



Remand from the Circuit Court for Montgomery County: RCCG Jesus House, Preliminary Plan No. 120160040

Ryan Sigworth, AICP, Senior Planner, Area 3, ryan.sigworth@Montgomeryplanning.org 301-495-2112

Sandra Pereira, Supervisor, Area 3, Sandra.pereira@montgomeryplanning.org 301-495-2186

Richard Weaver, Chief, Area 3, Richard.Weaver@Montgomeryplanning.org 301-495-4544

Completed: 4/17/20

Description

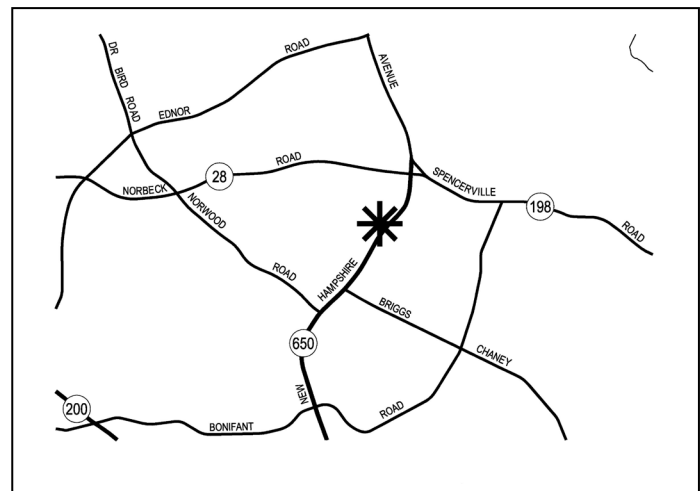
Remand from the Circuit Court for Montgomery County: RCCG Jesus House, Preliminary Plan No. 120160040: Application to create one lot for a 1,600-seat religious assembly with a non-commercial kitchen and associated 350-student private school, located at 15730 New Hampshire Avenue; 15.55 acres, RE-2; 1997 *Cloverly Master Plan*.

Recommendation – Approval with conditions

Applicant: Jesus House DC

Submittal Date: August 14, 2015

Review Basis: Chapter 22A, Chapter 50 in effect prior to February 13, 2017. Remand from the Circuit Court for Montgomery County



Summary

- Staff recommends **Approval with conditions** of the Preliminary Plan.
- The Planning Board originally heard this application in March of 2017. The application has been remanded back to the Planning Board by the Circuit Court for Montgomery County to further review the application and its compliance with County Council Resolution 14-334.
- Sewer category change approved by County Council in 1999 requires that the area of forest, which would have been removed for a septic system, must be preserved.
- Staff supports extending the APF validity for 10 years rather than the requested 12 years, which is generally applied for larger, mixed use projects on significantly larger properties with longer phasing plans.
- Meets requirements of Chapter 22A, Forest Conservation Law.
 - Substantially conforms to the 1997 *Cloverly Master Plan*, including the recommendation to maintain a subwatershed impervious level of below 15 percent.
- Application has been reviewed under the Subdivision Regulations effective prior to February 13, 2017.
- Application has been reviewed under the 2012-2016 Subdivision Staging Policy since the application was submitted prior to January 1, 2017.
- The Applicant and the Concerned Citizens of Cloverly have both submitted new information for this remanded staff report.

SECTION 1 - EXECUTIVE SUMMARY

The property is located on the west side of New Hampshire Avenue/MD650 approximately 0.25 miles south of the intersection New Hampshire Avenue/MD 650 and Spencerville Road/Norbeck Road/MD 198. The 15.55-acre property is a collection of three unplatted parcels in the RE-2 zone. Furthermore, the property is located in the Residential Wedge of the *1997 Cloverly Master Plan*. The Preliminary Plan discussed in this Staff Report proposes to create one lot for the construction of a 1,600-seat religious assembly with a 350-student private school.

This matter was last before the Planning Board in March 2017. At that time, the Board found that the proposed subdivision met all the required legal findings in the Subdivision Regulations as well as the *1997 Cloverly Master Plan*. At the public hearing, members of the Concerned Citizens of Cloverly testified regarding the conclusions of the septic area/forest save calculations and the County Council's sewer category change. After the Planning Board approved the Application, the Concerned Citizens of Cloverly filed an appeal with the Circuit Court for Montgomery County which ultimately upheld the Planning Board decision. After receiving an unfavorable decision from the Circuit Court for Montgomery County, the Concerned Citizens of Cloverly appealed to the Court of Special Appeals of Maryland which reversed the Circuit Court for Montgomery County and the Planning Board. The Court of Special Appeals of Maryland ruled that the Planning Board committed an error of law by failing to determine whether or not the applicant's application met the conditions of County Council Resolution 14-334.

This matter has now been remanded to the Planning Board by the Circuit Court for Montgomery County with an order (Attachment 4) that the Board make an independent determination whether or not the conditions of the sewer category change have been met by the preliminary plan application. Because the Maryland Court of Special Appeals vacated the entire resolution approved by the Planning Board in March of 2017, all of the required legal findings for the approval of a preliminary plan are included in this staff report. However, the Court's order is very narrow and is limited only to the adequacy of the septic calculations and conformance with County Council Resolution 14-334 within the Adequate Public Facilities section. As such, this staff report focuses primarily on the findings identified by the Maryland Court of Special Appeals.

The sewer category change had three conditions of approval which are documented in County Council Resolution 14-334. These conditions are:

- 1.) the church will establish a covenant preserving the forested area which would have been used for the on-site septic system
- 2.) the proposed low-pressure sewer main extension will be dedicated to the church's use only, and
- 3.) the church will pay all costs associated with the extension of public sewer service

To confirm compliance with the County Council resolution, Staff, Montgomery County Department of Environmental Protection, and the Montgomery County Department of Permitting Services required the applicant to submit theoretical wastewater calculations for the church and the private school proposed under this application to determine how much area would be required for a septic system to service the highest daily wastewater generator operating on different days. The results of this analysis continue to be confirmed by the Montgomery County Department of Permitting Services – Well and Septic Section, who determined that the private school is the highest wastewater generator (more so than the church) and

would require a septic field of 4.82 acres if a septic system were to be constructed. Thus, the preservation of 4.82 acres of existing forest satisfies the conditions of the sewer category change resolution. In addition, the requirements of the Forest Conservation Law have been applied to this application for the preservation of all the additional forest beyond the 4.82 acres. A Category I Forest Conservation easement and the covenant required by the County Council sewer category resolution will be the legal mechanisms used to permanently preserve the forest.

The application continues to have considerable public opposition. Since the Circuit Court for Montgomery County remanded this application back to the Planning Board, Staff has met with both the applicant and the Concerned Citizens of Cloverly multiple times to allow them to submit additional information directly relevant to the Court's order. Based on the remand order from the Circuit Court for Montgomery County, this staff report expands on the analysis and findings for Adequate Public Facilities concluding that the property is suitable for the proposed use; updates and, once again, finds substantial conformance with the current Master Plans adopted since the original public hearing; and complies with Chapter 22A, the Forest Conservation Law. The Staff Report provides conditions of approval to assure compliance with all laws and regulations.

