



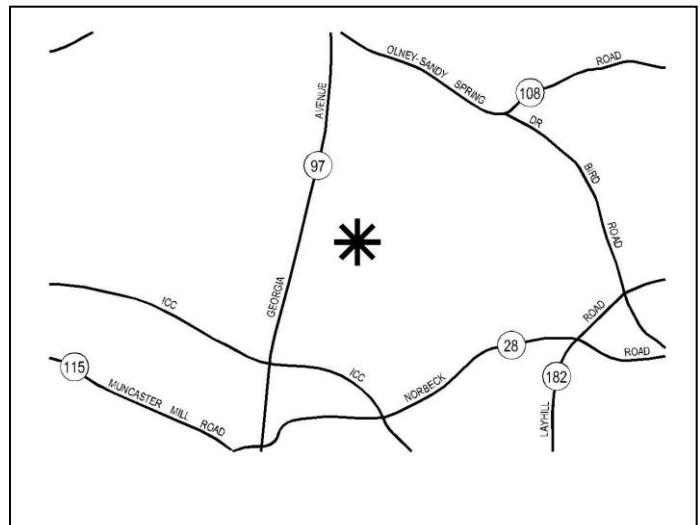
**Preliminary and Site Plans, First Baptist Church of Wheaton, 120100250 & 820100080**

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**description**

First Baptist Church of Wheaton

- A. Preliminary Plan 120100250  
Staff recommendation: Approval with conditions
  - B. Site Plan 820100080  
Staff recommendation: Approval with conditions
- 3110 Emory Church Road
  - 14.4 acres zoned RNC in the Olney Master Plan
  - Proposal to change an existing parcel into a platted lot and construct a 46,500 SF House of Worship with a maximum capacity of 788 seats and a 197-space parking lot through the optional method of development



**summary**

Staff recommends **approval of the Preliminary Plan and Site Plan with conditions**. Staff’s analysis addresses the following issues:

- Access to the project on Emory Church Road provides adequate and safe sight distance, while minimizing environmental impacts.
- The applicant has agreed to revise the parking lot layout in order to have less impervious surface and more open space available for church activities and gatherings.
- The project protects sensitive environmental resources through forest conservation easements and rural open space easements.
- Measures such as forest retention, reforestation of environmental buffers and infiltration of stormwater help to preserve the existing high water quality in the watershed and other high quality environmental resources (e.g., forest).
- As conditioned, the 0.96 acres of forest planting will mitigate for the loss of trees and will not be used by the applicant as a forest mitigation bank.
- Community opposition has focused on the water-sewer category change which was conditionally approved by the County Council with the provision that the Preliminary Plan be in substantial conformance to the Olney Master Plan. As discussed in the Findings section, the Preliminary Plan substantially conforms to the Olney Master Plan.

