



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

AUG 14 2020

MCPB No. 20-039

Preliminary Plan No. 120160040

Remand from the Circuit Court for Montgomery County: RCCG Jesus House

Date of Hearing: April 30, 2020

RESOLUTION

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

WHEREAS, on August 17, 2015, Jesus House DC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot on 15.55 acres of land in the RE-2 zone, located at 15730 New Hampshire Avenue ("Subject Property"), in the Cloverly Policy Area and 1997 Cloverly Master Plan ("Master Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

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

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on August 17, 2015; and

WHEREAS, the Circuit Court for Montgomery County affirmed Planning Board Resolution 17-019, dated May 23, 2017, with an Opinion and Order dated January 26, 2018.

WHEREAS, responding to an appeal from the Concerned Citizens of Cloverly, the Court of Special Appeals of Maryland issued an Opinion, dated March 14, 2019, reversing the Circuit Court for Montgomery County and determining 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.

WHEREAS, the Circuit Court for Montgomery County, by way of the Court of Special Appeals of Maryland, issued an Order On Remand June 19, 2019 to vacate and remand for the limited purpose of conducting further proceedings to make an independent assessment of the validity of the septic set aside calculations to ensure that Preliminary Plan No 120160040 conforms with the conditions required by Montgomery County Council Resolution No. 14-334.

WHEREAS, following review and analysis of the Application and the septic set aside calculations required by Montgomery County Council Resolution No. 14-334 by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 17, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 30, 2020, the Planning Board held a public hearing on the Application for the express purpose of addressing the deficiencies identified in the remand order by the Circuit Court for Montgomery County, at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on April 30, 2020, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 4-0; Commissioners Anderson, Cichy, Patterson, and Verma voting in favor. Commissioner Fani-Gonzalez was absent.

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

- 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:

¹ 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.

- 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 5-foot wide sidewalk replacing it with a 10-foot wide shared use path along the entire property frontage, including 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 an 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 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 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 has reviewed and 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 has reviewed and 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 has reviewed and 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 provided that the amendments do not conflict with other conditions of the 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 the 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 provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must dedicate and show on the record plat 62.5 feet of dedication from the centerline of New Hampshire Avenue/MD650 along the Subject Property's entire frontage.
- 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 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 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 all necessary easements.
- 18) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for 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.

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

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

The Subject Property is 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.

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). As adopted within the Master Plan this range of imperviousness is based on a subwatershed geography rather than an individual property geography. It also states that individual developments with high site imperviousness should be discouraged. Furthermore, the Master Plan does not define or provide guidance as to what is considered “high site imperviousness”. As a result, the Planning Board has the authority to interpret the language as adopted within the Master Plan.

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 achieves 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’s impervious levels of approximately 28.8 percent, include the offsite area along New Hampshire Avenue, where improvements are required to accommodate a 10-foot wide shared use path, and acceleration and deceleration lane. To achieve this level of imperviousness, the Applicant will utilize below ground parking with buildings located above, adjust the locations of improvements approximately 80 feet to the east, reduce the length of drive aisles, reduce the width of the interior drive aisles from 20 feet to 12 feet where fire access will not be impacted, redesign the entrance driveway from two lanes to one in each direction, reconfigure internal circulation patterns to minimize paving, reduce the length of the sidewalk connecting the buildings to New Hampshire Avenue, provide the baseline amount of parking required under the Zoning Ordinance, and reconfigure 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 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 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) of the Code. Section 50-20(c)(3)(B) requires the Applicant to show the minimum percentage of the project that the Applicant expects to complete in the first 5-7 years. To allow the extended validity period, the Planning Board must find that the extended validity period would promote the public interest. The Statement of Justification provides the Applicant’s phasing schedule and public interest justification as required by the Subdivision Regulations.

The Planning Board 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. As conditioned, the Planning Board approves an extended APF validity of 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 year (121 months) APF validity period approved by the Planning Board, 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.

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 for 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*, the 2018 *Bicycle Master Plan*, and the 2013 adopted *Countywide Transit Corridor Functional Plan*, the master-planned roadways and bikeways 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. The current 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 Functional Plan* recommends New Hampshire Avenue Corridor No. 5 between the DC line and the Colesville Park & Ride Lot for a combination of dedicated and mixed traffic bus lanes. The northern terminus of Corridor No. 5 is located approximately 2.5 miles 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*.

Available Public Transit Service

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. The Planning Board finds that the original traffic counts, included in the Traffic Impact Study dated August 9, 2015, are acceptable 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 to 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 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 a weekday educational institute.