Included in the Appendix to this staff report is the complete staff report from the prior hearing on March 30, 2017 that formed the basis for the Concerned Citizens of Cloverly appeal. It is included for historical purposes to provide the Board with a complete account of the record for the application.

SECTION 2 – RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN NO. 120160040: Staff recommends approval of the Preliminary Plan subject to the following conditions:

- 1) This approval is limited to one (1) lot for a religious assembly up to 1,600 seats with a non-commercial kitchen facility 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 must 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.
 - iv. The Final Forest Conservation Plan must include a revision to the proposed 5-foot wide sidewalk with a 10-foot wide shared use path along the entire property frontage, including an updated limits of disturbance and forest conservation worksheet calculations.
 - b. Prior to the start of any clearing, grading, or demolition occurring on the 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 include and 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 by deed, and the Book and Page for the easement must be referenced on the record plat. The Category I conservation easement must be recorded prior to the recordation of the overlapping covenant between the Applicant and Montgomery County for the 4.82 acres of forest retention.
 - c. The Applicant must record a M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank 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 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 57 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Property, 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.
- e. Prior to the start of any clearing, grading, or demolition occurring on the 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 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 Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Environmental Protection ("MCDEP"), in its letter dated March 2, 2017, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDEP may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
- 7) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Well and Septic Section in its letter dated February 24, 2020, and 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 amendment does not conflict with other conditions of Preliminary Plan approval.

- 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated August 30, 2016, and 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 amendment does not conflict with other conditions of Preliminary Plan approval.
- 9) The Applicant must dedicate and show on the record plat sixty-two and a half (62.5) feet of dedication from the centerline of New Hampshire Avenue/MD650 along the Subject Property's entire frontage.
- 10) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 11) Prior to the start of any clearing, grading, or demolition occurring on the Property, the Applicant must record a covenant between the Subject Property owner and Montgomery County for the preservation of 4.82 acres of forest retention as specified on the approved Final Forest Conservation Plan and as required by County Council Resolution 14-334. The covenant, approved by the M-NCPPC Office of the General Counsel and the Montgomery County attorney's office, must be recorded in the Montgomery County Office of Land Records by deed, and the Book and Page for the covenant must be referenced on the record plat. The covenant must be recorded after the Category I conservation easement has been recorded and it is subordinate to the Category I conservation easement.
- 12) Prior to the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an Impervious Surface Agreement with the Planning Board to limit impervious surfaces to no more than 29 percent of the Subject Property to ensure conformance with the 1997 *Cloverly Master Plan*. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
- 13) The low-pressure sewer main extension is restricted to the uses located on the Subject Property only.
- 14) The Applicant must pay for all costs associated with the extension of public sewer service.
- 15) 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.
 - f. The Applicant must construct a ten (10) foot wide shared use path with associated stormwater controls along the Property's frontage on New Hampshire Avenue/MD650.
- 16) 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."*
- 17) Record plat must show necessary easements.
- 18) 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.
- 19) Certified Preliminary Plan
Prior to approval of the Certified Preliminary Plan, the following revisions must be made and/or information provided subject to M-NCPPC Staff review and approval:
- a. The Applicant must delineate and identify the area covered by the covenant preserved forest as required by County Council Resolution 14-334 on the Certified Preliminary Plan and Final Forest Conservation Plan.
 - b. Modify the Certified Preliminary Plan to indicate a 10-foot wide shared use path across the Subject Property frontage.
 - c. The Applicant must obtain Staff approval of a revised Impervious Surface Plan that includes the required 10-foot shared use path.

SECTION 3 – SITE LOCATION & DESCRIPTION

Site Location

The subject property is located on the west side of New Hampshire Avenue/MD650 approximately 0.25 miles south of the intersection New Hampshire Avenue/MD 650 and Spencerville Road/Norbeck Road/MD 198 and consists of Parcel No. P167, Parcel No. P333, and Parcel No. P445 on Tax Map JS562 for a total of 15.55 acres (“Property” or “Subject Property”) (Figure 1). The Subject Property is zoned RE-2, and is located in the Residential Wedge of the *1997 Cloverly Master Plan* (“Master Plan”).