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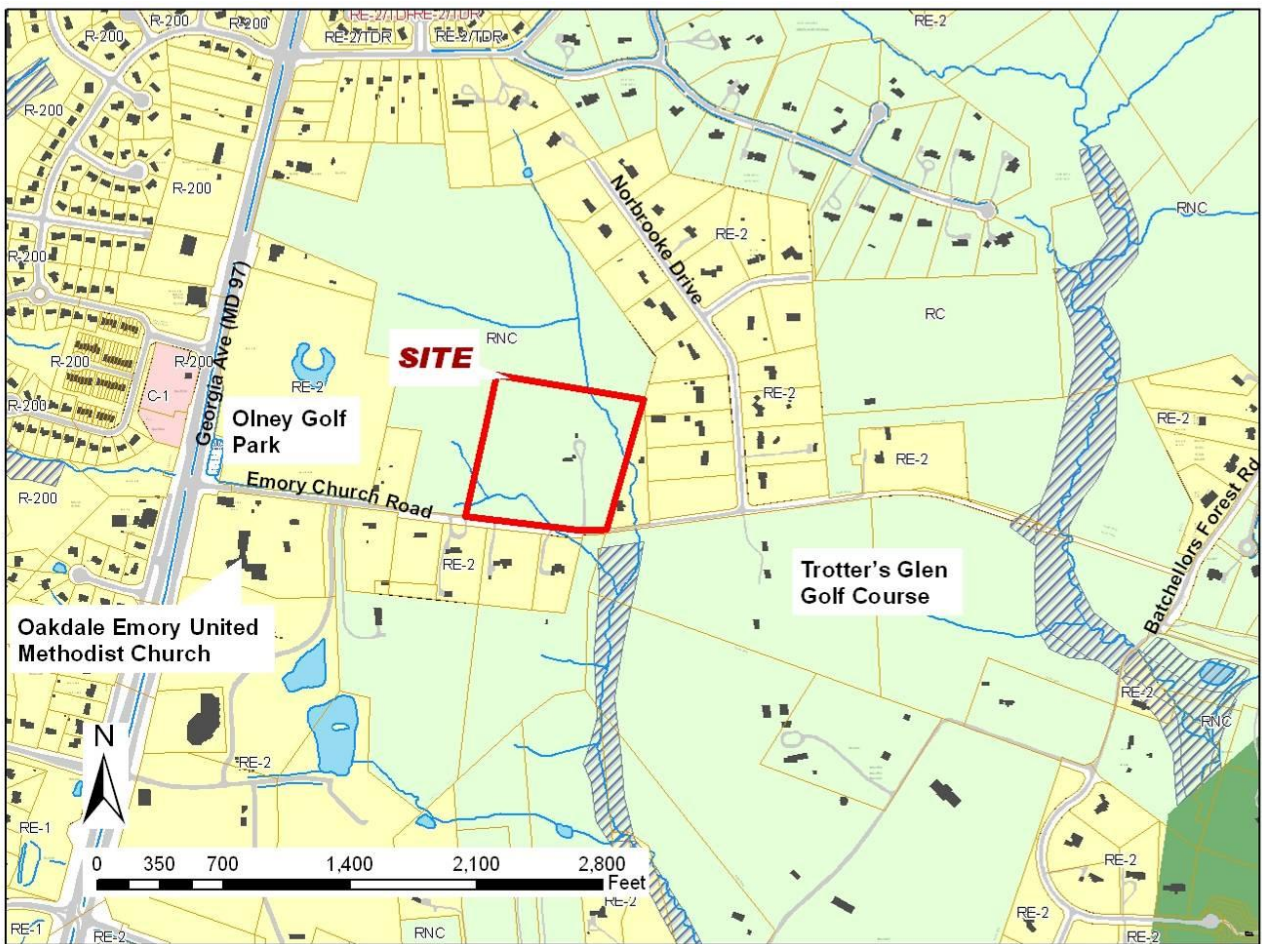
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# SECTION 1: CONTEXT AND PROPOSAL

## SITE DESCRIPTION

### Vicinity

The Property is located at 3110 Emory Church Road, approximately 1,500 feet east of Georgia Avenue, and lies within the southeast quadrant of the Olney Master Plan area. This quadrant contains the headwaters of the Northwest Branch and significant environmental resources. The property is approximately 1.5 miles south of the Olney Town Center. The property is zoned Rural Neighborhood Cluster (RNC). Adjacent properties to the north and west are zoned RNC and to the east and south (across Emory Church Road) are zoned RE-2.



Vicinity Map

The uses on Emory Church Road include one-family detached dwelling units, the Oakdale Emory United Methodist Church, the Olney Golf Park, and Trotter's Glen Golf Course. Emory Church Road is a secondary residential street with a rolling terrain, extending east from Georgia Avenue (MD 97) and terminating to the east of Norbrook Drive adjacent to the Norbrook Village residential subdivision and Trotter's Glen Golf Course. A 30-foot right-of-way for Emory Church Road, however, extends east of this point to Batchellors Forest Road. Emory Church Road currently has a varying pavement width of 14-24 feet with several large trees adjacent to the road pavement. Although not a designated rustic road, this road has a rural character.

## Site Analysis

The 14.4-acre property consists of one parcel (P77). The property contains one, one-family home centrally located on the property and a long gravel driveway accessed from Emory Church Road. The property drains to Batchellors Run, a tributary of the Northwest Branch of the Anacostia River, which is classified by the State of Maryland as Use IV waters. The property is gently sloping in a southeasterly direction from the forested high point in the northwest corner of the site. There are two streams that bisect the property; one is located in the southwest corner of the site and the other in the northeast corner. These streams flow in a southerly direction, offsite, before converging on the south side of Emory Church Road. One area of wetlands is located east of the northeastern stream. This wetland contains a seep that transitions to an intermittent stream as it flows south and into the onsite tributary. There are a few small areas of steep slopes in the eastern portion of the property, and there are no highly-erodible soils on the site.