Table 1: Critical Lane Volume Analysis

Studied Intersections	Weekday Traffic Condition					
	Existing		Background		Total	
	A M	P M	A M	P M	AM	P M
New Hampshire Ave & Spencerville Rd-Norbeck Rd	8 2 3	98 8	85 7	1,0 46	886	1, 05 6
New Hampshire Ave & Ednor Rd	9 1 9	1, 12 8	93 0	1,2 28	932	1, 23 0
New Hampshire Ave & Briggs Chaney Rd	6 7 0	85 3	72 6	93 2	770	96 7
New Hampshire Ave & Norwood Rd	1, 3 4 8	1, 11 8	1,4 13	1,1 71	1,4 42	1, 21 2
Briggs Chaney Rd & Good Hope Rd	7 9 5	80 4	80 8	83 2	811	83 6
Spencerville Rd & Peach Orchard Rd	1, 2 0 6	1, 19 2	1,2 56	1,2 84	1,2 64	1, 29 2
Norbeck Rd & Norwood Rd	1, 0 5 6	83 9	1,0 89	86 2	1,0 93	86 6

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 using an internal one-way counter-clockwise vehicular circulation around the buildings. The 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

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.

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 Resolution 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 (99A-CLO-02) on November 2, 1999 under County Council Resolution 14-334 to change the Subject Property to W-1 and S-3. The Planning Board had previously determined 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. This is discussed further in Finding #6 of this Resolution.

Other Public Facilities and Services

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

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included*

in the applicable master plan, and for the type of development or use contemplated.

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The 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 for the religious assembly structure contemplated for the Property. The depth of the 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 utilizes 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 tends 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 meets all the dimensional requirements for area, frontage, and 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 which have recommended approval.

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

Forest Conservation

Natural Resources Inventory/Forest Stand Delineation

The Natural Resources 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 floodplains, 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. 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 will 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 religious institution and private school. MCDPS and MCDEP have confirmed these calculations as accurate. If a septic system were necessary to serve this facility, approximately 4.82 acres of forest would be removed to construct it. The Applicant will protect this 4.82 acres of forest with a covenant between the Property owner and Montgomery County, to meet the sewer category change condition, while the remaining 1.04 acres of on-site forest retention will partially meet the requirements of the Forest Conservation Law. Since all 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 2 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 confirming the use of public water and sewer service is consistent with the County's Comprehensive Water and Sewer Plan, and 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 ($5.86 - 4.82 = 1.04 \text{ acres}$). 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 will 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. The Planning Board finds that the variance should be granted, and mitigation be required.

Variance Request – The Applicant submitted a variance request in a letter dated September 16, 2016, for the impact/removal of trees. The Applicant wishes to obtain a variance to remove 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; 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 will impact, but not remove, 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
8*	White Oak	<i>Quercus alba</i>	34 inch	52%	Good	Entrance driveway
9*	White Oak	<i>Quercus alba</i>	31 inch	51%	Good	Entrance driveway
10*	White Oak	<i>Quercus alba</i>	34 inch	54%	Fair	Entrance driveway
11	Scarlet Oak	<i>Quercus coccinea</i>	43 inch	100%	Poor	Grading, driveway

*Trees #5, #8, #9, and #10 will be evaluated at time of construction to determine if they can be retained

Table 4: Protected Trees to be affected but retained

Tree No.	Common Name	Botanical Name	Size (DBH)	CRZ Impact	Tree Condition	Location
14	Tuliptree	<i>Liriodendron tulipifera</i>	30 inch	22%	Good	Offsite, grading, swm
23	Tuliptree	<i>Liriodendron tulipifera</i>	30 inch	5%	Fair	Grading

The Application includes 7 on-site and 5 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, 2 are noted in good condition, 3 are in fair condition, and 1 is in poor condition. The 2 trees impacted but retained include 1 offsite tree that is in good condition, and 1 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 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, result in unavoidable impacts to additional Protected Trees.

The Applicant has revised the limits of disturbance to minimize the impacts to the Protected Trees as much as possible. The entrance driveway has been reduced from 2 lanes to 1 and the Application includes structured parking to serve the 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 granted, the development anticipated on this RE-2 zoned Property would not occur. The Planning Board has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not granted.

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. The Planning Board has made the following determinations 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. The Planning Board finds 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, and 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 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 Application to be acceptable as stated in a letter dated July 12, 2016. The Applicant will mitigate the removal of the Protected Trees by planting replacement trees onsite, which 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 to be removed are not located within an existing forest. Mitigation for the removal of these 6 trees is recommended at a rate that approximates the form and function of the trees removed. Therefore, the Planning Board requires that the 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 will 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 6 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 Planning Board 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.

Variance Finding – The Planning Board finds that the variance be granted with the 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.*

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

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

6. After reviewing the submitted documentation and hearing the testimony from all parties, the Planning Board finds that the Preliminary Plan meets the conditions of the sewer category change set forth by Montgomery County Council Resolution 14-334 - WSCCR 99A-CLO-02. County Council Resolution 14-334 set forth three conditions which must be met as part of the sewer category change.
 - a. *The church will establish a covenant preserving the forested area which would have been used for the on-site septic system;*

The language approved (and stated above) by the County Council in Resolution 14-334 is the guidance by which the Planning Board has determined compliance with this condition. County Council Resolution 14-

334 does not provide any specifics regarding the methodology or philosophy to be used to make any determination of compliance with this condition. As such, the Planning Board has the general authority, and has been ordered by the Circuit Court for Montgomery County by way of the Maryland Court of Special Appeals, to determine the appropriate methodology and philosophy to be utilized in determining compliance with the conditions in County Council Resolution 14-334.