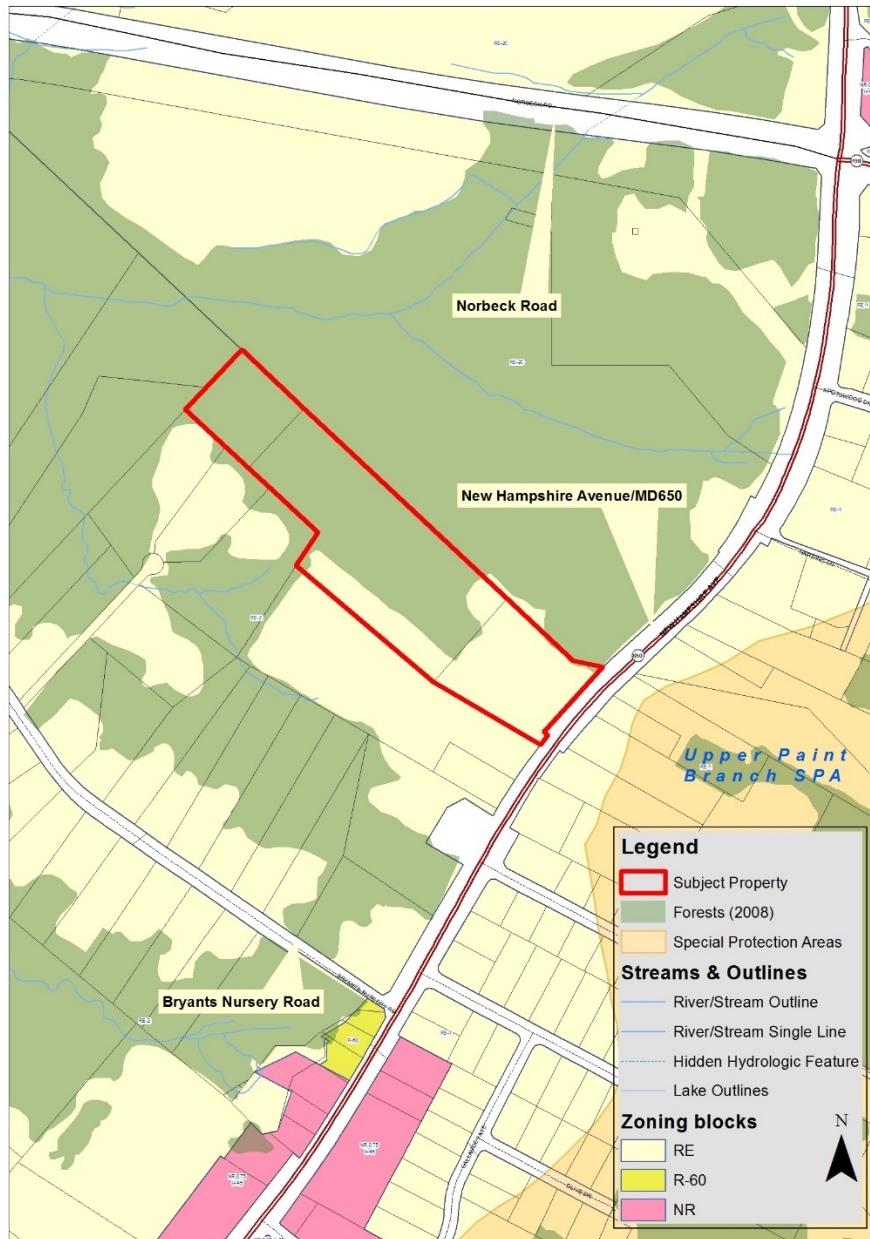


Figure 1 – Vicinity Map

Site Vicinity

Directly to the north is undeveloped and heavily forested property owned by the Hampshire Green Homeowners Association. Further to the north at the southwest corner of the intersection of New Hampshire Avenue/ MD 650 and Spencerville/Norbeck Road/MD 198 is an M-NCPPC property and a WSSC property which contains a complex of three water towers at the southwest corner of New Hampshire Avenue/MD 650 and Spencerville Road/Norbeck Road/MD 198. To the south and west are properties in the RE-2 zone which are made up primarily of low-density one-family housing on septic systems. Across New Hampshire Avenue/MD 650 are properties in the RE-1 zone made of single-family residential housing on comparatively smaller lots than those on the west side of New Hampshire Avenue/MD 650. As such, most of the housing on the east side of New Hampshire Avenue/MD 650 is on public sewer. Finally, further to the south along the east side of New Hampshire Avenue/MD 650 is the Cloverly commercial center.

Site Analysis

The Subject Property is currently improved with a detached one-family residential structure, several sheds, and two driveways accessing New Hampshire Avenue/MD 650. The 15.55-acre Property is located within the Northwest Branch watershed, which is classified by the State of Maryland as Use Class IV-P waters. There are approximately ten acres of forest on the Property as well as numerous large trees located in the northeastern corner of the Property and along the property boundaries. There are also areas of open field with scattered trees. An existing Category I Conservation Easement abuts the Property on the north side. The Property is fairly flat, sloping upward from New Hampshire Avenue to the west with the highest point occurring at the midpoint of the Property and sloping back down to the west. There are no documented streams, wetlands, or rare or endangered species on or immediately adjacent to the Subject Property.



Figure 2 - Aerial

SECTION 4 – APPLICATIONS AND PROPOSAL

Previous Regulatory Approvals

County Council Resolution 14-334 – WSCCR 99A-CLO-02 (Attachment 5)

A sewer category change from S-6 to S-3 and a water category change from W-6 to W-1 for the Subject Property was approved in November 2, 1999. The water category change was approved without any conditions. The sewer category change was approved with the following conditions:

- 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.

Current Applications

Preliminary Plan 120160040

The Preliminary Plan, No. 120160040, proposes to subdivide three parcels into one 15.55-acre lot for a religious assembly building and associated private school ("Preliminary Plan" or "Application"). The Preliminary Plan was reviewed for conformance with Chapter 50, Subdivision Regulations prior to February 13, 2017, 2012-2016 Subdivision Staging Policy and for substantial conformance with the recommendations of the 1997 *Cloverly Master Plan* ("Master Plan").

Proposal

The Preliminary Plan proposes to create one lot for the construction of 1,600 seat church and a 350-student private school with no weekday daycare facilities which is defined as a religious assembly structure and is a permitted use in the RE-2 zone under Section 59.3.1.6. A private educational institution typically requires a conditional use permit. However, because the private school is on the same premises and owned by the religious institution it is not subject to the conditional use permit requirement under Section 59.3.4.5 (B)(1). The 1600-seat sanctuary requires 400 parking spaces. Of the 400 spaces provided, 303 spaces are located in a parking facility built into the hillside. The church and private school will be constructed on top of the parking structure. The remaining 97 parking spaces will be provided as surface parking.

The Application proposes a single point of access directly to New Hampshire Avenue/MD 650. The Applicant proposes a new median break in New Hampshire. Acceleration and deceleration lanes will be constructed to facilitate traffic movement in the north and south directions.

The Application proposes to retain 5.86 acres of total forest to be protected in a Category I Conservation Easement and an overlapping covenant for the preservation of 4.82 acres of the 5.86 acres of forest retention. The sewer category change approval includes a condition to protect the forested area which would have been cleared for the construction of an on-site septic system, which was determined to be 4.82 acres. The 5.86 acres of on-site forest conservation includes the area necessary to accommodate septic had the Application not been constructed with public sewer. In addition to the on-site forest conservation, the Application proposes 3.64 acres of off-site forest conservation to be satisfied by purchasing credits from an M-NCPPC approved forest mitigation bank.