*Aerial Photo with approximate site boundary outlined in red*

There are 8.05 acres of existing forest on the property. All of the forest is identified as high priority for retention. The forest includes tulip trees, red maples, white ash, hickory, black cherry, redbud and flowering dogwood trees. A few large trees are located in the open areas around the existing house. There are 46 specimen trees on the site. These specimen trees are located in the open areas around the house, in the tree cover areas, and within the forest area. One of the specimen trees to be retained is an American chestnut (*Castanea dentate*) whose multi-stems measure at 17, 12 and 10 inches in diameter at breast

height (DBH). This tree is located in an open area within the environmental buffer and is a potential county champion of its species. The Maryland Department of Natural Resources includes the American chestnut on its list of *Rare, Threatened and Endangered Plant Species in Maryland* (2007) as “rare” in the State of Maryland and a “watch list species.”

There are two streams, one wetland seep, and associated floodplain and environmental buffers on and adjacent to the site. The site is located in the Batchellors Forest Tributary subwatershed of the Northwest Branch watershed, which is classified as Use IV. The 2003 update of the “Countywide Stream Protection Strategy” (CSPS) (Montgomery County Department of Environmental Protection) identifies this part of Northwest Branch as a watershed protection area with good stream quality. Management strategies recommended for watershed protection areas in the CSPS and employed in the Olney Master Plan include: expanded stream valley park acquisition or dedication, increased forested buffer requirements, expanded protection for wetland recharge and hydrology, and impervious surface reduction strategies.

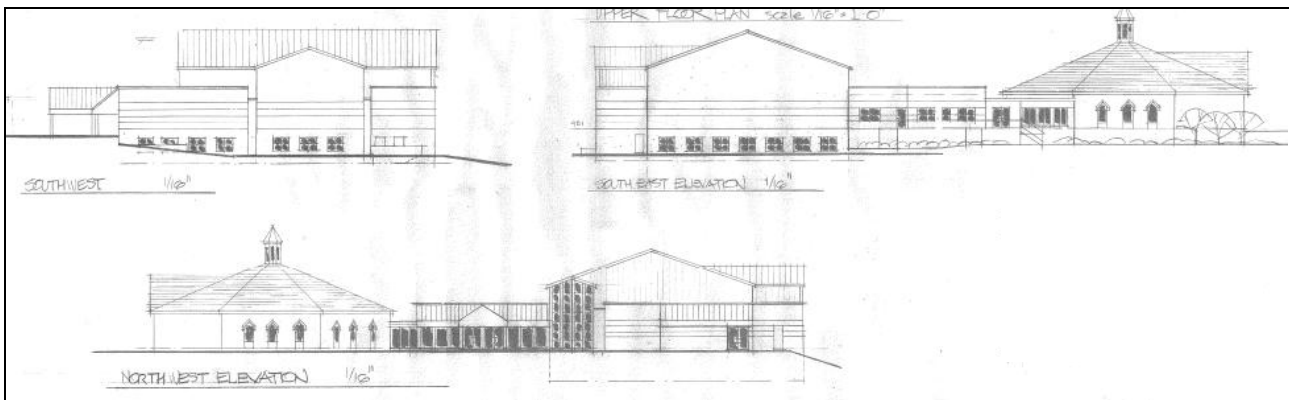
## PROJECT DESCRIPTION

### Previous Approvals

Pre-Preliminary Plan 720090050 was submitted in 2009, but this plan was reviewed for staff advice only. Staff provided advice regarding coordination with MCDOT for required improvements on Emory Church Road, stormwater management, and watershed protection. This Preliminary Plan is consistent with the advice given on the Pre-Preliminary Plan.

### Proposal

The Preliminary Plan proposes to subdivide the existing unplatted parcel into one 14.4-acre lot. A Site Plan is required in the RNC zone for optional method of development projects, and the development must be connected to a community water and sewerage system.



