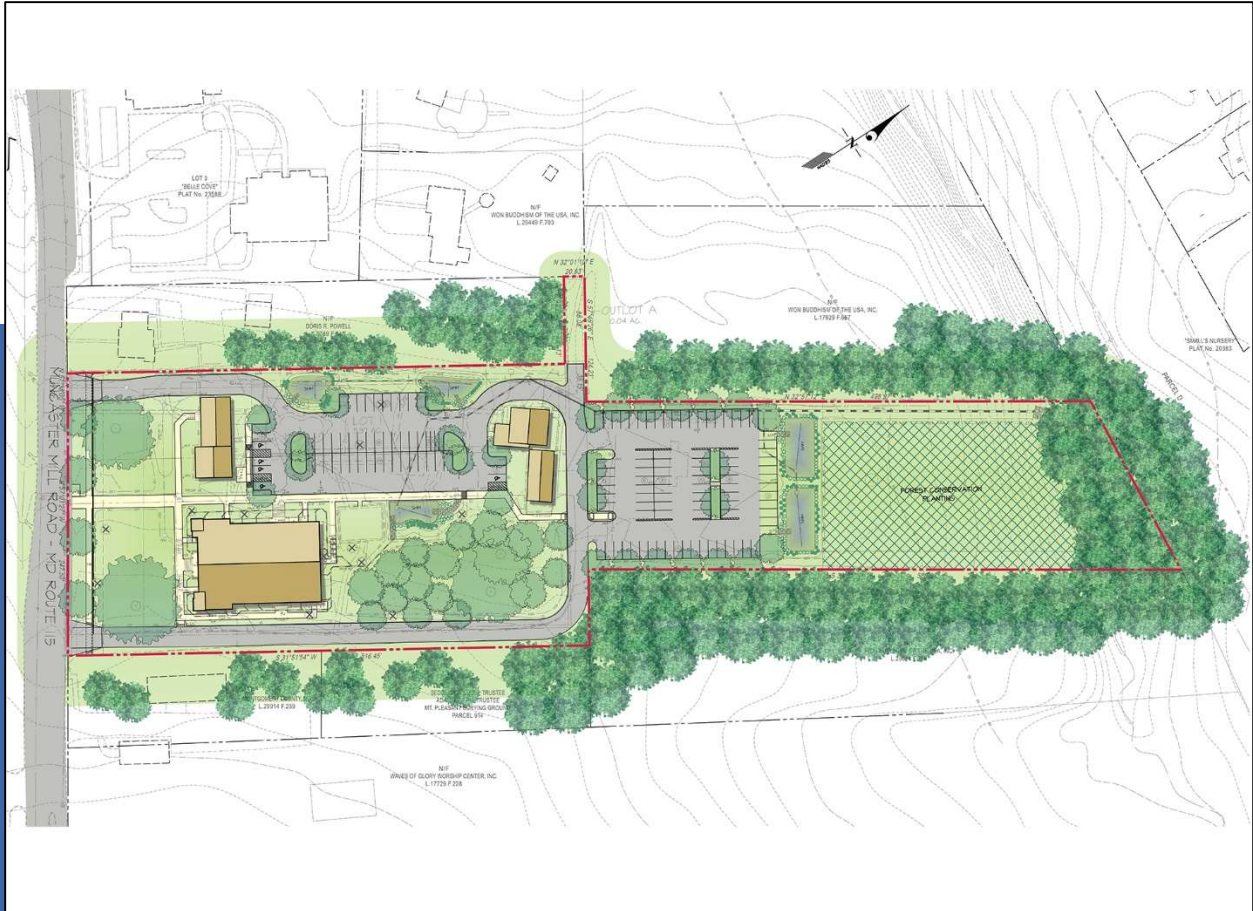


HBKY METMIQ ETHIOPIAN ORTHODOX TEWAHEDO CHURCH PRELIMINARY PLAN NO. 120230080 AND PRELIMINARY/FINAL FOREST CONSERVATION PLAN NO. F20230140



Request to consolidate four parcels and a driveway parcel into one lot for one religious assembly use, with up to 450 seats, and one existing parsonage.