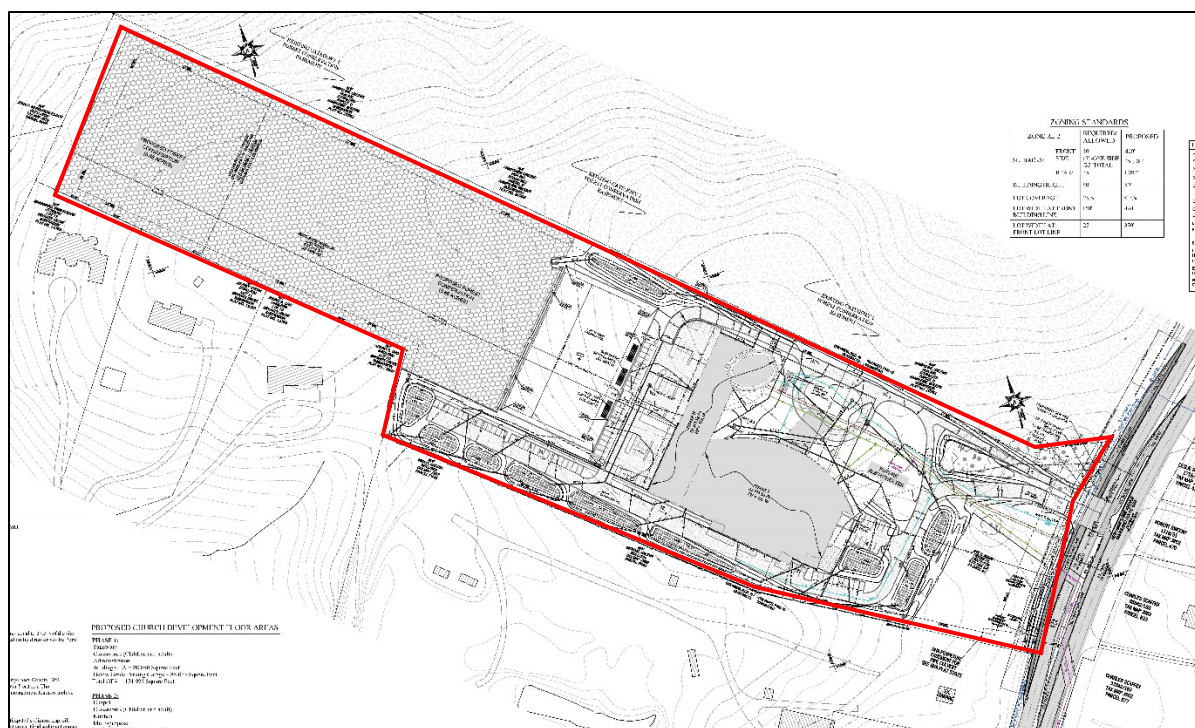


Figure 3 – Preliminary Plan

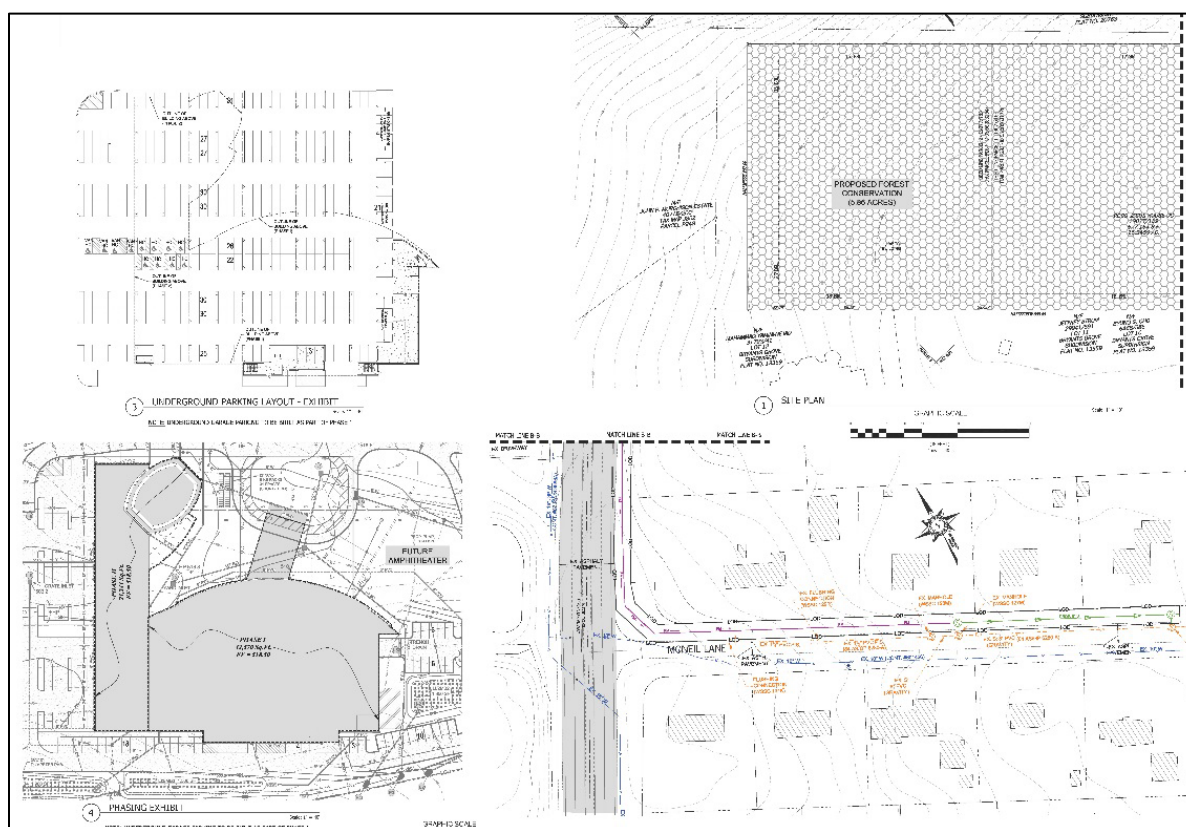


Figure 4 – Preliminary Plan, Parking Layout and Sewer Connection

SECTION 5 – ANALYSIS AND FINDINGS - Preliminary Plan No. 120160040

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 this Property.

LAND USE PLAN

FIGURE 10

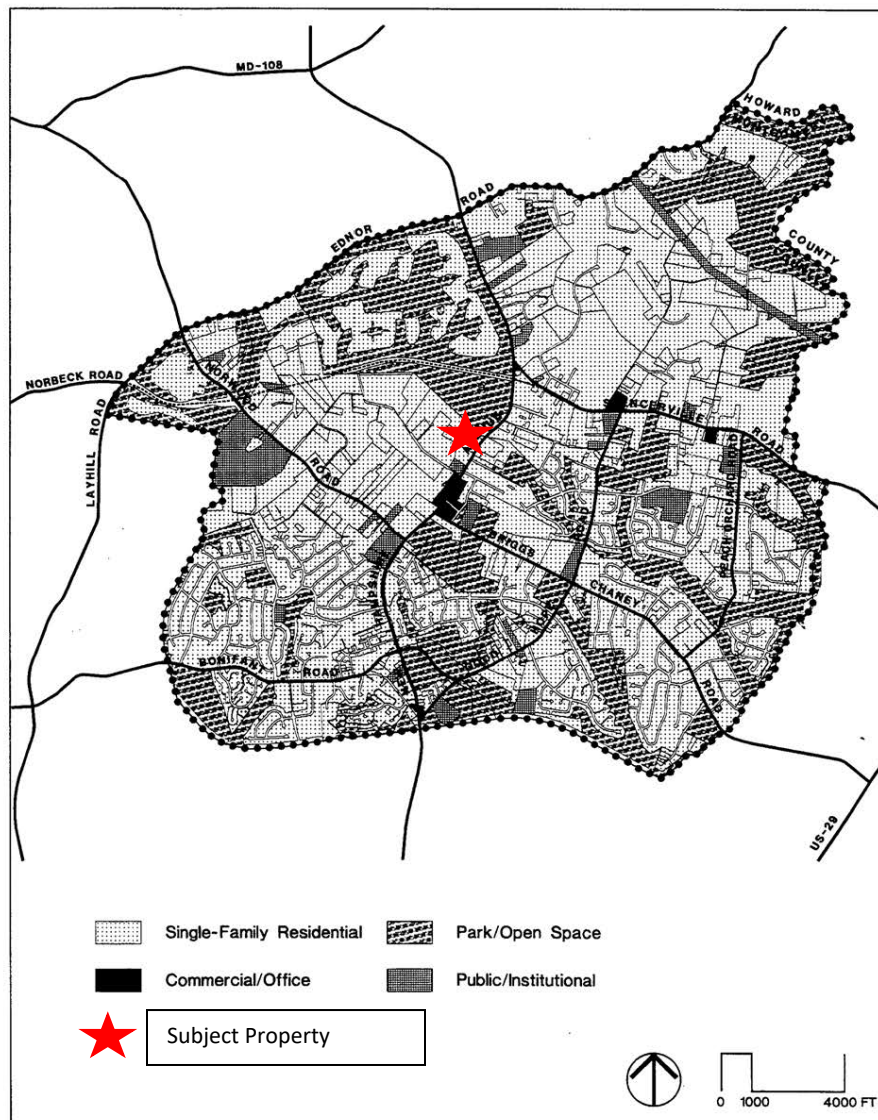


Figure 5 – Cloverly Master Plan, Land Use Plan

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 Run tributary, in which the Subject Property is located, has imperviousness of 11 percent. The Application proposes an impervious level of approximately 28.8 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.