*Building Elevations*

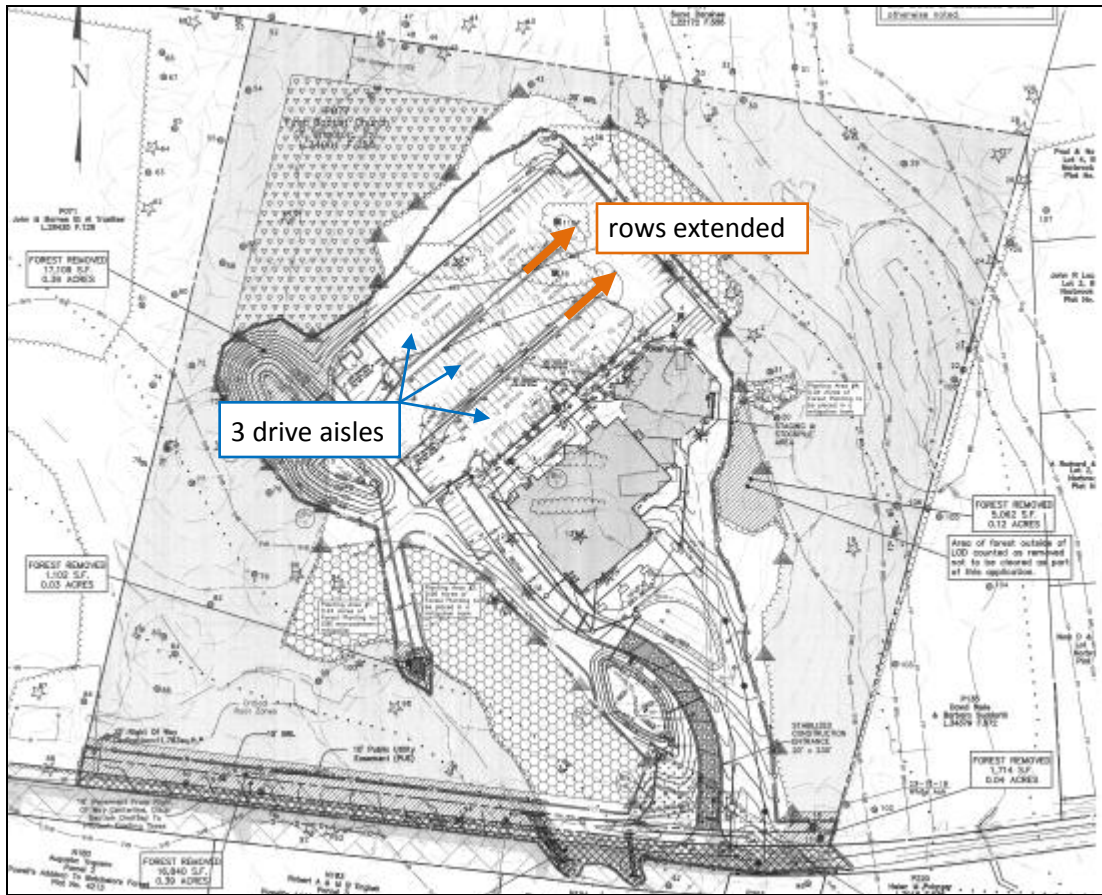
The Site Plan proposes to remove the existing house and build a 46,500 square-foot church with a maximum capacity of 788 seats. Access to the site will be from a new driveway at approximately the same location as the existing driveway on Emory Church Road. The driveway leads to the 197-space parking lot located toward the rear of the church building.

The building is set back 240 feet from the road, and the maximum building height is 35 feet (or two stories). The rural open space provided includes all areas outside the limits of disturbance and includes the environmentally-sensitive areas on the site including the two stream valley buffers. It totals 9.2 acres (402,350 SF) or 65.4 percent of the net lot area. The parking lot, access driveway, and areas around the building will be landscaped. This project will be developed in two phases, with the main building constructed in Phase I and the adjoining sanctuary (approximately 16,000 SF) constructed in Phase II.



