



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

MCPB No. 20-011
Preliminary Plan No. 120200040
Resurvey on Locust Level
Date of Hearing: February 27, 2020

MAR 04 2020

RESOLUTION

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

WHEREAS, on September 19, 2019, DC Metro Sai Samsthan (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot for a religious assembly and associated 29-student private daycare center, community center, retreat center, ceremonial pool, and four priest cottages; and one parcel for conveyance to M-NCPPC on 33.82 acres of land in the RC zone, located northeast of the intersection of Ridge Road (MD 27) and Davis Mill Road (“Subject Property”), in the Goshen Policy Area and 1994 Clarksburg Master Plan and Hyattstown Special Study Area (“*Master Plan*”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120200040, Resurvey on Locust Level (“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 February 14, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 27, 2020, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200040 to create one lot for a religious assembly and associated accessory uses and conveyance of one parcel on the Subject Property, subject

to the following conditions:¹

- 1) This approval is limited to one (1) lot for a religious assembly and associated accessory uses including a daycare center for a maximum of 29 children, a community center, a retreat center, a ceremonial pool, and four (4) priest cottages.
- 2) The Planning Board has reviewed and accepts the recommendations made by the Montgomery County Council as part of the Water Sewer Category Change No. WSSC 14-GWC-02A under Council Resolution No. 18-217 adopted on July 21, 2015, and the Planning Board hereby incorporates them as conditions of the Preliminary Plan approval.
- 3) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 19, 2020, 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) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Maryland State Highway Administration (SHA).
- 5) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated January 28, 2020 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 MCDPS, Fire Department Access and Water Supply Section in its letter dated December 12, 2019, 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 MCDPS may amend if the

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.

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

- 7) The Applicant must convey to Maryland-National Capital Park & Planning Commission ("Commission") approximately seven (+/-7) acres of the Subject Property identified as "Parcel A" on the approved Preliminary Plan located in the northwest corner of the site for a master planned trail connection between Ovid Hazen Wells Park and Damascus Recreational Park as shown in the Preliminary Plan per the 2016 *Countywide Park Trails Plan*. The land must be conveyed to the Commission at time of record plat in a form of deed approved by the Commission's Office of General Counsel, and must be held in escrow until completion of improvements within Parcel A and completion of the forest conservation reforestation maintenance period. The land to be conveyed must be identified on the record plat and must be free of any trash and unnatural debris prior to the deed of conveyance being recorded in the land records.
- 8) Prior to conveyance of Parcel A to M-NCPPC, the Applicant shall rough grade the future trail alignment in coordination with Parks Department Staff.
- 9) The Applicant must reserve an area from the edge of Ridge Road to Parcel A to allow for a 20-foot wide park easement for public access and construction. The Applicant shall enter into a reciprocal access easement with M-NCPPC. The easement shall be for the sole purpose of reciprocal access and must be compatible with the overall site layout of the Applicant's property and compatible with the M-NCPPC trail alignment. The public access easement may be reasonably relocated by the Applicant with the Parks Department's review and approval.
- 10) The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan ("FCP") No. 120200040, approved as part of this Preliminary Plan, including:
 - a. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record Category I Conservation Easements over all areas of retained and planted forest as specified on the approved FCP. The Category I Conservation Easements approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Book/Page for the easements must be referenced on the record plat.
 - b. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must provide financial surety in a

form approved by the M-NCPPC Office of the General Counsel for the 3.91 acres of new forest planting.

- c. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must submit a two-year Maintenance and Management Agreement (“MMA”) approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas credited toward meeting the requirements of the FCP.
- d. 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 20 percent of the Subject Property as specified in Montgomery County Council Resolution 18-217 dated July 21, 2015. 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.
- e. Within the first planting season following the release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, the Applicant must install the variance tree mitigation plantings as shown on the FCP or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- f. Afforestation/Reforestation plantings for Planting Areas 1, 2, and 4 (outside of the limits of disturbance (“LOD”)) must occur within the first planting season following the release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Project Site, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- g. Afforestation/Reforestation plantings for Planting Area 3 (inside the LOD) must occur in the first planting season following stabilization of the applicable disturbed area.
- h. The Applicant must install the permanent split-rail fencing along the border of the Category I Conservation Easements as shown on the approved FCP or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- i. The Applicant must install permanent Conservation Easement signage along the perimeter of the Category I Conservation Easements as shown on the approved FCP or as directed by the M-NCPPC Forest Conservation Inspection Staff.