The Application proposes impervious levels of approximately 28.8 percent, which includes offsite area along New Hampshire Avenue where improvements are required to accommodate a 10-foot wide shared use path, and acceleration and deceleration lanes (Attachment 2). In the course of the review process, the Applicant has demonstrated several efforts to minimize the amount of impervious surfaces on the Property. This is demonstrated in the comparison between Figure 6 and Figure 7. In 2014, the Applicant met with Staff with a concept plan (Figure 6) with an impervious surface level of 40.38 percent. At that time, Staff believed that an impervious level of this magnitude was unacceptable and asked for reductions. Over time and in conjunction with the review process, the impervious surfaces have been reduced to approximately 28.8 percent (Figure 7).

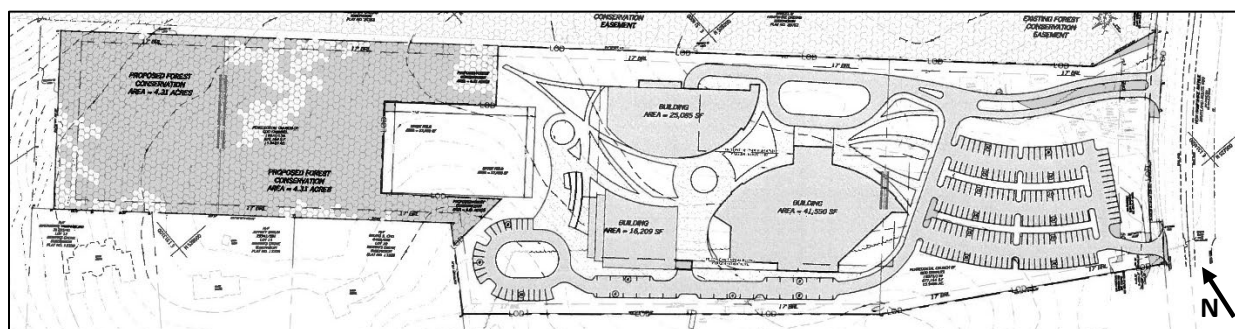


Figure 6 – Original Concept presented to Staff in 2014 with an impervious level of 40.38 percent

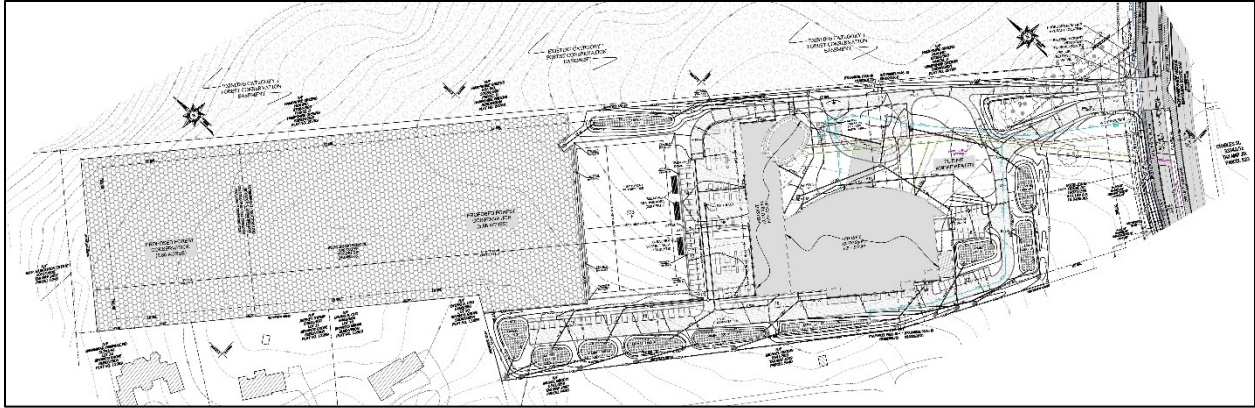


Figure 7 – Proposed Preliminary Plan with an impervious level of 28.8 percent

To reduce imperviousness, 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 in each direction, 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 Preliminary Plan have been shifted towards New Hampshire Avenue but cannot be shifted any further because the 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,” (p 31) 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 Property, however, it could not be shifted further east 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 has requested additional time for 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 (Attachment 1) provides

the Applicant's phasing schedule and public interest justification as required by the Subdivision Regulations.

Staff does not support extending the APF validity for the requested 12 years, which is typically reserved for larger, mixed use projects on significantly larger properties with longer phasing plans than this Application. Instead and as conditioned, Staff supports extending the APF validity for 10 years which should be an adequate amount of time 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 supported by Staff, an extension request can be submitted under Section 50-20 (c)(5) at which point the APF can be reevaluated based on conditions at that time. In discussing it here, the Planning Board is under no obligation to extend APF in the future or support an extension.

Master-Planned Roadways and Bikeways

Since the Planning Board heard this Application in March of 2017, Montgomery County has adopted the 2018 *Bicycle Master Plan*. Because the Maryland Court of Special Appeals (remanded by the Circuit Court of Montgomery County) invalidated Planning Board Resolution #17-019, the Planning Board must review the Application based on the master plans in effect at the time of the remanded public hearing. As a result, the requirements of the 2005 *Countywide Bikeways Functional Master Plan* no longer apply to this Application.

In accordance with the 1997 *Cloverly Master Plan*, the 2004 *Rustic Roads Functional Master Plan Amendment*, and the 2018 *Bicycle Master Plan*, and the 2013 adopted *Countywide Transit Corridor Function Plan*, the master-planned roadways and bikeway are as follows:

- 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 Bryants Nursery Road and Spencerville Road (MD 198). The 2018 *Bicycle Master Plan* recommends a separated bikeway facility on both sides of New Hampshire Avenue between Norbeck Road and the Intercounty Connector Trail in the form of a 10-foot wide shared use path (Figure 8). The currently right-of-way ranges from approximately 71 to 107 feet wide along the 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 *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 Property.
- Nearby Bryants 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*.



Figure 8 – 2018 Bicycle Master Plan Recommendation, Page 236

Available Public Transit Service

Only Metrobus route Z2 operates along this segment of 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)

A traffic study was submitted to satisfy the LATR test, in accordance with the 2012-2016 Subdivision Staging Policy, because the number of weekday site-generated peak-hour trips is estimated to be 30 or more. Although the LATR recommends traffic data associated with the Traffic Impact Study be collected within 1 year of the Planning Department accepting the Application, the LATR allows flexibility to use older counts when no substantive changes to either background development or the regional transportation network have occurred. Furthermore, delay between the original data collection and the date of this Staff Report is based on factors beyond the Applicant's control. Revising the Traffic Impact Study with new counts would produce an outcome consistent with the findings of the original Traffic Impact Study. Staff recommends that the original traffic counts, included in the Traffic Impact Study dated August 9, 2015, be accepted as an adequate representation of existing traffic congestion at study area intersections.

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 (Attachment 15) which is discussed below. 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 trip generation would generate 177 new peak-hour trips within the weekday morning peak period and the same number within the evening peak period. Based on the traffic study results, the capacity/Critical Lane Volume (CLV) values at the studied intersections are shown in the table below for the following traffic conditions:

1. Existing: The traffic condition as it currently is now.
2. Background: The existing condition plus the trips generated from approved but un-built nearby developments.
3. Total: The background condition plus the additional site-generated trips based on proposed weekday educational institute.