*Illustrative Site Plan*

As conditioned and agreed by the applicant, staff recommends a revision to the parking lot layout to have three instead of four drive aisles (parallel to the building) while maintaining the same number of spaces. This is accomplished by eliminating the last row of parking spaces with its access drive aisle and extending the remaining rows to the east to capture the same number of spaces that were deleted. The resulting number of parking spaces remains the same while achieving the benefit of less impervious surface and more open space available for church activities and gatherings without the need to encroach into the existing forest. The Site Plan rendering above illustrates the submitted plan without the recommended revision to the parking lot layout. The figure below shows the revised parking lot layout with three drive aisles instead of four, submitted as part of Final Forest Conservation Plan, dated July 12, 2011.



FFCP dated July 12, 2011

## COMMUNITY OUTREACH

The applicant has met all signage, noticing, and pre-submission meeting requirements. Staff has received correspondence in opposition to this project [Appendix C]. Community members have raised the following concerns:

- 1) Sewer-water category change does not conform to the Master Plan
- 2) Approval of the sewer category change was not consistent with the Private Institutional Facility (PIF) policy
- 3) The character of Emory Church Road will be negatively impacted
- 4) The impervious area proposed will have negative environmental impacts

The Olney Master Plan shows the subject property outside of the sewer service area. Further, at page 37, the Master Plan recommends rezoning of the subject property “to the RNC zone on community water and septic with 0.2 units per acres,” and explains that “[s]ince [the subject property] cannot be served by public sewer through gravity, [it] is not recommended to be in the public sewer service envelope.” However, in a 2008 amendment to the Comprehensive Water Supply and Sewerage Systems Plan, the Council approved a sewer category change that would allow the subject property to be served by public sewer under the County’s private institutional facility (PIF) policy (see Appendix A, Resolution No. 16-500). The Council conditioned the sewer category change upon “the Planning Board’s approval of a Preliminary Plan that

conforms to the intent of the Olney Master Plan.” Opponents of this plan have argued that because the Olney Master Plan recommends that the subject property not be served by sewer a Preliminary Plan for a project that is served by sewer is not in conformance with the Master Plan. As discussed in the Preliminary Plan Findings section below, the approval of the sewer category change in the amendment to the Comprehensive Water Supply and Sewerage Systems Plan supersedes the sewer recommendation for the subject property in the Master Plan.

