school for up to 350 students with no child daycare facility.
  - 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120160040, approved as part of this Preliminary Plan, subject to the following conditions:
    - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to recordation of the plat and address the following conditions:
      - i. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
      - ii. The Final Forest Conservation Plan must include a revised *Specimen Tree Mitigation Planting Requirements Table* and *Specimen Tree Mitigation Planting Schedule Table* to include Tree #11 as being removed and mitigated.
      - iii. The Final Forest Conservation Plan will include a report by a licensed arborist to determine if Trees #5, #8, #9, and #10 can be retained and identify necessary tree protection measures for these trees.
    - b. Prior to the start of any clearing, grading, or demolition occurring on the Subject Property, the Applicant must record a Category I conservation easement over 5.86 acres of forest retention as specified on the approved Final Forest Conservation Plan. The Category I Conservation easement must reference the 4.82 acres of forest retention to satisfy the conditions of the County Council's sewer category change action in November 1999 (CR 14-334 for WSCCR 99A-CLO-02). The Category I conservation easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Office of Land Records, and the Liber Folio for the easement must be referenced on the record plat.
    - c. The Applicant must record an M-NCPPC approved Certificate of Compliance in the Montgomery County Office of Land Records for the total afforestation/reforestation off-site requirement, as determined by the Certified Final Forest Conservation Plan, prior to any clearing, grading, or demolition occurring on the Subject Property.
    - d. Mitigation for the removal of six trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 229 caliper inches, with a minimum planting stock size of three caliper inches. The trees must be planted on the Subject Property, in locations to be
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shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.

- e. Prior to the start of any clearing, grading, or demolition occurring on the Subject Property, the Applicant must install permanent 4-foot high, 2-rail, split-rail fencing or equivalent acceptable to M-NCPPC Staff, along the conservation easement boundary where it abuts the proposed parking lot as shown on the approved Final Forest Conservation Plan.
  - f. Prior to the start of any clearing, grading, or demolition occurring on the Subject Property, the Applicant must install permanent conservation easement signage along the perimeter of the Category I conservation easement except where it abuts existing Category I conservation easement, or as determined by the M-NCPPC forest conservation inspector.
  - g. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
  - h. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
- 3) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 12, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  - 4) The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated October 29, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  - 5) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated July 12, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section

provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 6) The Applicant must dedicate and show on the record plat 62.5 feet of dedication from the centerline of New Hampshire Avenue/MD650 along the Subject Property's entire frontage.
- 7) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 8) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five (5) foot wide sidewalk along the Subject Property frontage on New Hampshire Avenue/MD650.
- 9) The Applicant must construct the following road frontage improvements in accordance with MDSHA standards:
  - a. The Applicant must construct a center median break in the median of New Hampshire Avenue/MD650.
  - b. The Applicant must construct a south bound deceleration lane along New Hampshire Avenue/MD650.
  - c. The Applicant must construct a south bound acceleration lane along New Hampshire Avenue/MD650.
  - d. The Applicant must construct a north bound acceleration lane in the center median of New Hampshire Avenue/MD650.
  - e. The Applicant must construct a left turn lane in the center median of New Hampshire Avenue/MD650.
- 10) 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 building permit approval except for the amount of on-site impervious surface which must substantially conform to the impervious surface exhibit approved with this Preliminary Plan. 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.”*

- 11) Record plat must show necessary easements.
- 12) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for one hundred and twenty-one (121) months from the date of mailing of this Planning Board Resolution.
- 13) Prior to issuance of building permit, the Applicant must submit a landscape plan, lighting plan, and impervious surface plan for review and approval by Staff which demonstrates the following elements:
  - a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standard for commercial development.
  - b. All on-site down light fixtures must be full cut-off fixtures
  - c. Deflectors must be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixture abutting the adjacent residential properties.
  - d. Illumination levels must not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential properties.
  - e. Landscaping should conform to the provisions under Article 59-6 for landscaping of off-street parking facilities.
  - f. The impervious surface plan must substantially conform to the impervious surface exhibit approved as part of this Preliminary Plan to address Master Plan recommendations.
- 14) Prior to issuance of any building permit or sediment control permit, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety, with the following provisions:
  - a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
  - b. The cost estimate must include landscaping and lighting improvements.
  - c. Completion of all improvements covered by the surety will be followed by inspection and potential reduction of the surety.
  - d. The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement including all relevant conditions.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified

herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Subject Property is located in a part of Cloverly described by the 1997 Cloverly Master Plan as the Residential Wedge. This area, in the Northwest Branch and Paint Branch watersheds, is made up of relatively low density residential neighborhoods, at one unit for every one or two acres. The Master Plan makes no specific recommendations for the Subject Property.