The Planning Board also finds that the County Council, in granting the sewer category change in Resolution 14-334, did not intend for percolation testing or any other form of testing to be performed on the Subject Property resulting in the removal of forest or trees. Doing so would have been contrary to the conditions in County Council Resolution 14-334. As such, the Planning Board finds that a mathematical approach to determining compliance with County Council Resolution 14-334 is appropriate.

After reviewing the submitted materials in the administrative record, the Staff Report, and hearing all testimony, the Planning Board finds the septic set-aside calculations meet the requirements of County Council Resolution 14-334.

The Planning Board finds that the Concerned Citizens of Cloverly and their representatives have misinterpreted the requirements of Code of Montgomery County Regulations (COMCOR) 27A.00.01.05(K) by concluding, and adding into their calculations, that the septic set aside must be increased for density requirements. The Planning Board finds that while the requirements of COMCOR 27A.00.01.05(K) require the septic area to be established on an additional 15,000 to 40,000 square feet of land when the septic area exceeds 10,000 square feet, it does not mean that this additional area must also be added to the septic area. This regulation is used to ensure that nitrogen levels stay below the allowable amount by determining the necessary size of the overall lot, not the size of a septic area. Thus, the misinterpretation by the Concerned Citizens of Cloverly and their representatives has resulted in an additional multiplication factor added to their septic set aside calculation that does not exist in Montgomery County Code.

Furthermore, the Planning Board finds that COMCOR 27A.00.01.05(K) only applies in a scenario where subdivision is occurring which increases density. The term "Subdivision" is defined in COMCOR 27A.00.01.01 as "the division of a single tract, tracts, or other parcels of land, or a part of it, into two or more lots, for the purpose, whether immediate or future, of sale or building development." This Application seeks to aggregate three unplatted tracts of land into one platted lot. Therefore, the Planning Board finds that COMCOR

27A.00.01.05(K) does not apply to this Application because it does not meet the threshold defined within COMCOR Chapter 27A as a "Subdivision". The Planning Board finds that, in the context of the COMCOR, this Application creates a "lot" defined as "a part of a subdivision or a parcel of land used as a building site or intended to be used as a building site, whether immediate or future, which would not be further subdivided" in COMCOR 27A.00.01.01.

As a result, the Planning Board finds that the septic set aside calculations submitted by the Applicant are accurate showing the private school to generate the maximum daily flow rate as required by COMAR 26.04.02.05(R) and meets all applicable requirements of COMCOR Chapter 27A as well as the requirements and intent of County Council Resolution 14-334.

The Planning Board finds the weekly and yearly operations of the church are not particularly unusual for a facility of this size and scope. The weekly, bi-weekly, and annual events for the church and private school, when taken in totality, do not add significant wastewater flows necessitating an increase in the maximum daily flow (MDF) to justify a septic set aside calculation for a septic system design based on a concurrent use. Whether or not the uses associated with the church and private school are occurring at the same time is irrelevant based on the expected frequency, duration and attendance of events. The relevant issue in the context of the septic calculations is that the design flow of the septic system remains unchanged. Additionally, the Code of Maryland Regulations (COMAR) 26.04.02.05(J) states that the Approving Authority may approve design flows based upon actual flow measurements. Based on the benchmark measurement of daily average consumption provided by the Washington Suburban Sanitary Commission (WSSC) over a 12-month period for the existing RCCG Jesus House facility in Silver Spring, Maryland, the water usage is significantly less than the figures used in the State of Maryland flow guidelines, which further supports the septic set aside calculations provided by the Applicant.

The Planning Board further finds that the language of the covenant, required by County Council Resolution 14-334, must include a prohibition on the permitting and construction of a commercial kitchen associated with the church or private school in perpetuity. Furthermore, the Planning Board finds that this Resolution, as conditioned, is adequate to prevent the future construction of a commercial kitchen resulting in an MDF over and above the septic calculations endorsed by the Planning Board.

- b. *the proposed low-pressure sewer main extension will be dedicated to the church's use only; and*

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, the Planning Board finds that this condition of County Council Resolution 14-334 has been satisfied.

- c. *the church will pay all costs associated with the extension of public sewer service.*

The Applicant's Application has created the need for the sewer extension. Therefore, the Applicant is required to pay for the sewer improvements which only benefits it. This complies with WSSC's financing requirements for System Extension Permit (SEP) projects under which the Applicant will construct the needed sewer main extension. As conditioned, the Planning Board finds that this condition of County Council Resolution 14-334 has been satisfied.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 14 2020 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 23, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board