No. 120230080

Completed: 11-17-2023

MCPB

Item No. 7

11-30-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

Planning Staff

<i>JS</i>	Jeffrey Server, Planner III, Upcounty Planning, jeffrey.server@montgomeryplanning.org , 301-495-4513
<i>SP</i>	Sandra Pereira, Supervisor, Upcounty Planning, sandra.pereira@montgomeryplanning.org , 301-495-2186
<i>PB</i>	Patrick Butler, Chief, Upcounty Planning, patrick.butler@montgomeryplanning.org , 301-495-4561

LOCATION/ADDRESS

4115 Muncaster Mill Road, Rockville

MASTER PLAN

2005 *Olney Master Plan*

ZONE

RE-1 Zone

PROPERTY SIZE

5.41 acres

APPLICANT

HBKY Metmiq Ethiopian Orthodox
Tewahedo Church

ACCEPTANCE DATE

March 22, 2023

REVIEW BASIS

Chapters 50, 59, and 22A

Summary:

- Staff recommends **approval with conditions** of Preliminary Plan No. 120230080 and Preliminary/Final Forest Conservation Plan F20230140.
- The Application proposes to consolidate parcels into one lot to construct a new church building with 450 seats and parking, one existing parsonage, and removal of an existing garage.
- The Application substantially conforms to the 2005 *Olney Master Plan*.
- As conditioned, the Applicant will construct a five-foot-wide bikeable shoulder and a six-foot-wide sidewalk along the property frontage of Muncaster Mill Road.
- The Application satisfies the requirements of Chapter 22A, Forest Conservation Law and will provide an easement over 0.79 acres and afforestation within the existing stream buffer.
- No community correspondence has been received as of the date of this Staff Report.

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SECTION 1: RECOMMENDATIONS & CONDITIONS

PRELIMINARY PLAN 120230080

Staff recommends approval with conditions of the Preliminary Plan to consolidate four parcels and a driveway parcel into one lot for one religious assembly use, with up to 450 seats, and one existing parsonage. All site development elements shown on the latest electronic version of the Preliminary Plan No. 120230080 as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions.

GENERAL APPROVAL

1. This Preliminary Plan is limited to one (1) lot for one (1) religious assembly use, with up to 450 seats, and one (1) existing parsonage.

ADEQUATE PUBLIC FACILITIES

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 Montgomery County Code 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 before the expiration date 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 filed.

OUTSIDE AGENCIES

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated June 12, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. 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 September 26, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

7. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated August 8, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

OTHER APPROVALS

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.
9. Prior to recordation of the plat, the Applicant must demolish the existing attached garage on proposed Lot 1 to meet the RE-1 zone side setback.

TRANSPORTATION

Frontage Improvements on Existing Roads

10. 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 forty (40) feet from the existing pavement centerline along the Subject Property frontage for Muncaster Mill Road.
11. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a five-foot-wide bikeable shoulder and a six-foot-wide sidewalk with a six-foot-wide street buffer along the Property frontage of Muncaster Mill Road.

RECORD PLATS

12. There shall be no clearing or grading of the site before recordation of plat.
13. The record plat must show necessary easements.
14. The record plat must reflect common ingress/egress and utility easements over all shared driveways to accommodate access and utilities to properties immediately adjacent to the north.

CERTIFIED PRELIMINARY PLAN

15. The certified Preliminary Plan must contain the following notes:
 - a) *Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

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.*

16. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:

- a) Show resolutions and approval letters on the certified set.
- a) Include the approved Fire and Rescue Access Plan.
- b) Include dedication area to the Site Data table on the certified set.
- c) Include a Landscaping and Lighting Plan, approved by Staff, and consistent with Section 59.6.5.3 for Screening for Parking Lots.

PRELIMINARY/FINAL FOREST CONSERVATION PLAN F20230140

Staff recommends approval with conditions of Preliminary/Final Forest Conservation Plan No. F20230140 (“FFCP”) to consolidate four parcels and a driveway parcel into one lot for one religious use, with up to 450 seats, and one existing parsonage. All site development elements shown on the latest electronic version of the Preliminary/Final Forest Conservation Plan No. F20230140, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:

- 1. 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.
- 2. 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 Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
- 3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- 4. The Applicant must install the 0.79 acres of Afforestation/Reforestation plantings as shown on the approved FFCP, in the first planting season following the required soil profile rebuilding and stabilization of the applicable disturbed area.
- 5. 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 on the Subject Property as shown on the approved FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 25.6 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.

6. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:
 - a. Record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
 - b. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and soil profile rebuilding credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - d. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.79 acres of new forest planting, soil profile rebuild, variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.

SECTION 2: COMMUNITY OUTREACH

The Applicant has complied with all application submittal, noticing, and sign posting requirements under Division 7.5 of the Zoning Ordinance. The required hearing notice sign was adequately posted at the Subject Property. Written notice of the Application was mailed by the Applicant to all required parties.

A pre-submittal community meeting was held at HBKY Ethiopian Orthodox Church on January 10, 2023, at 7:00 p.m. There were 13 attendees from the community, along with two people from the Applicant team. There were questions asked about the existing driveway, the number of traffic access points to be provided, parking capacity for the Subject Property, whether traffic signaling or significant road improvements were planned, the length of construction time, whether outdoor services and noise would be reduced after construction, and whether the Church planned future expansions following this Application. No significant concerns were raised. The Applicant’s summary notes of the meeting can be reviewed in Attachment I.

As of the published date of this Staff Report, no other community comments or correspondence has been received regarding the Application.

SECTION 3: VICINITY & PROPERTY DESCRIPTION

VICINITY

The surrounding properties are predominantly residential in character on a mix of large estate and smaller lots, all primarily within the RE-1 and R-200 Zones. The surrounding properties vary in size and contain single-family detached residential houses and churches. The Subject Property abuts residential properties to the north, east, and west which are zoned RE-1. To the south, across Muncaster Mill Road are residential properties, which are a mix of RE-1 and R-200 zoned properties with a TDR-2.0 receiving area located beyond. Further to the east are RT-100 and CRT-0.75 zoned properties, while east of the Subject Property is Norbeck-Muncaster Mill Neighborhood Park.



Figure 1 - Zoning Map



Figure 2 – Aerial View of the Subject Property

PROPERTY DESCRIPTION

Parcel 867, Parcel 868, Parcel 915, Parcel 805, and a Private Right-of-Way (ROW) Parcel compose the Subject Property, resulting in a cumulative total of 5.41 acres (Figure 3). The Subject Property, as depicted in Figures 1 and 2 above, is currently developed and includes an existing parsonage, church, and park pavilion, which are used for religious assembly purposes. The Property fronts onto Muncaster Mill Road (MD Route 115). The Subject Property slopes gently from Muncaster Mill Road down to the stream at the rear of the Property. The stream has an associated stream valley buffer which comprises approximately 0.76 acres at the rear of the Property of which 0.36 acres are forested. There is a wetland along with some segments of steep slopes close to the stream channel within the stream buffer. There are no other sensitive environmental features located on the Property. No known rare, threatened, or endangered species or habitats exist on the Subject Property. There are no designated historic sites on the Property, however there is an existing cemetery adjacent to the Subject Property along the southeast property line. Along the southeast property line are existing parklands with the Norbeck-Muncaster Recreation Center and Neighborhood Park (Figure 2).