For the Residential Wedge, the Master Plan maintains recommendations from the 1981 Eastern Montgomery County Master Plan for low density residential land uses and limits access to public sewer service in some areas to maintain recommended densities. For the planning area as a whole, the Master Plan endorses cluster development that protects natural resources, offers recreation and contributes to residential or rural character. To maintain that character along New Hampshire Avenue, the Master Plan recommends setbacks of 100 feet from New Hampshire Avenue/MD 650 for nonresidential uses.

The Subject Property is in the Northwest Branch portion of this district where existing low density zones help to protect environmental resources. The Master Plan indicates that “ultimate subwatershed imperviousness levels should remain in the 10 to 15 percent range...” (p 21). It also states that individual developments with high site imperviousness should be discouraged. Current overall impervious levels in the Cloverly portion of the Northwest Branch watershed are approximately 13 percent; religious assemblies in the vicinity have produced higher levels of imperviousness of approximately 27 percent. Other institutional uses, schools for example, produce levels of imperviousness in the vicinity of 16 percent primarily because they generally occur on larger properties and consist of more open space (i.e. perviousness) due to recreation and sports programs.

The Bryants Nursery tributary, in which Subject Property is located, has imperviousness of 11 percent. The Application proposes an impervious level of 28.5 percent, which is similar to impervious levels of other houses of worship in the Cloverly portion of the Northwest Branch watershed. This level of imperviousness will result in an increase in the imperviousness in the Bryants Nursery Run subwatershed from its current level of 11 percent to 11.5 percent. While it is reasonable to expect greater imperviousness from institutional uses like religious assemblies, meeting the Master Plan’s recommendation will require careful attention to ensure that the imperviousness proposed by a future building permit closely matches the imperviousness level approved in the Application.

The Application proposes below ground parking with buildings located above, adjusting the locations of proposed improvements approximately 80 feet to the east, reducing the length of drive aisles, reducing the width of the interior drive aisles from 20 feet to 12 feet where fire access won't be impacted; redesigning the entrance driveway from two lanes to one, reconfiguring internal circulation patterns to minimize paving, and reducing the length of the proposed sidewalk connecting the buildings to New Hampshire Avenue, providing the baseline amount of parking required under the Zoning Ordinance, and reconfiguring surface parking areas. The improvements shown on the plat have been shifted towards New Hampshire Avenue but cannot be shifted any further because the Subject Property narrows on its eastern side, and the proposed parking structure utilizes the grade of the site to "bury" it into the hillside.

The Master Plan also recommended significant setbacks for nonresidential development along New Hampshire Avenue, to maintain rural and suburban character as well as enhance roadway character. The Master Plan states that the additional setbacks would help to "minimize the impact of buildings that tend to be taller, wider, and more massive than homes," and settled on 100 feet as a recommended setback, with language allowing flexibility to match already established setbacks or to reduce environmental impacts. As stated above, the building and associated limits of disturbance were shifted towards New Hampshire Avenue to maximize forest save in the rear of the Subject Property, however, it could not be shifted further due to the need to use existing grades to bury the underground parking. The Application meets the Master Plan setback criteria by locating the building approximately 420 feet away from New Hampshire Avenue in response to these Master Plan recommendations to minimize impacts.

Based on the above evidence, the Application substantially conforms with the recommendations of the Master Plan.

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

Request for Extended Adequate Public Facilities Validity Period

The Applicant requested additional time in the Adequate Public Facilities (APF) validity period. The normal validity period under the Subdivision Regulations is 85 months. The Applicant requests extending this time to 12 years (145 months) under Section 50-20 (c)(3)(A)(iii). Section 50-20 (c)(3)(B) requires the Applicant to show the minimum percentage of the project that the Applicant expects to complete in the first 5-7 years. To allow the extended validity period, the Planning Board must find that the extended validity period would promote the

public interest. The Statement of Justification provides the Applicant's phasing schedule and public interest justification as required by the Subdivision Regulations.

The requested 12 years, which is typically reserved for larger, mixed use projects on significantly larger properties with longer phasing plans than the subject Application. Extending the APF validity to total of 10 years should be sufficient to construct this project given its scope and extended construction schedule. In the event that the Applicant has not completed the construction within the 10 years (121-months) APF validity period, it can request an extension, and APF can be reevaluated based on conditions at that time.