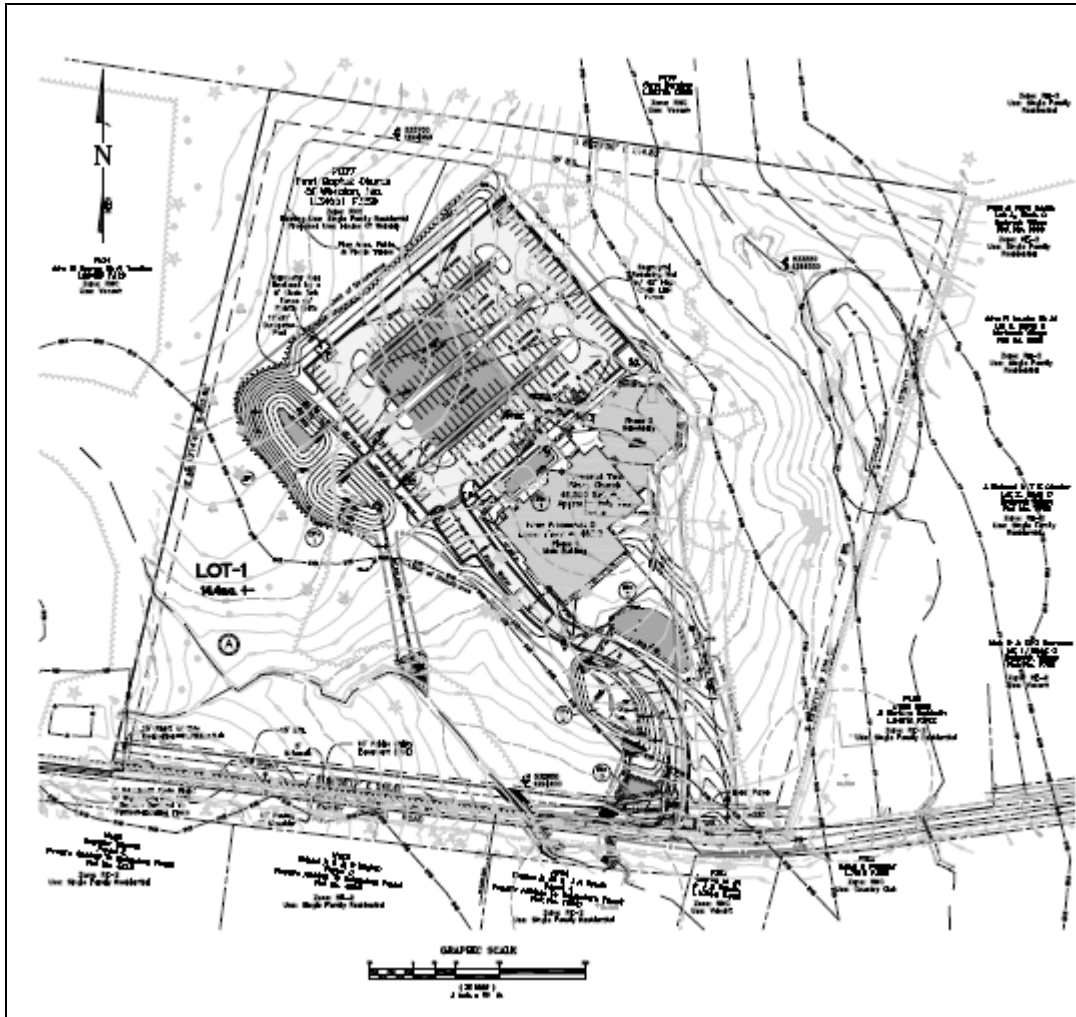
Opponents of the plan have also argued that the County Council’s approval of a sewer category change for the subject property violates the county’s PIF policy, because the proposed sewer extension will abut properties that are not eligible for sewer service. Whether the Council’s approval of the extension of sewer service to the subject property under the PIF was proper is beyond the scope of this proceeding. The question of whether this property qualifies for sewer extension under the PIF is for the Council alone to decide, and it has found that it does qualify.

Emory Church Road is a narrow dead end secondary residential street with a rolling terrain, a varying pavement width of 14-24 feet, and several large trees adjacent to the road pavement. This road serves approximately 30 homes and provides access to the Oakdale Emory United Methodist Church and Olney Manor Recreational Park located to the southeast of the Georgia Avenue/Emory Church Road intersection. The project preserves rural community character by strategically widening Emory Church Road so that the greatest number of existing trees on the north side of this road can be retained.

The community has raised concerns that the impervious area will contribute to the degradation of the headwaters of the Northwest Branch of the Anacostia River, which is located near this property, and will negatively impact stormwater recharge of the local water table, which affects the water supply for wells on adjacent properties. As discussed in the environmental findings, staff has worked closely with the applicant to decrease the amount of impervious area. In addition, the application increases the size of the forest conservation area and the extent of the water quality techniques above the minimum requirements to further protect environmental resources.



