

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-046

Preliminary Plan No. 120210020

Iglesia Vida Nueva

Date of Hearing: May 5, 2022

MAY 18 2022

RESOLUTION

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

WHEREAS, on April 6, 2021, Benning and Associates (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot on 4.10 acres of land in the Residential Estate zone, located approximately 830 feet south of the intersection of East Randolph Road and Old Columbia Pike (“Subject Property”), in the Fairland Planning Policy Area and 1997 Fairland Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120210020, Iglesia Vida Nueva (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 25, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 5, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Verma, seconded by Commissioner Cichy, with a vote of [4-0]; Chair Anderson, Commissioners Cichy, Patterson, and Verma voting in favor, and with Commissioner Carol Rubin being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210020 to create one (1) lot on the Subject Property, subject to the following conditions:¹

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.

GENERAL

1. This Preliminary Plan is limited to one (1) lot to construct a building for a 270-seat religious assembly use and associated parking spaces.
2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date as defined in Section 50.4.3.J.5.

PLAN VALIDITY PERIOD

3. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension filed.

OTHER AGENCIES

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County **Department of Transportation ("MCDOT")** in its letter dated April 13, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any 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 September 3, 2020 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of approval. MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
6. The Planning Board has reviewed and accepts the recommendations of the **MCDPS Fire Department Access and Water Supply Section** in its letter dated March 15, 2022, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS Fire Department Access and Water Supply Section may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.

OTHER APPROVALS

7. Prior to any land disturbance, demolition, or the issuance of any building permit, the Applicant must obtain an approved **Historic Area Work Permit (HAWP)**.
8. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Preliminary Plan.

TRANSPORTATION

9. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a. All land necessary to accommodate 48 feet from the existing pavement centerline along the Subject Property frontage for Old Columbia Pike.
10. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Montgomery County Department of Transportation ("MCDOT").
11. Prior to the release of the use and occupancy permit, the Applicant must satisfy all necessary requirements of MCDOT to ensure construction of an 11-foot-wide side path along the Subject Property on Old Columbia Pike; and a minimum ten-foot-wide side path, or as illustrated in the Certified Preliminary Plan a path that may accommodate minor reductions from the 10 ft. minimum as required, from the southernmost corner of the Subject Property to connect to an existing bus stop at the northwest corner of the intersection of Carters Cove Drive and Old Columbia Pike.
12. The Applicant must provide one (1) access easement on the northeast portion of the Property on the Certified Preliminary Plan to allow for future vehicular inter-parcel connectivity consistent with the 1997 Fairland Master Plan. The easement must provide rights to access and the ability to construct a vehicular and pedestrian connection to the vehicular and pedestrian circulation route on the Subject Property, as demarcated on the Plan as "Area Reserved for Possible/Future Pedestrian & Vehicular Connections to P194" on the Preliminary Plan dated March 17, 2021.
13. The record plat must reflect a common use and access covenant for the benefit of the public over all trails, sidewalks and paths not included in a public right-of-way or private street parcel. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel and recorded among the Montgomery County Land Records.

14. Prior to the installation of the required afforestation/reforestation plantings, the Applicant shall provide a natural surface trail onsite in the approximate location as shown on the Certified Preliminary Plan to eventually connect to the existing trail network on the adjacent Manors of Paint Branch Homeowners Association property. This trail must connect with the internal sidewalk network on the Subject Property and allow pedestrian access.
15. The Applicant must explore an east-west natural trail connection through the property generally from the western property line to the eastern property line. If, in consultation with Staff, this trail connection is determined to be feasible, the Applicant must provide this east-west natural surface trail onsite.

CERTIFIED PRELIMINARY PLAN

16. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
17. The certified Preliminary Plan must contain the following note:
 - a. Unless specifically noted on this plan drawing or in the conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
 - b. The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Preliminary Plan is required to be on-site at all times.
18. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set.
 - b) Include the approved Fire and Rescue Access plan in the certified set.
 - c) Ensure consistency between the data table in the staff report and the certified set, including the maximum fixed seating as 270 seats.

PRELIMINARY/FINAL FOREST CONSERVATION PLAN

The Applicant must comply with the following conditions of approval of Preliminary/Final Forest Conservation Plan ("FFCP") No. 120210020, approved as part of this Preliminary Plan:

19. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
20. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree saving measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
21. Prior to recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved FFCP. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded among the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
22. Prior to the initial acceptance of the reforestation plantings for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the Category I Conservation Easement as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
23. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.02 acres of new forest planting, variance mitigation plantings and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
24. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures. All proposed maintenance measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.

25. The Applicant must install the Afforestation/Reforestation plantings for the 0.02-acre area (inside the LOD), as shown on the approved FFCP, in the first planting season following stabilization of the applicable disturbed area.
26. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three caliper inches totaling 65.55 caliper inches as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
27. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FFCP.
28. Prior to submittal of the Certified FFCP, the Applicant must show the potential alignment of the natural surface trail on the FFCP, specifying that the trail is to be a mowed trail and with a notation that the final alignment of the trail will be field located by the M-NCPPC Inspection Staff in order to minimize environmental impacts.
29. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.