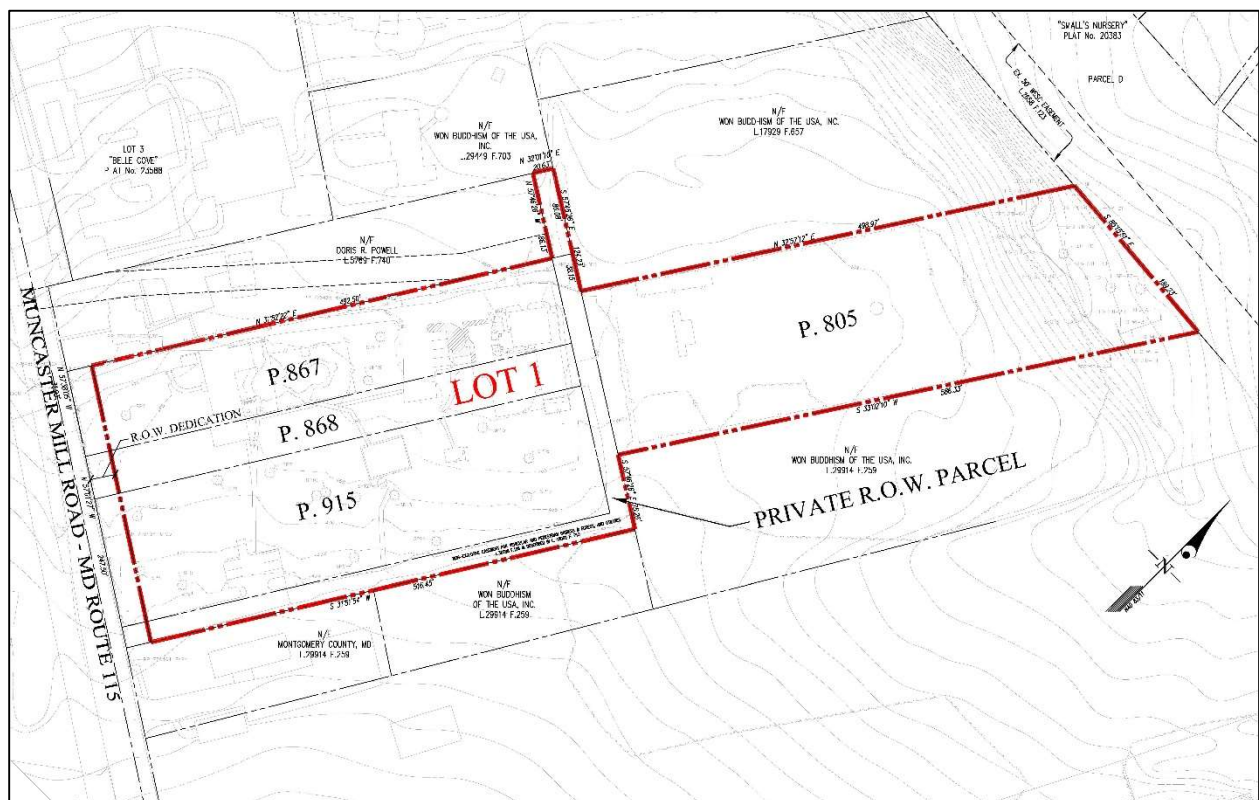


Figure 3 - Lotting Plan

SECTION 4: PROPOSAL

PROPOSAL

Preliminary Plan No. 120230080

Preliminary Plan No. 120230080 was accepted on March 22, 2023, and the Applicant proposes to consolidate four parcels and a driveway parcel into one lot for the construction of a primary church building (up to 450 seats) and surface parking (142 spaces), while retaining an existing parsonage and church (“Application”). As discussed above in Section 3, the Subject Property includes an existing parsonage, church, and park pavilion. The park pavilion is a freestanding, non-enclosed space that will remain in use without any improvements. The existing church is to remain in its current state, without any improvements. The existing parsonage is to remain its current state, however the existing garage attached to the parsonage will be removed to meet the side setbacks for the RE-1 zone. As part of the Application, parking will be located behind the existing house and at the rear of the Subject Property, next to the Forest Conservation easement. An access easement will be provided to accommodate access to the lots to the north.

Preliminary/Final Forest Conservation Plan No. F20230140

The Preliminary/Final Forest Conservation Plan No. F20230420 (“FFCP”) shows 0.29 acres of forest, a stream with an associated stream buffer along the northeast portion of the 5.41-acre property. The Subject Property has a reforestation requirement of 0.79 acres. The Applicant will satisfy this requirement by providing 0.79 acres of reforestation plantings within and adjacent to the unforested stream valley buffer on the Subject Property. Please see the analysis in Section 6 for an expanded explanation of the FFCP.



Figure 4 – Preliminary Plan Layout

SECTION 5: ANALYSIS & FINDINGS, PRELIMINARY PLAN 120230080, 50.4.2.D

The Preliminary Plan consolidates four parcels and a driveway parcel into one lot for the construction of a primary church building and surface parking, while retaining an existing parsonage and church. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations.

- 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 is appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type (religious assembly) and use contemplated for the Subject Property. The Application will subdivide Parcel 867 (0.97 acres), Parcel 868 (0.49 acres), Parcel 915 (1.47 acres), Parcel 805 (2.07 acres), and the Right-of-Way Parcel (0.41 acres), with a combined total of 5.41 acres, to create Lot 1 (5.25 acres) and dedicate 0.16 acres along Muncaster Mill Road.