Table 1: Critical Lane Volume Analysis

Studied Intersections	Weekday Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
New Hampshire Ave & Spencerville Rd-Norbeck Rd	823	988	857	1,046	886	1,056
New Hampshire Ave & Ednor Rd	919	1,128	930	1,228	932	1,230
New Hampshire Ave & Briggs Chaney Rd	670	853	726	932	770	967
New Hampshire Ave & Norwood Rd	1,348	1,118	1,413	1,171	1,442	1,212

Studied Intersections	Weekday Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Briggs Chaney Rd & Good Hope Rd	795	804	808	832	811	836
Spencerville Rd & Peach Orchard Rd	1,206	1,192	1,256	1,284	1,264	1,292
Norbeck Rd & Norwood Rd	1,056	839	1,089	862	1,093	866

As indicated in the table above, the calculated 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 (Attachment 15). The proposed circulation will minimize vehicular conflicts and provide ample on-site queuing with over 1,000 feet of driveway distance 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 Property driveway. The SYNCHRO results indicated an overall intersection level of service (LOS) of "A" with the worst level of service of "C" on the eastbound left-turn approach. These SYNCHRO results are based on a scale from LOS A to LOS F. LOS A represents unimpeded traffic movement or free flow. Conversely, LOS F represents heavy congestion and/or gridlock.

Should Sunday services 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 Property driveway during the Sunday services.

Transportation Policy Area Review

Although the Application is subject to the 2012-2016 Subdivision Staging Policy (SSP), which included a Transportation Policy Area Review (TPAR) analysis, TPAR payments are no longer collected by Montgomery County.

As a development within the Cloverly Policy Area, the TPAR test finds that roadway capacity is adequate, and transit capacity is inadequate. the Application has been reviewed under the 2016-2020 SSP, and therefore, no TPAR condition is included as part of this Staff Report and the Applicant will pay the impact fees based on the Subdivision Staging Policy currently in effect.

Water and Sewer Facilities

Other public facilities and services are available and will be adequate to serve the religious assembly and private school. The Subject Property received a water and sewer category change approval on November 2, 1999 for category change request 99A-CLO-02 (Attachment 5) under County Council Resolution 14-334. The Planning Board had previously determined that public facilities to be adequate at a public hearing

heard on March 30, 2017. The Circuit Court for Montgomery County remanded this Application back to the Planning Board to further review the adequacy of public facilities and compliance with County Council Resolution 14-334.

The Preliminary Plan proposes that all structures will be served by public water and sewer. The conditions in County Council Resolution 14-334 are the following:

- 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.

The condition from the County Council Resolution with the greatest impact on the Application is the requirement to establish a covenant preserving the forested area which would have been used for an on-site septic system. The language approved by the County Council in Resolution 14-334 is the guidance that Staff must interpret and implement. However, County Code and the County Council Resolution does not provide guidance on the methodology to calculate the size needed for a septic system when the system will not actually be installed. When developing a property to be served by an on-site septic system, a site evaluation is required to determine a satisfactory area for the septic field and replacements. The design flow, depth to a limiting condition, and the infiltration rate of the soil determines the area of the septic system. To perform a site evaluation, equipment must be able to access the property resulting in tree loss and other environmental impacts. Normally, these environmental impacts tend to be of little importance because the construction of the septic system will remove all the large trees. The circumstances of this Application are much different.

The methodology used to determine compliance with County Council Resolution 14-334 is a pivotal issue with this Application. Specifically, the decision to use a mathematical calculation which is utilized to provide a professional estimate using requirements in the County septic code. In this Application, the forest identified outside the limits of disturbance shown on the Final Forest Conservation Plan will be retained and a septic system will not be installed. If a site evaluation was completed, it would have consequences. Staff estimates that an acre or more of forest could be removed in order to perform a site evaluation.

While doing a site-specific design would provide another solution, the amount of time, effort, and impact on the Property does not appear to have been considered by the County Council in 1999. It also opens up numerous questions neither the County Code nor the County Council Resolution can answer and doesn't provide direction to Staff. The County Council Resolution cites no methodology to determine compliance and the County Code is not designed to provide a regulatory structure for septic systems that won't actually be constructed or account for the environmental impacts of site evaluations done to only achieve data without resulting in future construction of a septic system. The County Code is designed to review septic systems for construction rather than compliance with the arbitrary standard established by County Council Resolution 14-334.

Staff has taken a reasonable and measured approach which avoids forest loss and environmental impacts to the Property by accepting the mathematical calculations supplied by the Applicant, taking into consideration the accepted practices available for projects with variable daily flows (flow equalization) and shallow or low permeable soils (mound systems), the calculations produce a reasonable forest save area. When available, actual water use measurements from utility records may also be used to determine

the maximum daily flow (MDF) design for a proposed sewage disposal system. The data may also be used to supplement the MDE flow guidance and is used to justify a requirement for a larger MDF. The water use records for the existing Jesus House facility in Silver Spring do not support an increase in the MDF above that calculated using the applied flow guidance. If the size and scope of the Application remains the same, an expanded forest save area based on a site-specific approach won't actually save more forest on the Property. It will only result in an increase in off-site forest credits in a forest bank allowed under Chapter 22A.

In order to achieve compliance with the County Council's conditions as they were written, Staff and MCDEP in conjunction with the DPS, Well and Septic Section requested wastewater calculations on a gallons per day basis for the 1,600 seat church and the 350 student private school (Attachment 21 and Figure 9) to determine the size (i.e. acreage) of a septic system to serve this Application. Between the two different uses, the higher level of gallons per day of wastewater generation, in the case of the private school, has been implemented to determine the mathematical septic system size and by extension the amount of forest to be preserved as a requirement of the condition from the County Council. Based on this information, MCDEP issued on letter, dated March 2, 2017 (Attachment 20), confirming the accuracy of 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-ALO-02 in County Council Resolution 14-334. In addition, DPS, Well and Septic Section reconfirmed their findings in a letter issued on February 24, 2020.

The Concerned Citizens of Cloverly contend that the church and the private school are not separate uses, but rather concurrent uses. As such, any septic calculation should combine both uses at the same time. The Concerned Citizens of Cloverly also contend that the Applicant will ultimately have a commercial kitchen inside the church rather than a warming kitchen. The different kitchen types would significantly change the wastewater generation from the church and, in turn, changes the size of the septic system and, therefore, the forest save area required by the County Council resolution. The Applicant rejects all of the assertions made by the Concerned Citizens of Cloverly (Attachment 25). Staff is unable to speculate how any property owner will or won't use property in the future. Staff can only review the information provided within the Application. After the Application is constructed, it becomes an enforcement action by the relevant agency with jurisdiction.



Civil Engineers

Land Planners

Date: June 25, 2014

Revised: November 9, 2016- Updated December 24, 2019

Project: RCCG-Jesus House- Analysis of Hypothetical Septic System

Data:

1. Proposed Seats: 1,600 Seats
2. School: 350 Students, K-12

Regulations/Requirements:

1. 10,000 square feet of septic area for each 500 gallons of water flow per day.
2. Church Use with warming Kitchen: 5 Gallons Per Day (GPD)/Seat
3. Septic trenches are laid out based on topography. Therefore the amount of space required for a septic system is also dependent on topography.
4. Each additional 10,000 square feet of absorption area or portion must be established on 15,000-40,000 square feet or proportional area depending on percolation rates.