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

1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the proposed lot are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type and religious assembly use contemplated for the Property.

The lot meets all the dimensional requirements for area, frontage and can accommodate the proposed religious assembly building as shown in Table 1.

Table 1: RE-2C Development Standards Analysis

Development Standard	Required by the RE-2C Zone	Proposed
Tract Area	n/a	4.10 acres
Dedications	n/a	0.33 acres
Net Tract Area	n/a	3.77 acres
Minimum Lot Area	2.0 acres	+/-3.77 acres
Lot width at front building line (min)	150 feet	150 feet or greater
Lot width at front lot line (min)	25 feet	25 feet or greater
Frontage on street or open space	Required, except as exempt under Chapter 50	Provided
Maximum Lot Coverage	25%	Less than 25%
Setbacks (min)		
Front	50 feet	50 feet or greater
Side	17 feet	17 feet or greater
Sum of side setbacks	35 feet	35 feet or greater
Rear	35 feet	35 feet or greater
Building Height (max)	50 feet	50 feet max
Parking	68 spaces	70 spaces
Bicycle Parking	7 spaces	7 spaces
Site Plan Required	No	No

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

Fairland Master Plan

The Preliminary Plan substantially conforms to the recommendations within the Master Plan. The Property is located in the Rolling Acres community of the Master Plan which is comprised of residential and non-residential uses. The Property is further identified as Area 7b and the Plan provides two specific recommendations for the Subject Property:

Provide sufficiently large lot sizes to achieve a cluster layout in keeping with the historic structure (Conley House) and setting.

The existing lot size is approximately 8 acres. The Applicant proposes to create one lot of 3.77 acres, which is nearly half the size of Area 7b. Further, the Applicant proposes one structure, which is situated the greatest distance feasible from the historic structure. Due to topography, the proposed structure is also situated at a lower elevation than the historic structure which further reduces the visual impact.

Consider the historic structure and setting for special exception uses, such as a bed-and-breakfast, to preserve the structure and setting.

The Application is not a special exception (conditional use) or a bed-and-breakfast. The Applicant does not propose to alter the Conley House. However, because the Property is located within the historic environmental setting of the historic resource, as conditioned, a Historic Area Work Permit (HAWP) is required. An approved HAWP will ensure that any new development will comply with the Historic Preservation Ordinance and any applicable guidelines.

Provide connection to Paint Branch Stream Valley Park.

To satisfy this Master Plan recommendation, the Applicant will provide an onsite natural surface trail intended to eventually connect to the off-site trail network to the southeast of the Property. This existing off-site trail network is located on property owned by the Manors of Paint Branch Homeowners Association (HOA). Additionally, the Applicant will explore an east-west natural trail connection through the property, generally from the western property line to the eastern property line. If feasible, the Applicant must provide this east-west natural surface trail onsite.

Bicycle Master Plan

The 2018 Bicycle Master Plan recommends a side path along the west side of Old Columbia Pike fronting the Subject Property. Therefore, as a condition of approval, the Applicant must construct an 11-foot-wide side path along the Subject Property frontage on Old Columbia Pike, and a minimum ten-foot-wide side path from the southernmost corner of the Subject Property to connect to an existing bus stop at the northwest corner of the intersection of Carters Cove Drive and Old Columbia Pike.

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

Transportation

The Applicant will provide 48 feet of dedication from the existing pavement centerline along the Subject Property frontage for Old Columbia Pike to accommodate all land necessary to accommodate the full Master Plan right-of-way. As conditioned, the Applicant must provide an access easement on the northeast portion of the Property to allow for future vehicular inter-parcel connectivity consistent with the Master Plan.

As stated in the Applicant's transportation study exemption letter dated March 17, 2021, the religious use will produce less than 50 trips during weekday peak hours. Therefore, the Application is exempt from additional LATR review and the existing transportation facilities are deemed adequate.

Water and Sewer

As identified by the County Department of Environmental Protection, the Property is located in the W-1 water service and the S-1 sewer service categories. Properties designated as Category 1 are deemed eligible to receive public water and/or sewer service. Therefore, existing water and sewer facilities are deemed adequate.

Schools

The proposed use is a non-residential religious assembly use and it does not generate students.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Applicant has submitted a Preliminary/Final Forest Conservation Plan ("FFCP") as part of the current Application (Attachment A). The Application satisfies all applicable requirements of Montgomery County Code, Chapter 22A, Forest Conservation Law, and is in compliance with the Montgomery County Planning Department's Environmental Guidelines.

The Property is zoned RE-2C and is classified as Medium Density Residential ("MDR") as defined in Section 22A-3 of Chapter 22A of the Montgomery County Forest Conservation Law ("FCL") and specified in the Trees Technical Manual. This land use classification gives the site an afforestation requirement of 20 percent and a conservation threshold of 25 percent for the net tract area of the application.