The lot was reviewed for compliance with the dimensional requirements for the RE-1 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, and

can accommodate the religious assembly use, which can reasonably meet the width and setback requirements in that zone. A summary of this review is included in Table 1. The Application is proposed under the standard method in accordance with Section 59.4.4.6.B of the Zoning Ordinance. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

Table 1 – HBKY Metmiq Ethiopian Orthodox Tewahedo Church Preliminary Plan Data Table for RE-1 Zone, Standard Method, Section 59.4.4.6.B

RE-1 Zone	Allowed / Required (Religious Assembly)	Proposed for Approval (Religious Assembly)
Density	1.09 units/acre	Religious Assembly with up to 450 seats and 1 Parsonage
Minimum Lot Size	40,000 sq. ft.	228,690 sq. ft. (5.25 acres)
Front Setbacks	50 ft. min.	50 ft. min.
Side Setbacks	17 ft. min. / 35 ft. min.	17 ft. min. / 35 ft. min. ¹
Rear Setbacks	35 ft. min.	35 ft. min.
Minimum Lot Width at Front Building Line	125 ft.	125 ft. min.
Minimum Lot Width at Front Lot Line	25 ft.	25 ft. min.
Maximum Lot Coverage	15%	15% or less
Maximum Building Height	50 ft.	50 ft. or less
Off-street Parking	1 space / 4 seats (450 seats) 2 spaces per parsonage = 115 spaces	142 spaces
Site Plan Required	No	No

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

a) Land Use

The Property is within the “Southern Olney” plan neighborhood of the 2005 *Olney Master Plan* (“Master Plan”). The Master Plan does not have any specific recommendations for the Subject Property, and there are only general recommendations for this part of the Southern Olney plan neighborhood, mostly related to maintaining or enhancing environmental protections. The Preliminary Plan proposes a new church building and parking lot on a property with several smaller buildings already used for church purposes, which will be retained. The proposed use aligns with the Master Plan’s goal of retaining the land use pattern of Olney as a satellite community. This goal

¹ As conditioned, part of the existing parsonage will be demolished before record plat to meet the minimum side setback.

discourages new commercial developments outside the town center, but a church is not a commercial use and a church can be an important part of a robust residential area.

b) Environment

The Subject Property is within the Upper Rock Creek watershed. The Master Plan only has general recommendations for properties in this area, such as encouraging reforestation and protecting wetlands. The Plan recommends new developments use “environmentally sensitive development techniques” such as minimizing impervious surfaces and the use of bioretention areas. There is a stream and a forested area at the rear of the Property that the Application protects with a forest conservation easement and stormwater will be managed by five landscaped bioretention areas (see the forest conservation plan section for more details).

c) Transportation

The Master Plan recommends an expanded sidewalk and bicycle network to help reduce air pollution. The Master Plan recommends bikeable shoulders along Muncaster Mill Road and the 2018 *Bicycle Master Plan* confirms this recommendation. The Application proposes a new sidewalk along Muncaster Mill Road, which is in keeping with the Master Plan recommendation to improve the sidewalk network. Five-foot bikeable shoulders are also proposed per Master Plan recommendations. The Master Plan recommends Muncaster Mill Road as an 80-foot arterial, now called an Area Connector per the 2021 *Complete Streets Design Guide*. The Applicant intends to dedicate the required property frontage for the right-of-way. See public facilities review in the next section for details.

The Application supports the Master Plan goal of retaining the land use pattern of Olney as a satellite community and Southern Olney primarily as a residential area. It provides appropriate environmental protections and required transportation improvements. The Application substantially conforms with the recommendations of the Master Plan.

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

a) Roads and other Transportation Facilities

- iii. **Existing Facilities** Muncaster Mill Road is a two-lane Area Connector with a master planned right of way of 80 feet. The 52 Ride-On bus operates along the road, with an existing stop at the southeast corner of the Property. There are no existing bicycle or pedestrian facilities on the road.
- iv. **Proposed public transportation infrastructure** The Application proposes constructing a five-foot-wide bikeable shoulder and a six-foot-wide sidewalk with a six-foot-wide street buffer along the frontage on Muncaster Mill Road.
- v. **Proposed private transportation infrastructure** The subject Property will be accessed by a private driveway running along the eastern edge of the Property boundary. The

driveway makes a 90 degree turn midway through the middle of the property where it then runs to the west. An access easement is provided to accommodate access to existing properties to the north of the Subject Property along this driveway.

