



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

MCPB No. 17-089  
Preliminary Plan No. 120170220  
Son of David  
Date of Hearing: October 12, 2017

OCT 23 2017

**RESOLUTION**

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

WHEREAS, on March 21, 2017, Son of David Congregation, Inc. c/o Dennis Karp, Congregational Leader ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.39 acres of land in the RE-2 zone, located on the north side of Norbeck Road (MD 28), approximately 50 feet east of Wintergate Drive ("Subject Property"), in the Olney Policy Area and Olney Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170220, Son of David ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 29, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 12, 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, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170220 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.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
MNCPPC Legal Department  
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1. This Preliminary Plan is limited to one lot for a religious assembly building with up to 236 seats.
  2. Prior to recordation of the plat(s), the Applicant must ensure with Maryland State Highway Administration ("MDSHA") the construction of a 10-foot wide shared use path along the Subject Property frontage along Norbeck Road. This shall include an off-site connection to the Intercounty Connector ("ICC") trail to the west. The final location of the path may vary from that shown on the certified Preliminary Plan pending coordination with MDSHA. ADA compliant curb ramps must be provided at all drive aisle.
  3. If a preferred alternative for the future MD 28/MD 198 corridor is selected by MDSHA before the Applicant pursues access permits, the frontage improvements along Norbeck Road, including the future access and shared use path, must be consistent with design alternative selected by MDSHA. If a preferred alternative is not selected by MDSHA by the time the Applicant pursues access permits, the frontage improvements along Norbeck Road may be built according to the Certified Preliminary Plan.
  4. Include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
  5. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan (PFCP) No. 120170220, approved as part of this Preliminary Plan, subject to:
    - a. A Final Forest Conservation Plan must be approved by Staff prior to certification of the Preliminary Plan 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 identify the location of the trees planted as mitigation for the tree variance.
    - b. Mitigation for the removal of six (6) trees subject to the variance provision and located outside of the forest must be provided in the form of planting native canopy trees totaling 56 caliper inches, with a minimum size of three (3) caliper inches. The trees must be planted in locations to be 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.
    - c. The Applicant must record a Category I Conservation Easement over all areas of forest retention, as specified on the approved Final Forest
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Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.

- d. The Applicant must install permanent conservation easement signage along the perimeter of the Category I Conservation Easement. Signs must be installed a maximum of 100 feet apart with additional signs installed where the easement changes direction, or at the discretion of the M-NCPPC forest conservation inspector.
  - e. The Final Sediment Control Plan must depict the limits of disturbance consistent with the limits of disturbance on the approved Final Forest Conservation Plan.
  - f. 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 Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 20, 2017, 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.
  7. The Planning Board accepts the recommendations of the MDSHA in its email correspondence dated May 11, 2017, 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.
  8. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
  9. 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 September 26, 2017, 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.

10. The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated August 29, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
11. Prior to issuance of final Use and Occupancy certificate, the Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the *2005 Olney Master Plan* and/or to the design standards imposed by all applicable road codes.
12. Prior to issuance of final Use and Occupancy certificate, the Applicant must install one (1) bicycle rack as shown on the Certified Preliminary Plan.
13. The record plat must show necessary easements.
14. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.
15. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
16. Prior to certification of the Preliminary Plan, the Applicant must submit a Landscape and Lighting Plan.

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 layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision*

*given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

- a. *The block and lot design is appropriate for the development or use contemplated*

The Preliminary Plan proposes to convert an unplatted parcel into a recorded lot. The block this parcel is located in contains many other unplatted parcels that are similar in size and dimension. The Preliminary Plan does not propose any changes to the configuration of the block or parcel. The lot meets the dimensional standards of the RE-2 zone including size, width, shape, and orientation. The lot is narrow and deep, but is suitably wide to accommodate a synagogue building and its associated parking and stormwater management. The synagogue will be located in the front of the lot along Norbeck Road, and the parking will be hidden in the rear of the building. The shape of the lot also provides enough room to meet the forest conservation requirements on-site in a conservation easement.

- b. *The Preliminary Plan provides for required public sites and adequate open areas*

No public sites are required to be provided by this Application and the right-of-way for Norbeck Road was previously dedicated by MDSHA Plat 57104.

- c. *The Lot and Use comply with the basic requirements of Chapter 59*

The lot was 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 setbacks in that zone.

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

The Preliminary Plan substantially conforms to the recommendations within the 2005 Olney Master Plan.

### Land Use

The Master Plan states that the land use plan “maintains the current distribution of land uses in the Master Plan area” and focuses on refining only those areas that have potential to redevelop. The Master Plans recommendations for the southeast quadrant focus on the preserving open space, significant forest, streams, and preserving the low-density character of the quadrant. The Master Plan does not include any site-specific land use recommendations for the Subject Property and recommends retaining the existing RE-2 zoning for those properties below 5 acres, such as the Subject Property which is 2.39 acres. The

Applicant will develop the Property with a modest synagogue (religious assembly)—a permitted use in the RE-2 zone—and preserve existing contiguous forest on-site consistent with Master Plans recommendations.

### Environment

The Master Plan acknowledges significant environmental resources in the southeast quadrant of Olney, and its general recommendations are designed to preserve a land use pattern that preserves open space, stream valleys and forests. The Master Plan recommends the use of forest conservation easements to preserve forest in and near stream valleys. The Application includes a forest conservation easement on the forested northern portion of the Subject Property that meets all of its forest conservation requirements. While this area is not in a stream valley, there is existing high priority forest, and its preservation in an easement will contribute to resource protection in this generally developed area.