School Requirement- Based on Maryland Department of The Environment (MDE), Memorandum of June 27, 2011. Subject: "Decision Framework for Evaluating Project Flows Utilizing On-Site Systems".

Schools (Per Student)

No food or showers- 15 GPD/Student
add for food 5 GPD/Student
add for showers 10 GDP/Student

15 GPD + 5 GPD (Kitchen) + 10 GPD (Showers) = 30 GPD

CALCULATIONS:

1. Determine the required gallons per day based on a 1,600 seat church with a warming kitchen:

5 GPD/seat x 1,600 seats = 8,000 GPD

Determine the area of septic required, based on 10,000 square feet of septic area for each 500 GPD of water flow.

8,000 GPD/500 = 16 x 10,000 = 160,000 Square Feet (3.67 Acres)

2. Determine the required gallons per day based on a 350 Students:

30 GPD/student x 350 students = 10,500 GPD

Determine the area of septic required, based on 10,000 square feet of septic area for each 500 GPD of water flow.

10,500 GPD/500 = 21 x 10,000 = 210,000 Square Feet (4.82 Acres)

341 West Patrick Street, Frederick, MD. 21701. Tel(301)775-4394
mike@raztecengineers.com

RAZTEC ASSOCIATES, INC

Civil Engineers

Land Planners

Conclusion: Since the uses for the site are not simultaneous, then the highest daily use will be used. In this case that is for the school use. Therefore, 4.82 acres of existing forest area will be preserved to satisfy the existing sewer category change.



PROFESSIONALS' REVIEW STATEMENT

I CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME,
AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS
OF THE STATE OF MARYLAND, LICENSE NUMBER:22742. EXPIRES: JUNE 15, 2020

Figure 9: Septic Calculations from Applicant

The pressure sewer system is required by WSSC to be designed specific to the needs of the user. As such, it will not have the capacity for other users to connect to it. As conditioned for compliance with County Council Resolution 13-334, the public pressure sewer system will be dedicated to the church's use only.

Finally, because the Applicant's Application is creating the need for the sewer extension, the Applicant is required to pay for the sewer improvements which only benefit themselves. This complies with County Council Resolution 13-334 and with WSSC's financing requirements for System Extension Permit (SEP) projects under which Jesus House will construct the needed sewer main.

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 (Attachment 16). 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 lot is 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 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” (p 31) 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 lot has been 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. A summary of this review is included in Table 2 below. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

Table 2 – Development Review Table

RE-2	Required by the Zone	Proposed for Approval
Lot Width at the front building line	150 feet	424 feet
Lot Width at Front Lot Line	25 feet	370 feet
Setbacks		
Front	50 feet	420 feet
Side, abutting Residential	17 feet on one side, 35 feet total	45 feet/80 feet
Rear, abutting Residential	35 feet	1,083 feet
Lot coverage	25%	9.7%
Building Height	50 ft. Max	50 feet or less
Site Plan Required	No	No
Parking	400 spaces	400 spaces

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

Forest Conservation

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420121450 for the Property was approved on November 12, 2013. The NRI/FSD identifies the environmental features and forest resources on the Property. The Property contains approximately ten acres of forest and there are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or slopes greater than 25 percent located on or immediately adjacent to the Property. There are 27 trees greater than or equal to 24” Diameter at Breast Height (DBH) that were identified on or adjacent to the Subject Property, 12 of which are 30” DBH and greater.

Forest Conservation Plan

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 (Attachments 6, 7, and 8). The net tract area for forest conservation is 16.73 acres, which includes the 15.55-acre 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 a sewer category change for the Property included the following condition related to forest conservation:

The church will 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 private school. MCDPS and MCDEP has confirmed these calculations as accurate (Attachment 21). 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 this 4.82 acres of forest with a covenant between the Property owner and Montgomery County, to meet the sewer category change condition of approval with a covenant between the Applicant and Montgomery County, while 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) = $20\% \times 16.73 \text{ acres} = 3.35 \text{ acres}$

Existing forest above Conservation Threshold = $10.02 - 3.35 = 6.67 \text{ acres}$

Break-even point = $(20\% \text{ of } 6.67 \text{ acres}) + 3.35 \text{ acres} = 4.68 \text{ acres}$

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 (Attachment 20) 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 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. The entire 5.86 acres of retained forest on-site will be protected in a Category I conservation easement. An overlapping covenant between the Property owner and Montgomery County will include 4.82 acres of the 5.86 acres of forest retention, as required by the sewer category change approval.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to high priority vegetation, including disturbance to the critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Development of the Property requires impact to trees identified as high priority for retention and protection (Protected Trees), therefore, the Applicant has submitted a variance request for these impacts. Staff recommends that a variance be granted and mitigation be required.

Variance Request – The Applicant submitted a variance request in a letter dated September 16, 2016, for the impacts/removal of trees (Attachment 18). The Applicant wishes to obtain a variance to remove six (6) Protected Trees that are 30 inches or greater, DBH, and considered a high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Two of these trees (#7 and #11 on the FCP) will be removed for the construction of the entrance driveway. Four of these trees (#5, #8, #9, and #10) are included in the request for removal due to the amount of impact proposed; however, the Applicant intends on trying to retain them during construction, if possible. These six trees are listed in Table 3, and shown graphically in Figure 10. The Applicant also proposes to impact, but not remove, two (2) Protected Trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. These trees are noted as numbers 14 and 23 on the FCP. The critical root zones of these trees will be impacted by necessary site grading and construction of the driveway entrance. Details of the Protected Trees to be affected but retained are listed in Table 4 and shown graphically in Figure 11.

Table 3: Protected Trees to be removed

Tree No.	Common Name	Botanical Name	Size (DBH)	CRZ Impact	Tree Condition	Location
5*	Post Oak	<i>Quercus stellata</i>	34 inch	31%	Fair	Entrance driveway
7	Red Oak	<i>Quercus rubra</i>	53 inch	100%	Fair	Entrance driveway