- j. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved FCP.
 - k. The Applicant must comply with all tree protection and tree save measures shown on the approved FCP. Tree save measures not specified on the FCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
- 11) The Applicant must provide a minimum of three (3) long-term bike parking spaces located near the entrance of the religious assembly as shown in the Preliminary Plan. The long-term bike parking spaces must be in a secured bicycle locker or Staff approved equivalent and must be identified on the Certified Preliminary Plan. Examples of acceptable parking include, but are not limited to bicycle rooms, lockers, or racks in a protected area.
 - 12) The Applicant must provide a minimum of two (2) short-term bike parking spaces located near the entrance of the religious assembly as shown in the Preliminary Plan. The short-term publicly-accessible bike spaces must be inverted-U racks or Staff approved equivalent, installed in a location convenient to the main entrance of the religious assembly, and the specific location of the short-term bike rack must be identified on the Certified Preliminary Plan.
 - 13) The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.
 - 14) Before approval of the Certified Preliminary Plan, the following revisions must be made and/or information provided subject to Staff review and approval:
 - a. The Certified Preliminary Plan must include an impervious surface exhibit.
 - b. The Applicant must include the stormwater management concept approval letter and other applicable agency approval letters, development program, and Preliminary Plan resolution on the approval or cover sheet(s).

- c. The Certified Preliminary Plan must include a 10-foot easement parallel to the internal driveway for Potomac Edison utilities that is no more than a 3:1 side slope.
- d. The Applicant must label and dimension the 20-foot wide public access easement from Ridge Road to Parcel A on the Preliminary Plan.
- e. 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 approval of a building permit. 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.”
- f. Ensure consistency of all details and layout between the data table and the Preliminary Plan.

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

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

The Preliminary Plan meets all applicable sections of the Subdivision of Land Article of the County code. The approved 26.82 lot size, width, shape and orientation is appropriate for the location and for the religious assembly use approved including a temple, associated parking area with vehicle circulation, a daycare center, a retreat center, ceremonial pool, and four small cottages for attending or visiting priests. The approved buildings and structures are grouped together as tightly as possible and located toward the rear of the lot to take advantage of the sloping topography, and to limit visual impacts onto the Cedar Grove Historic District. The lot shape, steep slopes, conditions of approval as part of Council Resolution 18-217, a stream buffer and existing easements all contribute to limiting the buildable area on the Subject Property.

Although the approved lot is irregular in shape, it allows conveyance of a portion of the Property for the future trail alignment that will go through the Property while meeting the minimum 300-feet of frontage requirement for development in the RC Zone. Despite these constraints, the approved lot is large enough in size to accommodate a religious institution and its associated uses, parking and stormwater management facilities. The shape and size of the lot also provides enough room to meet the forest conservation requirements on-site in a conservation easement.

The approved lot was reviewed for compliance with the Montgomery County Code, Chapter 59 and the Application meets the dimensional requirements for the Rural Cluster (RC) zone as specified in the Zoning Ordinance. The lot as approved will meet all the dimensional requirements for area, frontage, width, and provides ample buildable area within the setbacks in the RC zone. A summary of this review is included in Table 1 below. The Preliminary Plan has been reviewed by other applicable county agencies, all of which have recommended approval.

Table 1 – Development Standards in the Rural Cluster Zone

Development Standards - RC	Required by the Zone	Approved by the Planning Board and Binding on the Applicant
Lot Area	5 acres (min.)	26.82 acres
Min. Lot width at front building line	300 feet	300 feet
Min. Lot width at front lot building line	300 feet	300 feet
Max. Lot Coverage	10 percent	5 percent
Max. Density	1 unit/5 acres	N/A
Min. Setbacks for Principal Building		
Front	50 feet	50 feet min.
Side	20 feet	20 feet min.
Rear	35 feet	35 feet min.
Min. Setbacks for Accessory Structures		
Front	80 feet	80 feet min.
Side	15 feet	15 feet min.
Rear	15 feet	15 feet min.
Max. Principal Building Height	50 feet	50 feet
Max. Accessory Structure Building Height	50 feet	44 feet
Min. Vehicle Parking	167	294
Bicycle Parking	5	5

Development Standards - RC	Required by the Zone	Approved by the Planning Board and Binding on the Applicant
Impervious Surface Level *	20 percent	14.8 percent

*Restriction under water and sewer category change WSCCR 14-GWC-02A approved under Council Resolution 18-217.