b) Local Area Transportation Review (LATR)

For Applications with Transportation Exemption Statements:

The Subject Property is currently used by an existing 2,600 square foot church. This use will be expanded to 22,600 square feet of religious assembly use, which is estimated to generate a net increase of 8 person trips in the morning peak hour and a net increase of 13 person trips in the evening peak hour (Attachment H). The 2020-2024 *Growth and Infrastructure Policy* requires a transportation impact study for any project that is estimated to generate a net increase of 50 or more person trips in either the morning or evening peak hours. As that is not the case for this Application, the LATR review is satisfied with a transportation exemption statement. A summary of the trip generation analysis is provided in Table 2 below.

Table 2: Trip Generation Analysis

		ITE Trip Generation Vehicle Rates		Adjusted Vehicle Rates Olney Policy Area		Total Person Trips	
		AM	PM	AM	PM	AM	PM
Existing	2,600 sf Church	1	1	1	1	1	1
Proposed	22,600 sf Church	7	11	7	11	9	14
Net Change						8	13

Source: Transportation Exemption Statement from Lenhart Traffic Consulting, Inc., January 19, 2023, modified by staff

a) Schools

The Application proposes to create a new lot for a religious assembly use, while maintaining the existing buildings on the Subject Property, consequently there is no impact on schools.

b) Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Preliminary Plan is in the W-1 and S-1 water and sewer service categories, respectively, and will utilize existing public water and sewer lines.

The Preliminary Plan Amendment was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Department Access Plan was approved on August 8, 2023 (Attachment E). The Fire Department Access Plan indicates that fire access will be provided from Muncaster Mill Road and a 20-foot-wide fire lane. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 Growth and Instructure Policy (GIP) in effect at the time that the Preliminary Plan was accepted.

4. All Forest Conservation Law, Chapter 22A requirements are satisfied.

The Preliminary/Final Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Refer to Section 6 below for the analysis and findings for the Preliminary / Final Forest Conservation Plan.

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

Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on September 26, 2023 (Attachment D). The Application will meet stormwater management goals through the use of Micro-Bioretenion facilities.

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.

There is no evidence, actual notice, or constructive notice of a burial site within the Preliminary Plan. The Subject Property is not included in the Montgomery County Cemetery Inventory. While there is a cemetery located directly adjacent to the Subject Property, the Subject Property was researched and evaluated by Staff and determined to not include any burials sites.

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

There are no other applicable provisions specific to the Preliminary Plan that are necessary for approval of this Application.

SECTION 6: ANALYSIS & FINDINGS, PRELIMINARY /FINAL FOREST CONSERVATION PLAN F20230140

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Preliminary/Final Forest Conservation Plan (“FFCP”) was reviewed under Montgomery County Code, Chapter 22A, Forest Conservation Law that was effective on February 25, 2021, because the development application was submitted and all initial plans uploaded on February 28, 2023, before the current Forest Conservation Law became effective on April 3, 2023. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of subject trees. The FFCP complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

FOREST CONSERVATION

Natural Resource Inventory/Forest Stand Delineation Plan

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420221700 for this Property was approved on March 25, 2022. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The NRI/FSD identifies the 5.00-acre Subject Property located within the Upper Rock Creek – North Branch watershed, a Use Class IV-P watershed as classified by the State of Maryland. The Subject Property contains 0.29 acres of forest, an onsite stream at the far eastern edge of the property with 0.36 acres of stream valley buffer on the Property, and wetlands associated with the stream. The Property also contains 12 specimen trees that measure 30 inches and greater of diameter breast height (“DBH”) and one (1) tree that is a potential Montgomery County Champion Tree, a Bigtooth Aspen (*Populus grandidentata*), shown as tree #5 on the NRI/FSD.

Forest Conservation Plan

The Applicant has submitted an FFCP, Plan No. F20230140 to be reviewed concurrently with the Preliminary Plan, Plan No. 120230080. The FFCP satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned RE-1 and assigned a Land Use Category of Institutional Development Area (“IDA”), as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 20% and a conservation threshold of 25% of the Net Tract Area.