#### Master-Planned Roadways and Bikeway

In accordance with the 1997 Cloverly Master Plan, the 2004 Rustic Roads Functional Master Plan Amendment, and the 2005 Countywide Bikeways Functional Master Plan, and the 2013 adopted Countywide Transit Corridor Function Plan, the master-planned roadways and bikeway are as follows:

1. New Hampshire Avenue (MD 650) is designated as a four-lane major highway, M-12 with a recommended 125-foot wide right-of-way between Bryant Nursery Road and Spencerville Road (MD 198) and a Class II (bike lanes), PB-23, bikeway. The Countywide Bikeways Functional Master Plan recommends bike lanes, BL-11, along this segment of New Hampshire Avenue. The currently right-of-way ranges from approximately 71 to 107 feet wide along the Subject Property frontage. The Applicant must dedicate additional right-of-way for a total of 62.5 feet from the centerline of New Hampshire Avenue.

The 2013 adopted Countywide Transit Corridor Function Plan recommends the New Hampshire Avenue Corridor No. 5 between the DC line and the Colesville Park & Ride Lot that has its northern terminus south of the subject site.

2. Nearby Bryant Nursery Road is designated as a rustic road with an unspecified right-of-way in the Cloverly Master Plan and Rustic Roads Functional Master Plan Amendment.

#### Available Public Transit Service

Only Metrobus route Z2 operates along this segment New Hampshire Avenue every 30 minutes between the Medstar Montgomery Medical Center in Olney and the Silver Spring Metrorail Station on weekdays only. The nearest existing



bus stop is located approximately 500 feet to the south along New Hampshire Avenue.

Local Area Transportation Review (LATR) for 1,600 Seat Religious Assembly

The religious assembly does not typically hold religious functions during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 and 7:00 p.m.). However, a religious assembly with a sanctuary that seats 800 or more seats is required to submit a traffic circulation study. In addition, the Application includes a 350-student private school.

Local Area Transportation Review (LATR) and Weekday Intersection Congestion Levels for 350 Student Private School

The weekday private school would generate 177 new peak-hour trips within the weekday morning peak period and the same number within the evening peak period. A traffic study was submitted to satisfy the LATR test because the number of weekday site-generated peak-hour trips is 30 or more. Based on the traffic study results, the capacity/Critical Lane Volume (CLV) values at the studied intersections do not exceed the CLV standard of 1,450 for the Cloverly Policy Area, and, thus, the LATR test is satisfied.

Circulation Study

A traffic circulation study was submitted where the Applicant proposed an internal one-way counter-clockwise vehicular circulation around the proposed buildings. The proposed circulation would minimize vehicular conflicts and provide ample on-site queuing of over 1,000 feet from the underground garage access point to the curb cut at New Hampshire Avenue. A queuing and delay analysis using the nationally-recognized SYNCHRO simulation model was performed and resulted in the most congestion at the New Hampshire Avenue and the subject site driveway. The SYNCHRO results indicated an overall intersection level of service of "A" with the worst level of service of "C" on the eastbound left-turn approach.

Should Sunday services prove to create traffic concerns on New Hampshire Avenue, the Applicant has suggested that at least one off-duty police officer would be made available to direct traffic at the intersection with New Hampshire Avenue and the subject site driveway during the Sunday services.

Transportation Policy Area Review

While the Subject Property is located within the Cloverly Policy Area for the Transportation Policy Area Review ("TPAR") test and is subject to the 2012-2016 Subdivision Staging Policy, TPAR payment will not apply in this particular case because the Applicant will not receive a building permit before March 1st, 2017. As such, the Applicant will pay the impact fees based on the Subdivision Staging Policy currently in effect.

If the TPAR test were implemented, the roadway test for the Cloverly Policy Area is adequate, and the transit test is inadequate. Therefore, the Applicant would be required to provide TPAR mitigation payment equal to 25 percent of the General District Transportation Impact Tax for the any new square feet, pursuant to the 2012-2016 Subdivision Staging Policy. However, as stated above, because this Application was approved by the Planning Board during the transition between subdivision staging policies a TPAR payment will not be collected at the time a permit building is submitted. Therefore, no TPAR condition is included as part of this Staff Report.