### Transportation

In accordance with the *2005 Olney Master Plan* and the *2005 Countywide Bikeways Functional Master Plan*, Norbeck Road (MD 28) is designated as a four-lane divided major highway, M-18, with a recommended 150-foot wide right-of-way and a dual bikeway (signed shared roadway and shared use path), DB-12. The *Countywide Bikeways Functional Master Plan* recommends the shared-use path on the north side of Norbeck Road. The current right-of-way in front of the Subject Property is a minimum of 88 feet from centerline, so no additional right-of-way is required to be dedicated along Norbeck Road.

The Master Plan recommends connecting properties in the southeast quadrant with bikeways, walkways, and trails to increase access for pedestrians and cyclists to community facilities. Along the Subject Property frontage on Norbeck Road, there is an existing approximately 5-foot wide bike lane that will remain. The Applicant proposes to complete the bikeway recommendations of the Master Plan by constructing a 10-foot wide shared use path along the Property frontage, and extending it off-site, between the Subject Property and the existing Intercounty Connector Trail to the west. New lead-in sidewalks will provide a pedestrian connection from the shared use path along Norbeck Road to the synagogue.

Bicycle parking is not required, however, given the abundant bicycle facilities in the area, the Applicant will install a bicycle rack near the building entrance.

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

### Roads and Other Transportation Facilities

Transportation access is adequate to serve the development proposed by this Preliminary Plan. No public roadway improvements are necessary to serve the Subject Property. As mentioned in the Master Plan Section above, the existing bike lane along the Subject Property frontage will remain and a new shared use path will be constructed.

MDSHA is currently evaluating improvements to Norbeck Road as part of the Norbeck Road/Spencerville Road (MD 28/198) Corridor Study. There are currently two build alternatives along Norbeck Road in front of the Subject Property that include various pedestrian and bike facilities and road upgrades. In addition to these alternatives, there is also an access management option that would provide three access roads, including one on the north side of Norbeck Road between Wintergate Drive and 2801 Norbeck Road along the frontage of the Subject Property. Although the preferred alternative for the Norbeck Road segment in front of the Subject Property has not been decided, both MDSHA staff and M-NCPPC staff support the proposed driveway configuration along the future service road's alignment which links to the existing shared access driveway (or extension of Wintergate Drive) north of Norbeck Road. The proposed alignment provides safe, adequate and efficient full-movement access for the Subject Property by utilizing the signalized intersection at Wintergate Drive and Norbeck Road.

#### Local Area Transportation Review (LATR)

The Applicant submitted a transportation statement which verifies that the house of worship (without a weekday school or daycare facility) generates 50 or fewer additional peak-hour person trips, therefore, the Application is exempt from review under the LATR guidelines.

#### Other Public Facilities and Services

The existing house is served by a 4-inch sewer house connection that tees into an 8-inch sewer main within Norbeck Road. The existing sewer connection will be used to serve the synagogue, subject to WSSC detailed review. Public water is also available via a new waterline that will connect to the existing 10-inch water main within Norbeck Road. The existing electrical service provided by PEPCO will serve the Subject Property.

The Application has been reviewed by the MCDPS, Fire Code Enforcement Section, which determined that the Subject Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated August 29, 2017. All other public facilities and services are available and will be adequate to serve the existing and proposed building.

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, a Preliminary Forest Conservation Plan for the project was submitted with the Preliminary Plan. The net tract area for forest conservation is 2.62 acres, which includes the 2.39-acre Subject Property and 0.23 acres of offsite disturbance for the removal of the existing driveway, and construction of a new driveway, a shared use path along Norbeck Road, utility connections, and a storm drain outfall. The Application includes the removal of approximately 1.12 acres of existing forest and protection of the remaining 0.80 acres of forest in a Category I Conservation Easement. There is no forest planting requirement for this Application.

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 13 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. As described in the Staff Report, impacts to the Protected Trees is necessary for development on the Subject Property to occur in a manner consistent with the RE-2 zone.

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



therefore any development would be faced with the Subject Property's relatively narrow frontage along Norbeck Road and such a wide distribution of Protected Trees. Granting a variance to allow land disturbance within the developable portion of the Subject Property and providing required stormwater management facilities is not unique to this Applicant. Granting 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 Variance is based upon existing conditions on the Subject Property, including the location of the Protected Trees within the developable area of the Subject Property and the location of the existing house, driveway and utilities.

- 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 has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated September 26, 2017. The stormwater management concept incorporates Environmental Site Design (ESD) standards.

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 trees that are a minimum of 3 caliper inches in size. As conditioned, the Final FCP must include the planting of approximately 19 native, canopy trees on the Subject Property as mitigation for the removal of the six variance trees. Although these trees

will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees. The loss of the seven Protected Trees within the forest is included in the forest conservation worksheet calculations as forest clearing and no additional mitigation for these trees is required. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

The Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on September 26, 2017. The Application will meet stormwater management goals through a variety of techniques including bioswales and a microbioretention facilities.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

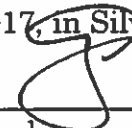
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 23 2017 (which is the date that this Resolution is mailed to all parties of record); and

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).

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**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 Patterson, seconded by Commissioner Fani-González, with Chair Anderson and Commissioners Fani-González and Patterson voting in favor, and Vice Chair Dreyfuss and Commissioner Cichy absent at its regular meeting held on Thursday, October 12, 2017, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board