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

This Subject Property is in the Clarksburg Planning Area and is part of the Ridge Road Transition Area of the *1994 Clarksburg Master Plan and Hyattstown Special Study Area*. The Master Plan has two objectives for the analysis area that are relevant to this Property. One proposes ‘a land use pattern east of Ridge Road which is compatible with Agricultural Reserve areas in the Goshen/Woodfield Planning Area’ (p.71). The second proposes ‘a land use pattern which provides a suitable setting for the Cedar Grove Historic District’ (p.72).

The Master Plan recommends the Rural Cluster Zone for properties—including this one—in this part of the analysis area to promote agricultural activities as well as low-density residential neighborhoods that would echo the existing development pattern. This density and development pattern also protect the historic district by creating an appropriate rural setting next to it.

This Application meets the objectives of the Master Plan. Religious Assembly is a permitted use in the Rural Cluster Zone, which implies that the use is in keeping with the intent of the zone and, in this case, with Master Plan objectives. The approved temple and accessory structures are located on the eastern end of the Property and are approximately 1,500 feet from Ridge Road to retain undeveloped open space at the entrance that is located near the Cedar Grove Historic District to maintain the rural character in this area. The Applicant has also proposed landscaping along the driveway that may be visible from properties within the Cedar Grove Historic District that consists of residential development and a religious institution to ameliorate the impact of any such design on the historic district.

Further, the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (p.158) identifies a regional greenway through the Property that will connect to the Damascus Recreational Park to the north with the Ovid Hazen Wells Park to the south. In addition, the *2016 Countywide Park Trails Plan* (Trails Plan) identifies an approved hard surface (paved) trail alignment with this greenway,

in part passing through this Property. The Trails Plan also identifies this '*Ovid Hazen Wells Recreational Park-Damascus Recreational Park Link*' as a priority hard surface trail connection that would serve as a major regional connection in the Northern Region (p.56).

The Applicant is conveying approximately seven (7) acres, to M-NCPPC in order to implement the Trails Plan recommendations. The conveyance of land will allow the Parks Department enough space to facilitate the design, construction and future long-term maintenance of the approved hard surface trail within the dedicated area. Therefore, the approved Application is consistent with the Trails Plan.

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

Master-Planned Roadway and Bikeways

The Property is located along Ridge Road, identified by the Master Plan of Highways and Transitways as a two-lane arterial with an 80-foot right-of-way which was previously dedicated; therefore, no additional dedication is required. The 2018 *Bicycle Master Plan* recommends a Tier 4 priority shared-use sidepath along the west side of MD 27 opposite the Subject Property; there are no master-planned improvements along the frontage of the Subject Property and no improvements are required.

Pedestrian and Bicycle Facilities

As mentioned, a Tier 4 priority shared-use sidepath is recommended along the west side of MD 27 opposite the Subject Property; there are no master-planned improvements along the frontage of the Subject Property and no improvements are required. The Applicant is exempt from frontage improvements along MD 27 under Ch 49.27.a of the County Code due to it being owned and operated by SHA.

Montgomery Parks has requested that the Applicant convey approximately seven (7) acres in the northwest portion of the Subject Property to M-NCPPC. The conveyance is intended to facilitate design, construction and future long-term maintenance of an approved hard surface trail connection between Ovid Hazen Wells Park and other park facilities to the east such as the Damascus Recreational Park and Upper and Lower Magruder Branch Parks.