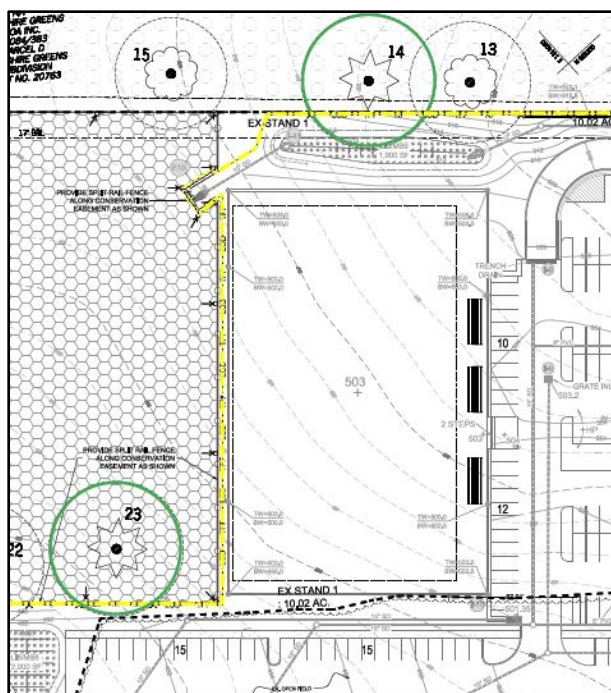


Figure 11 – Tree Variance Exhibit: two Protected Trees affected, but retained

The Application includes seven on-site and five off-site trees subject to the variance provision, six of which will be removed by this Application. The trees to be removed are located on the Property, two are noted in good condition, three are in fair condition, and one is in poor condition. The two trees proposed to be impacted but retained include one offsite tree that is in good condition, and one on-site tree that is in fair condition. The Property is rectangular in shape, and the majority of the specimen trees exist along the eastern edge of the Property, close to New Hampshire Avenue. The location of the proposed driveway to access the Property is dictated by the need for the driveway to align with a required median cut in New Hampshire Avenue to accommodate left turning vehicles travelling north to access the Property. The location of the median cut in New Hampshire Avenue was determined by traffic engineering studies and cannot be modified. This in turn dictates the location of the driveway to access the Property, resulting in unavoidable impacts to Protected Trees. The remainder of the Property is the developable area available for the construction of the project and required stormwater management features. The relatively narrow configuration of the Property, the development requirements of the zone, and the location of the Protected Trees within the developable area, results in unavoidable impacts to additional Protected Trees.

Staff worked with the Applicant to revise the limits of disturbance to minimize the impacts to the Protected Trees as much as possible. The entrance driveway has been reduced from two lanes to one and the Application proposes some structured parking with the proposed buildings stacked above. The number and location of the Protected Trees, along with the existing shape of the Property and development requirements create an unwarranted hardship. If the variance were not considered, the development anticipated on this RE-2 zoned Property would not occur. Staff has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings – Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the forest conservation plan:

Granting of the requested variance:

1. *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 Property. The Protected Trees are located in the developable area of the Property and close to New Hampshire Avenue where traffic studies have determined the entrance driveway must be located. Any development considered for this Property would be faced with the same considerations of locating the development on a Property with relatively narrow frontage along New Hampshire Avenue. Granting a variance to allow land disturbance within the developable portion of the Property is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *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 Property conditions, including the location of the Protected Trees within the developable area, including the point of access to the Property.

3. *Is not based on a condition relating 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 Property, and not a result of land or building use on a neighboring property.

4. *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 (Attachment 17). 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 Protected Trees – The Protected Trees subject to the variance provision and proposed to be removed are not located within an existing forest. Mitigation for the removal of these six trees is recommended at a rate that approximates the form and function of the trees removed. Therefore, Staff is recommending that replacement occur 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. This Application proposed to remove 229 inches in DBH, resulting in a mitigation requirement of 57 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. The FCP requires the planting of 19 native, canopy trees on the 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. Staff does not recommend mitigation for trees affected, but not removed. The affected root systems will regenerate and the functions provided restored.

County Arborist's Recommendation on the Variance – In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in MCDEP for a recommendation prior to acting on the request. The request was forwarded to the County Arborist. On October 4, 2016, the County Arborist provided a letter recommending that a variance be granted with mitigation (Attachment 19).

Variance Recommendation – Staff recommends that the variance be granted with mitigation described above.

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.*

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on July 12, 2016 (Attachment 17). The Application will meet stormwater management goals through the use of micro-biofiltration facilities and landscape infiltration facilities in various locations on the Property.

SECTION 6: CITIZEN CORRESPONDENCE AND ISSUES

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the remanded Application. A pre-submission meeting for the original Preliminary Plan was held on May 19, 2015 at the Marilyn Praisner Library at 14910 Old Columbia Pike in Burtonsville. To address the requirements for a new public hearing for the remanded Application, the Applicant sent updated application notification letters, updated the surrounding property owners listed, and posted a new sign on the Subject Property.

Since the Application has been remanded by the Circuit Court for Montgomery County, Staff has met with the Concerned Citizens of Cloverly and the Applicant. In addition, Staff has participated in meetings held by Montgomery County staff with the Concerned Citizens of Cloverly. Staff has given ample time to all stakeholders to submit additional information. The Concerned Citizens of Cloverly have submitted additional information as well as testimony from other citizens (Attachment 25). The new information revolves around the following issues:

1. Simultaneous use of the church, private school, and other facilities vs separate use to determine wastewater generation rates.
2. Wastewater generation methodology: mathematical calculations done by the applicant vs a site-specific design which would require septic testing creating impacts to the existing forest.
3. Interpretation of the conditions in the County Council Resolution 14-334.

Staff has addressed these concerns in the findings for Adequate Public Facilities. While Staff understands it is unlikely the members of the Concerned Citizens of Cloverly will agree with Staff, Staff's review is limited to the findings as outlined in Chapter 50 and the contents of the Application submitted to Staff. The Applicant chose to resubmit septic calculations which have been certified and stamped by the civil engineer. These septic calculations are the same of the previous calculations reviewed by the Planning

Board. The engineer's certification is the only change to the septic calculation document. There have been no submitted revisions to any other plans associated with the original application.

SECTION 7: CONCLUSION

The Application meets all requirements established in the Subdivision Regulations, the Zoning Ordinance and County Council Resolution 14-334. Access and public facilities will be adequate to serve the proposed lot, and the Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application. Staff finds the Applicant has adequately addressed the recommendations of the *1997 Cloverly Master Plan*, and has made a good faith effort to be responsive to the concerns raised by Staff, the community and the Circuit Court for Montgomery County. Staff recommends approval of this Application, with the conditions as enumerated in the Staff Report.

ATTACHMENTS

Attachment 1 – Statement of Justification
Attachment 2 – Circuit Court for Montgomery County Opinion
Attachment 3 – Circuit Court for Montgomery County Remand Order
Attachment 4 – Maryland Court of Special Appeals Opinion No. 02568
Attachment 5 – County Council Resolution 14-334
Attachment 6 – Preliminary Plan, Sheet 1
Attachment 7 – Preliminary Plan, Sheet 2
Attachment 8 – Preliminary Plan, Sheet 3
Attachment 9 – Forest Conservation Plan, Sheet 1
Attachment 10 – Forest Conservation Plan, Sheet 2
Attachment 11 – Forest Conservation Plan, Sheet 3
Attachment 12 – MCDOT Approval
Attachment 13 – MCDOT Traffic Impact Study Acceptance Letter
Attachment 14 – Maryland State Highway Administration Traffic Impact Study Letter
Attachment 15 – Traffic Impact and Circulation Study
Attachment 16 – MCDPS Fire Access Approval Letter
Attachment 17 – MCDPS Stormwater Concept Approval Letter
Attachment 18 – Applicant's Variance Request Letter
Attachment 19 – County Arborist Recommendation Letter
Attachment 20 – MCDEP Confirmation with Condition Compliance with WSCCR 99A-CLO-02
Attachment 21 – Wastewater Generation Calculations
Attachment 22 – MCDPS Confirmation and Approval of Septic Calculations
Attachment 23 – Impervious Surface Exhibit
Attachment 24 – Staff Report from March 17, 2017 Planning Board Hearing
Attachment 25 – Correspondence from the Concerned Citizens of Cloverly and other citizen correspondence