#### Water and Sewer Facilities

The Subject Property received a water and sewer category change on November 2, 1999 by change request 99A-CLO-02 and the Preliminary Plan proposes that all structures will be served by public water and sewer. Thus, sewer and water are adequate to serve the proposed development.

Usually, that would be the end of the Board's analysis of sewer adequacy. But the County Council conditioned its approval of the category change on the church to "establish[ing] a covenant preserving the forested area which would have been used for the on-site septic system."

Staff and MCDEP, in conjunction with MCDPS, requested wastewater calculations on a gallons-per-day basis for the 1,600-seat church and the 350-student private school to determine how large of a septic system would have been necessary to serve proposed development. The output was calculated based on the private school, which would generate the higher sewage output. According to this analysis, the septic system would have required 4.82 acres. On March 2, 2017, MCDEP issued a letter confirming the Applicant's wastewater calculations and the consistency of the Application with the County's Comprehensive Water and Sewer Plan as well as Sewer Category Change WSCCR 99A-CLO-02 in County Council Resolution 14-334. Under the Application, this 4.82 acres is to be placed in a Category I Forest Conservation Easement, but is separate from and in addition to the other forest conservation requirements required for this development.

Several opponents of the Application argued that the 4.82-acre calculation significantly understates the area that would be required for the septic system and, thus, the area of forest that the Applicant should be required to protect in compliance with the conditions of approval of the sewer extension. Among the questions raised was whether the sewer output calculations took appropriate account of both the school and church uses intended for the subject property. The Board heard testimony from a County official that the sewer output

assumptions for a school use take into account that a school hosts non-academic functions in the evening and weekends.

Plan opponents also questioned whether the area to be set aside needed to include seepage area surrounding the septic fields as well as the septic field itself. In other words, would the hypothetical septic area of 4.82 acres be sufficient to serve the proposed development. In reviewing a subdivision application, the question that the Board is tasked with answering with respect to sewer, is whether there is sewer – either public sewer or septic – to serve the property. Where a subdivision is to be served by septic, the Board would ordinarily rely on MCDPS to determine whether the septic system proposed for the site would be adequate. If the proposed development were to be served by public sewer, the Board would ordinarily look to the determination of MCDEP, which administers the County's water and sewer plan, that sewer would be available to serve the subject property. In this case, the plan opponents ask the Board to make its own determination about the proposed development's compliance with the County Council's conditional approval of the sewer extension and to look behind the MCDPS and MCDEP analyses that led DEP to conclude that it does. Not surprisingly, the law does not clearly answer the novel question of whether the Board has the authority to enforce a condition under these unique circumstances. But given the respective roles of MCDPS, MCDEP, and the Board, the Board is not convinced that it has the authority to do so.

#### Other Public Facilities and Services

The Preliminary Plan has also been reviewed by the Montgomery County Fire and Rescue Services who have determined that the Application provides adequate access for fire and emergency vehicles. Other public services such as police and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. This Application does not generate school age children. Thus, the School Facilities Payment does not apply to this Application.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation for the religious assembly is appropriate for the location of the subdivision taking into account the recommendations included in the Master Plan, and for the religious assembly structure contemplated for the Subject Property. The depth of the proposed lot is particularly appropriate because it allows the Application to

respond to the Master Plan recommendations which seek to “maintain the rural and suburban character of New Hampshire Avenue through greater front-yard setbacks” (p 31) by implementing 100 foot setbacks for non-residential uses. This Application proposes a setback of approximately 420 feet which helps to reinforce the rural and suburban character and is pivotal in the Application’s need to address on-site traffic circulation and queuing on the Subject Property. The Master Plan states that “the additional setback for non-residential uses is designed to minimize the impact of building that tend to be taller, wider, and more massive than homes” making the Application for this use on the Subject Property more appropriate given its depth. Finally, it is the depth and overall size of the lot that provides adequate area for on-site forest conservation and screening from surrounding residential areas.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and provides ample buildable area within the setbacks in that zone.

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

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Preliminary Forest Conservation Plan (FCP) for the project was submitted with the Preliminary Plan. The net tract area for forest conservation is 16.73 acres, which includes the 15.55-acre Subject Property and 1.18 acres of offsite disturbance for required road improvements along New Hampshire Avenue. The Application proposes to retain 5.86 acres and remove 4.16 acres of forest. The forest clearing does not result in a forest planting requirement per the forest conservation law.