Local Area Transportation Review (LATR)

The Application is exempt from additional LATR review as it does not generate 50 or more person trips in the peak AM or PM periods. As detailed in the transportation statement, a conservative approach was taken in determining trip generation, with the Hindu temple being analyzed under the ITE code for a

church (ITE does not produce data for Hindu temples) and the retreat center analyzed as a hotel, with both receiving a 50 percent reduction credit. This reduction was agreed upon in light of similar studies of Hindu temples which showed either minimal or no peak-hour trip generation due to the unscheduled nature of Hindu worship, which contrasts with scheduled hours for worship for other churches. In a 2016 study of the nearby Jagadguru Sri Shivarathreshwara's Spiritual Mission in Gaithersburg, trip generation was reported at 10 person trips over the course of a typical day for a comparably sized temple. It is noted that over major holidays, particularly New Years in the fall and the Holi Festival of Colors in the spring, attendance may increase to about 200 persons over the course of a day. As these events only occur on a limited number of days and do not contribute to regular transportation patterns, these events do not warrant additional study. The retreat center, which may accommodate overnight stays, is analyzed under the hotel use code. However, due to the retreat center's religious purpose, guests are not expected to leave the premises during their stay, contributing to a significant reduction in trips as compared to a true hotel use. The approved daycare center on the other hand was analyzed without reduction.

Circulation and Connectivity

The site is accessed via a driveway that is approximately 1,500 feet in length and fire accessible. Parking is located around the perimeter of the main complex with allowance for two-way circulation. A parallel parking bay with two-way circulation is approved to the east and adjacent to the main parking and will serve the approved daycare facility. To the northeast corner, a circular parking facility will serve the retreat center. An internal network of sidewalks will connect all buildings and parking facilities. The circulation pattern, as approved, is safe and adequate for the use. As conditioned, the approved use is consistent with the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*, the *Master Plan of Highways and Transitways*, and the approved 2018 *Bicycle Master Plan*.

School Capacity

Due to the approved non-residential use, the Preliminary Plan is not subject to the Annual School Test.

Sewer and Water Facilities

The approved application will provide adequate sewer facilities. On June 23, 2015 the County Council approved WSCCR 14-GWC-02A for a water and sewer category change by Council Resolution 18-217. The approved development plan under the initial application included a place of worship with 500 seats, a private school with 500 students and a child development center for 150 children located

at the eastern end of the site. The sewer water and category change from W-6 and S-6 to W-1 and S-3 was approved with several conditions listed below.

- 1) Both W-1 and S-3 are restricted to a private institutional facility (PIF) use only;
- 2) DEP will review sewer main extension plans with WSSC to ensure that PIF policy requirements with regard to main extensions are maintained by this project;
- 3) a maximum impervious surface level of 20 percent;
- 4) the location of all buildings at the east end of the site; and
- 5) an unstructured open space towards Ridge Road to buffer properties in the Cedar Grove Historic District. The church will dedicate a portion of the Property to M-NCPPC in the northwest corner of the site for a trail connection between Ovid-Hazen Wells Park and other park facilities to the east.

The Application addresses the conditions adopted under Council Resolution No. 18-217 listed above. The Application consists of a private institution for a religious assembly, the Applicant received an approval letter from the Department of Environmental Protection (DEP) and the Washington Suburban Sanitary Commission (WSSC), the impervious surface level approved is 14.8 percent, all buildings are located at the east end of the site and an unstructured open space is provided towards Ridge Road. Conveyance of +/-7 acres will also be provided as part of the Application for the future trail connection. Therefore, the approved Application meets the conditions outlined in the Montgomery Council Resolution 18-217.

In order to achieve compliance with the County Council's conditions as they were written, the Planning Board and the Department of Environmental Protection in conjunction with the WSSC reviewed the Application. MCDEP issued a letter, dated January 10, 2020 and Washington Suburban Sanitary Commission issued a letter dated, January 13, 2020, 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 under WSCCR14-GWC-02A in County Council Resolution 18-217. The Department of Environmental Protection and WSSC have also agreed on a sewer extension alignment that is adequate for this Project and satisfies the requirements of the private institutional facility (PIF) policy. Public sewer service will require a main extension from the Subject Property to WSSC's gravity sewerage system. A

planned low-pressure main extension, crossing and largely contained on the intervening northern property, will tie into an existing gravity sewer main near the intersection of Kings Valley Road and Preakness Drive. The Applicant has received permission from the northern property owner to install the sewer connection for adequate sewer facilities for the Subject Property. The extension will belong to the user, not WSSC. The planned extension, as a dedicated low-pressure sewer, will not allow for sewer service to any other intervening or abutting property, as required by the PIF policy. DEP will monitor the extension design process to ensure continued conformance with the PIF policy.