The FFCP shows a net tract area of 4.27 acres which includes the total tract area of 4.10 acres plus 0.17 acres for off-site work associated with this application. The FFCP shows a total forest cover of 1.94 acres, proposes to remove 0.65 acres and retain 1.29 acres of forest. When the numbers of the total tract area, land use category, total amount of forest, forest removed, and forest retained are entered into the Forest Conservation Worksheet it results in a total afforestation/reforestation requirement of zero (0.00) acres. Of the 0.65 acres of forest removal, 0.02 acres is being removed adjacent to the proposed sidewalk in order to regrade the side slope for the PUE and to remove a retaining wall within

this area. The Applicant will reforest this 0.02-acre area. All of the retained forest, the planted forest and stream buffer area will be protected by a Category I Conservation Easement.

B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to 134 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

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

Granting the variance will not confer a special privilege on the Applicant as the removal of the Protected Trees is due to the location of the trees and necessary site design requirements required by county agencies. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary site design requirements of county agencies for this Application, including street frontage improvements.

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

The requested variance is a result of the existing conditions and county agency requirements, not as a result of land or building use on a neighboring property.

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. There are a total of 21 Protected Trees proposed for removal along Old Columbia Pike within the existing forest cover that is located within the stream valley buffer. These trees range in caliper from three inches up to 16 inches. The Applicant is proposing to install 22 3-inch caliper MD native overstory trees within open areas of the stream buffer. These newly planted trees will mimic the form and function of the trees being removed and as such will provide improvements in water quality for this stream.

Table 2: Protected trees to be removed requiring mitigation.

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
50	Pignut Hickory (<i>Carya glabra</i>)	12.0	100	Moderate condition
51	Black Locust (<i>Robinia pseudoacacia</i>)	15.4	100	Moderate condition
52	Black Locust (<i>Robinia pseudoacacia</i>)	11.1	100	Moderate condition
53	Black Locust (<i>Robinia pseudoacacia</i>)	12.4	100	Moderate condition
54	Black Locust (<i>Robinia pseudoacacia</i>)	9.8	100	Moderate condition
55	Bradford Pear (<i>Pyrus calleryana</i>)	3.5	100	Non-native invasive, moderate condition
111	Bradford Pear (<i>Pyrus calleryana</i>)	11.7	100	Non-native invasive, moderate condition
122	Bradford Pear (<i>Pyrus calleryana</i>)	14.7	100	Non-native invasive, moderate to poor condition

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
128	Scarlet Oak (<i>Quercus coccinea</i>)	9.0	100	Good to moderate condition
131	Bradford Pear (<i>Pyrus calleryana</i>)	9.3	100	Non-native invasive, moderate condition
132	Bradford Pear (<i>Pyrus calleryana</i>)	6.0	100	Non-native invasive, poor condition
134	Bradford Pear (<i>Pyrus calleryana</i>)	10.3	100	Non-native invasive, poor condition
135	Bradford Pear (<i>Pyrus calleryana</i>)	18.3	100	Non-native invasive, moderate condition
136	Black Walnut (<i>Juglans nigra</i>)	13.3	100	Moderate condition
137	Bradford Pear (<i>Pyrus calleryana</i>)	19.8	100	Non-native invasive, poor condition
138	Bradford Pear (<i>Pyrus calleryana</i>)	2.0	100	Non-native invasive, good condition
139	Bradford Pear (<i>Pyrus calleryana</i>)	16.1	100	Non-native invasive, moderate condition
140	Bradford Pear (<i>Pyrus calleryana</i>)	16.6	100	Non-native invasive, moderate to poor condition
141	Bradford Pear (<i>Pyrus calleryana</i>)	16.0	100	Non-native invasive, moderate condition
142	Chokecherry (<i>Prunus virginiana</i>)	11.3	100	Moderate to poor condition
143	Black Walnut (<i>Juglans nigra</i>)	21.6	100	Moderate condition

There are 21 Protected Trees proposed for removal in this variance request that are located outside of the existing forest cover resulting in a total of 260.2 inches of DBH being removed needing mitigation. No mitigation is required for the removal of Protected Trees within existing forest stands on the Subject Property. It has been M-NCPPC policy not to require mitigation for Protected Trees removed within forest stands since the removal of the forest is accounted for through the Forest Conservation Worksheet.

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

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

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

The Application received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on September 3, 2020 (Attachment E). The Application will meet stormwater management goals through the use of Environmental Site Design ("ESD") to the Maximum Extent Practicable ("MEP") using drywells and landscape infiltration. Therefore, the Application meets all requirements of Chapter 19.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.*

The Property does not contain any known burial site as referenced in the Montgomery County Burial Sites Inventory.

7. *Any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied*

Other than as provided in the conditions of approval, the Application does not have any other specific provisions necessary for approval.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section

50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 18 2022 (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 (Maryland Rule 7-203).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Verma, Commissioners Cichy and Patterson voting in favor, and Commissioner Rubin abstaining, at its regular meeting held on Thursday, May 12, 2022, in Wheaton, Maryland.



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