However, the Montgomery County Council’s approval of the sewer category change for the Subject Property required the church to “establish a covenant preserving the forested area which would have been used for the on-site septic system.” A portion of the 5.86 acres of retained forest will satisfy this condition of approval and the remainder will be counted towards meeting the requirements of the forest conservation law. The

Applicant has demonstrated that the Application is in conformance with the conditions of approval of the sewer category change and the requirements of the forest conservation law. The Applicant has calculated the acreage that would be necessary for a septic system to serve the proposed religious institution and MCDEP has confirmed these calculations as accurate. If a septic system were necessary to serve this facility, approximately 4.82 acres of forest would be removed to construct it. The Applicant proposes to protect 4.82 acres of forest to meet the sewer category change condition of approval, and the remaining 1.04 acres of on-site forest retention will partially meet the requirements of the forest conservation law. Since all of the retained forest will not be counted toward the requirements of the forest conservation law, this Application results in a forest planting requirement.

The forest conservation worksheet determines the conservation threshold based on the land use category, which is 20% for institutional developments. In this case, the conservation threshold is 20% of the net tract area of 16.73 acres, or 3.35 acres. The forest conservation worksheet calculates the "break-even point," which is the exact level of forest retention that is necessary to preclude the need for reforestation (20% of the original forested area above the conservation threshold plus the conservation threshold). This calculation is necessary because the forest conservation law requires that any forest cleared above the conservation threshold must be replaced by planting  $\frac{1}{4}$  acre for every acre cleared and forest cleared below the conservation threshold must be replaced by planting two acres for each acre cleared. The existing forest above the conservation threshold is 6.67 acres, and the "break-even point" is 20% of 6.67 acres plus 3.35 acres, or 4.68 acres.

- Net Tract Area = 16.73 acres
- Existing Forest = 10.02 acres
- Conservation Threshold (Institutional Development) = 20% x 16.73 acres = 3.35 acres
- Existing forest above Conservation Threshold = 10.02 – 3.35 = 6.67 acres
- Break-even point = (20% of 6.67 acres) + 3.35 acres = 4.68 acres
- A total of 4.68 acres of the original 10.02 acres of forest land must be retained in order to avoid a reforestation requirement for forest clearing.

MCDEP's memorandum dated March 2, 2017 confirming the use of public water and sewer service, as proposed by the Applicant's preliminary plan, is consistent with the County's Comprehensive Water and Sewer Plan, specifically states that the preservation of 4.82 acres of existing onsite

forest is in addition to that required under the County's Forest Conservation Law. Since this Application must retain 4.82 acres to meet the condition of approval for the sewer category change, this acreage was deducted from the total forest to be retained on the Subject Property (5.86 - 4.82 = 1.04 acres). The forest retained beyond that required for the sewer category change, 1.04 acres, is counted towards forest retention to meet the forest conservation law. This 1.04 acres was deducted from the "break-even point" to determine the forest planting requirement (4.68 - 1.04) of 3.64 acres. The Application proposes to satisfy the planting requirement at an offsite location.

#### B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to eight Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Subject Property. The Protected Trees are located in the developable area of the Subject Property and close to New Hampshire Avenue where traffic studies have determined the entrance driveway must be located. Any development considered for this Subject Property would be faced with the same considerations of locating the development on a Subject Property with relatively narrow frontage along New Hampshire Avenue. Granting a variance to allow land disturbance within the developable portion of the Subject Property is not unique to this Applicant. The Planning Board believes

that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Subject Property conditions, including the location of the Protected Trees within the developable area, including the point of access to the Subject Property.

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

The need for a variance is a result of the existing conditions and the proposed design and layout of the Subject Property, and not a result of land or building use on a neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. In addition, the Montgomery County Department of Permitting Services (MCDPS) has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated July 12, 2016. The Applicant proposes to mitigate the removal of the Protected Trees by planting replacement trees onsite, that will ultimately replace the functions currently provided by the Protected Trees to be removed.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using threes that are a minimum of 3 caliper inches in size. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on July 12, 2016. The Application will meet stormwater management goals through the use of micro-biofiltration facilities and landscape infiltration facilities in various locations on the Subject Property.

6. The Planning Board finds that the Preliminary Plan meets the conditions of the sewer category change set forth by the Montgomery County Council Resolution 14-334 - WSCCR 99A-CLO-02 which are:
  - The church will establish a covenant preserving the forested area which would have been used for the on-site septic system
  - The proposed low-pressure sewer main extension will be dedicated to the church's use only and;
  - The church will pay all costs associated with the extension of public sewer service.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 17 2017 (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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, May 11, 2017, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board