The Application also provides adequate water facilities. Public water is directly available to the Property from an existing water main along Ridge Road; no offsite main extensions are needed. Other public facilities and services are available and will be adequate to serve the religious assembly and associated accessory uses.

Other Public Facilities and Services

The Preliminary Plan has also been reviewed by the Fire Department Access and Water Supply Section that has 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.

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

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”), Plan No. 420191840, for the Subject Property was approved on May 23, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The majority of the Subject Property is located within the Little Seneca Creek watershed, a Use IV-P stream. However, there are two small areas, one in the northeast corner and the other in the southeast corner of the Subject Property that are located in the Upper Great Seneca, Wildcat Branch watershed, a Use III-P stream. The Subject Property is 33.82 acres in size, contains 2.55 acres of forest, 3.53 acres of stream buffer, one stream, 0.57 acres of wetland, 1.81 acres of forested floodplain and twenty-seven (27) trees that are 30” diameter breast height (“DBH”) or greater in size.

Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the County code. As required by Chapter 22A, an FCP was submitted with the Application. The total net tract area for forest conservation purposes is 35.57 acres which includes the Subject Property of 33.82 acres, plus offsite work of 1.75 acres for the installation of a sewer line. The property is zoned RC and the approved development is classified as Institutional Development Area (IDA) as specified in Chapter 22A-3 of the County code. The Subject Property contains 2.59 acres of forest. The Applicant proposes to remove 0.58 acres of forest and retain 2.01 acres of forest. This results in a total reforestation requirement of 3.91 acres, all of which will be met onsite. Within the overall total of forest saved and forest planted, 1.64 acres of forest saved, and 3.59 acres of reforestation are located within a 7.0-acre area that will eventually be conveyed to the M-NCPPC Parks Department. However, this conveyance may not happen for several years. Until this conveyance occurs this area of forest saved, and forest planted will be protected by a Category I Conservation Easement. The remaining 0.37 acres of forest saved, and 0.32 acres of forest planted located in close proximity to the approved temple complex will also be protected by a Category I Conservation Easement.

Forest Conservation Variance

As required under Section 22A-12(b)(3) of the County code a variance must be approved by the Planning Board if trees 30" DBH or greater are impacted. The Applicant proposes to impact two trees and remove one tree that are 30" DBH or greater (Table 2). These trees are being impacted or removed for the construction of the main building and the installation of the SWM outfall. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a variance to be granted. The Planning Board has made the following determinations in the review of the variance request and the approved FCP.

Table 2 – Impacted/Removed Specimen Trees

Tree No.	Common Name	Scientific Name	DBH	% Impact	Notes
20	Tulip Poplar	<i>Liriodendron tulipifera</i>	45.0"	4%	Impacts only, Save tree
21	Red Maple	<i>Acer rubrum</i>	32.0"	21%	Impacts only, Save tree
44	Black Cherry	<i>Prunus serotina</i>	35.0"	100%	Remove tree

The Applicant has demonstrated that the denial of the variance request would cause an unwarranted hardship. The Applicant proposes to construct a temple, associated parking area with vehicle circulation, a ceremonial pool, a daycare facility, a retreat center and four small cottages for attending priests. The approved buildings and structures are grouped together as tightly as possible and located toward the rear of the lot to take advantage of the sloping topography, limit visual impacts on the Cedar Grove Historic District, and to address the conditions of the water and sewer category change. The lot shape, steep slopes, a stream buffer and an existing AT&T easement all contribute to limiting the buildable area on the Subject Property.