The Net Tract Area for forest conservation purposes is 5.42 acres. This includes the original site of 5.00 acres plus 0.41 acres of access right-of-way brought into this Application and 0.01 acres of offsite disturbance. There is a total of 0.29 acres of existing forest on the Subject Property that will be retained which results in a reforestation requirement of 0.79 acres. The Applicant proposes to meet

the planting requirement on-site by planting forest in unforested portions of the stream buffer and areas immediately adjacent to the stream buffer. All retained and planted forest will be protected in a Category I Conservation Easement (Figure 5).

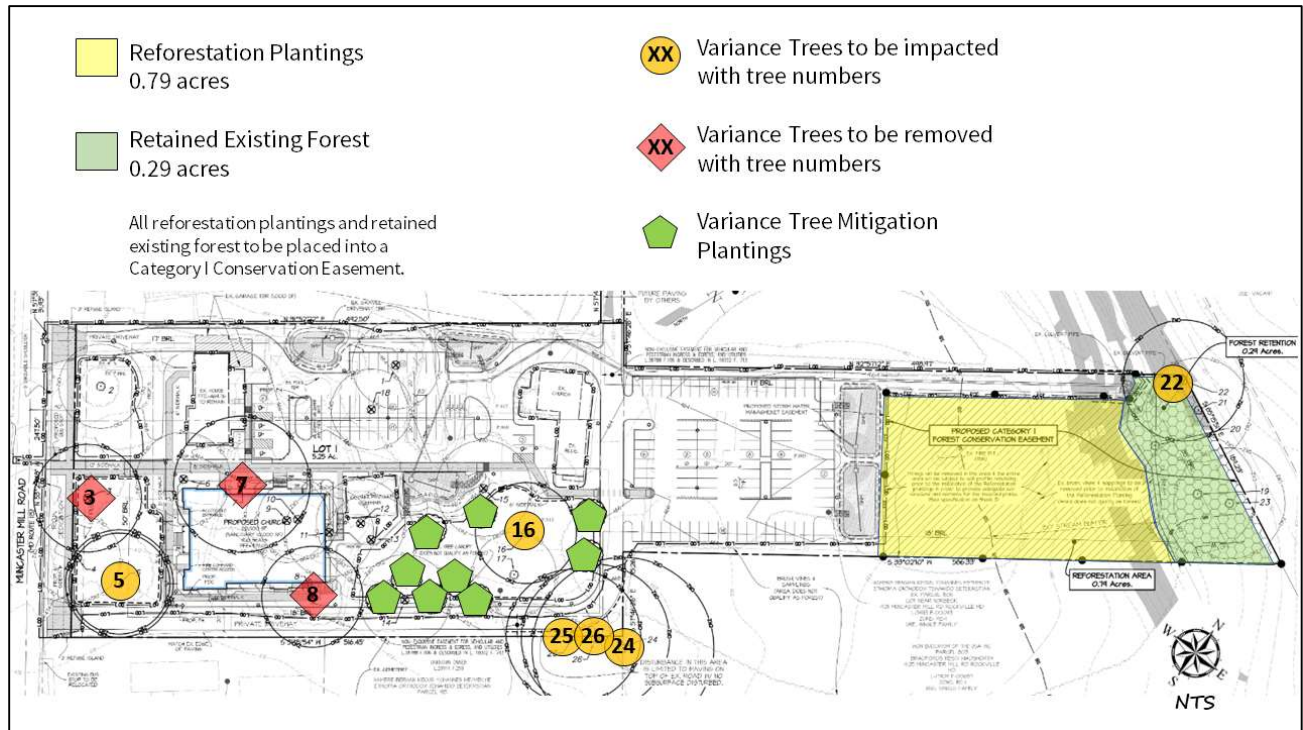


Figure 5 – Forest Conservation Plan and Tree Variance Plantings

Forest Conservation Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these trees, including removal of the subject tree or disturbance within the 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. 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. The law requires 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 a 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.

Variance Request

The Applicant submitted a variance request in a letter dated May 26, 2023 (Attachment G). The Applicant proposes to remove three (3) trees and impact six (6) trees that are 30 inches or greater

DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Tables 1 and 2).

Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted
3	<i>Acer saccharinum</i>	Silver Maple	32.0"	Fair	57%
7	<i>Ulmus americana</i>	American Elm	40.5"	Fair	100%
8	<i>Juglans nigra</i>	Black Walnut	30.0"	Fair	100%

Table 1 – Protected Trees Removed

Tree Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted
5	<i>Populus grandidentata</i>	Bigtooth Aspen	30.0" and 32.0"	Fair	32%
16	<i>Liriodendron tulipifera</i>	Tulip Poplar	30.0"	Good	5%
22	<i>Liriodendron tulipifera</i>	Tulip Poplar	36.0"	Good	3%
24	<i>Liriodendron tulipifera</i>	Tulip Poplar	54.0"	Good	17%
25	<i>Liriodendron tulipifera</i>	Tulip Poplar	40.0"	Good	38%
26	<i>Acer rubrum</i>	Red Maple	44.0"	Good	29%

Table 2 – Protected Trees Impacted

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of their property for a church and parsonage. In this case, the unwarranted hardship is caused by the necessary layout of the proposed development on the Subject Property, which is dictated by the existing site conditions, development standards of the zone, Montgomery County agency requirements, and requirements associated with Master Plan objectives. There are 3 trees requested to be removed and 6 trees requested to be impacted which are located within or adjacent to the developable area of the Property.

Trees #3, #7 and #8 are proposed to be removed. Tree #3 is located at the front of the Subject Property and adjacent to the Public Utility Easement (PUE) along the proposed right-of-way for Muncaster Mill Road. Tree #3 is bordered on two sides by proposed sidewalks and utilities within the PUE resulting in approximately 60% removal of its CRZ. Given the tree species and its current condition, this tree could become a hazard tree in the near future, and it is prudent to remove the tree now. Trees #7 and #8 are both located immediately adjacent to the proposed church building and within the active construction of the building each having 100% of their CRZs removed.

Six Protected Trees are being impacted by the limits-of-disturbance (“LOD”) for the project. These trees are having anywhere from 3% up to 32% of their CRZs impacted. Tree #5 is a twin-trunk Bigtooth Aspen (*Populus grandidentata*) tree measuring 30” and 32” DBH respectively. Although an entry drive and a sidewalk border on two sides of Tree 5 resulting in about a 32% impact to its CRZ, with the appropriate protection and care, the tree could survive the construction impacts. The other five Protected Trees are located outside of the LOD and on the periphery of the construction areas.

The inability to impact or remove these trees would potentially render portions of the site undevelopable for this project or pose threats to the health, safety, and welfare of future members of the church or pedestrians along Muncaster Mill Road. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the development of this religious institution allowed under the zone, which is a reasonable and significant use of the Property.

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, in order for a variance to be granted.

Variance Findings

The following determinations are based on the required findings for granting of the requested variance:

I. 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 three and impacts to six Protected Trees are due to the development of the Property, location of the trees within the limits-of-disturbance (“LOD”) of the Property and necessary site design requirements. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

II. 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, development standards of the zone, location of the trees on the Property and necessary design requirements of this Application.

III. *Is not based on a condition relating to land or building use, either permitted or non-comforming, on a neighboring property.*

The requested variance is a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

IV. *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 Protected Trees being removed are not located within a stream buffer, wetland or Special Protection Area. At time of the FFCP, mitigation will be proposed for the removal of trees 3, 7 and 8 by planting nine 3-inch caliper, Maryland native overstory trees on-site. These trees will replace the ecological and water quality functions that may be lost by removal of the three specimen trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

[Recommendation on the Variance Request](#)

Staff recommends approval of the variance request.

SECTION 7: CONCLUSION

The Preliminary Plan satisfies the findings of the Subdivision Regulations (Chapter 50), complies with the applicable requirements in the Zoning Ordinance, and substantially conforms to the recommendations of the 2005 *Olney Master Plan*. The Preliminary/Final Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Therefore, as conditioned, Staff recommends approval of Preliminary Plan No. 120230080 and Preliminary/Final Forest Conservation Plan No. F20230140 with the conditions as specified at the beginning of this report.

ATTACHMENTS

Attachment A: Statement of Justification

Attachment B: Preliminary Plan Composite

Attachment C: MCDOT Approval, June 12, 2023

Attachment D: MCDPS Stormwater Management Approval, September 26, 2023

Attachment E: MCDPS Fire Department Access and Water Supply Approval, August 8, 2023

Attachment F: Preliminary/Final Forest Conservation Plan Composite

Attachment G: Tree Variance Request Letter, August 15, 2023

Attachment H: LATR Exemption Statement

Attachment I: Minutes of Pre-submittal Meeting