The impacts to Trees 20 and 21 are the result of the approved storm drain outfall. Stormwater management ("SWM") practices require the outfall of site stormwater drainage be directed to any existing streams in an attempt to maintain, as much as possible, the existing hydrology of those streams. The chosen alignment of the approved outfall sought to meet this requirement while avoiding wetlands, impacting the least amount of stream buffer, and impacting the least number of forest and specimen trees. Although impacts to Trees 20 and 21 were minimalized, those impacts could not be eliminated entirely and require a tree variance review.

Tree 44 is located toward the rear of the Subject Property. This Property is located adjacent to the Cedar Grove Historic District and the Master Plan recommends preserving open space along MD 27 and locating development towards the rear of the Property. Satisfying this requirement and not encroaching into the existing AT&T easement meant moving the development envelope of the approved buildings to a point where Tree 44 is within the active construction area of the temple. The impacts to Tree 44 cannot be reduced and removal is the only viable option.

Addressing the SWM design practices, agency requirements to move the approved development as far back from MD 27 as possible and respecting the existing AT&T easement have placed the Applicant in the position of unavoidably impacting these three specimen trees. Based on these conditions, the Planning Board concurs that the Applicant has a sufficient unwarranted hardship to justify a variance request.

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.* Granting the variance to impact Trees 20 and 21 and remove Tree 44 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the Application. Trees 20 and 21 are located in close proximity to the location of the approved SWM outfall. Tree 44 is located within the active construction area for the temple and would be difficult to save. Therefore, 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions of the Subject Property and the requirements to meet development standards and Master Plan recommendations to preserve the rural setting of the Cedar Grove Historic District by placing adjacent development as far as possible from the historic district.
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming on a neighboring property.* The requested variance is a result of the existing conditions of the Subject Property and the required improvements, and not as 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. The one specimen tree being removed is not located within a stream buffer, wetland, or a special protection area. Also, as a result of County Council Resolution 18-217 dated July 21, 2015 granting a water and sewer change, an impervious surface limitation was placed on this Subject Property of 20 percent. The Applicant proposes to address this requirement by clustering the design and keeping the impervious surface to 14.8 percent as shown on the most recently submitted Impervious Surface Exhibit Plan.

Mitigation for Trees Subject to the Variance Provision

There is one standalone tree approved for removal in this variance request resulting in a total of 35.0 inches of DBH being removed. As a standalone tree, its removal is not accounted for in the forest conservation worksheet, therefore, the Planning Board recommends that its loss be mitigated consistent with Board

practice. The FCP includes mitigation at a rate that approximates the form and function of the trees removed. This tree will be replaced 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, resulting in a mitigation requirement of 8.75 caliper inches of planted, native canopy trees. The FCP includes the planting of three 3-inch caliper native canopy trees on the Property as mitigation for the removal of this one variance tree. Although these trees will not be as large as the tree removed, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of this tree. No mitigation is required for trees that are impacted but retained.

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 the Montgomery County Department of Environmental Protection. The request was forwarded to the County Arborist on December 5, 2019. To date, the Planning Board has not received any comments from the County Arborist.

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

The approved Application includes environmental site design (ESD) measures including one bio-swale, 19 micro-bioretenion and one planter box micro-bioretenion to meet all stormwater management requirements of Chapter 19. The stormwater concept plan has been approved by the Department of Permitting Services Water Resources Section. The Subject Property is not located in a Special Protection Area and therefore does not require a water quality plan.

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

The Subject Property abuts the Upper Seneca Baptist Church to the southwest and the accompanying cemetery site is included in the Montgomery County Burial Sites Inventory. Burial dates in the cemetery range from 1843 to the present. The oldest graves are in the portion of the cemetery away from the boundary separating the cemetery from the Application area. Graves closest to the Property are recent (late 20th century or later) and there is no visible evidence of graves outside of the abutting church Property. Because there is no

evidence of a cemetery on the Subject Property, the project appears unlikely to have any effect on the neighboring Upper Seneca Baptist Church Cemetery; no archaeological investigations or adjustments are needed at this time consistent with the County Burial Sites Inventory and associated guidelines.

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

There are no other applicable provisions specific to the Property and necessary for approval of the subdivision is satisfied.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 04 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 Vice Chair Fani-González seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson and Verma voting in favor at its regular meeting held on Thursday, February 27, 2020, in Silver Spring, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board

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