## SECTION 2: PRELIMINARY PLAN REVIEW



Preliminary Plan

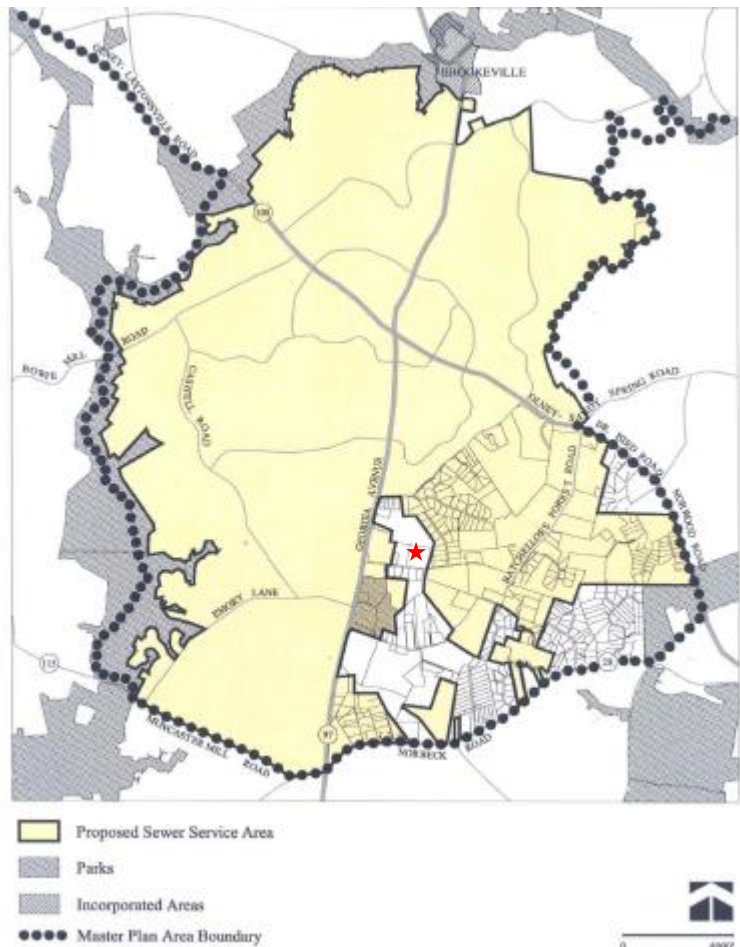
### ANAYSIS AND FINDINGS

#### Master Plan Conformance

The Olney Master Plan provides general recommendations for the Southeast Quadrant of Olney, and specific recommendations for more than a dozen properties or groups. The proposed application for the First Baptist Church of Wheaton conforms to the recommendations in the Olney Master Plan.

**Land Use and Zoning** - The Master Plan, followed by the Sectional Map Amendment, established the Rural Neighborhood Cluster (RNC) Zone for the property. The Master Plan did not recommend sewer service for this property. The maximum residential density for this property is 0.2 units per acre. In addition to residential development, the RNC Zone allows libraries, museums, and houses of worship as permitted uses. The RNC Zone also allows, by Special Exception, a limited number of institutional activities.

Although the Olney Master Plan recommends against extending sewer service to the subject property, in light of the County Council’s approval of sewer service to the site under the PIF policy the plan substantially conforms to the Olney Master Plan. This conclusion is based on the relationship between the Olney Master Plan and the PIF policy. The point of the PIF policy is to make exceptions for properties that are not recommended for sewer or water service. If the Olney Master Plan recommended sewer for the site, there would have been no need for the applicant to seek the Council’s approval of a sewer extension under the PIF policy. In that case, the property would simply be entitled to sewer service. Because the entire purpose of the PIF policy is to extend sewer service outside of the recommended sewer service envelope, it would make no sense to conclude, as some parties have advocated, that notwithstanding the approval of the sewer category change under the PIF, the subdivision still cannot be approved because of nonconformance with the master plan’s sewer recommendations. Although the Council in this case conditioned its approval of sewer service for the subject property on the Planning Board subsequently approving a Preliminary Plan that is consistent with the intent of the Olney Master Plan, Staff does not believe that the Council intended to include consistency with the master plan’s sewer recommendations. The Council must have understood that the subject property was not recommended for sewer service – otherwise, as explained above, the PIF policy would not have come into play – and was fully capable of denying the proposed sewer extension on that basis. It would have been absurd for the Council to approve the sewer extension subject to the Planning Board finding that the sewer extension is consistent with the Olney Master Plan’s sewer recommendations.



*Sewer Service Areas as recommended by the 2005 Olney Master Plan (p.144)*

A summary of the conformance to the Master Plan recommendations for habitat protection, rural open space, stormwater management, and forest preservation and restoration follow.

**Rural Open Space** – The Olney Master Plan’s general recommendations for the Southeast Quadrant foster the protection of the existing rural and low density residential character of the area by proposing a zone that preserves significant amounts of rural open space that could preserve existing forest and provide opportunities to restore forest and wetlands in the sensitive Batchelors Forest tributary of the Northwest Branch. The proposed plan provides over 65 percent of the property to be maintained as rural open space with forest cover. The proposed plan locates the building and parking areas in the middle of the site to provide a significant setback from the adjacent residences and Emory Church Road that will assist in preserving rural character and preserve forest.

**Habitat Protection** – For habitat protection, the Master Plan recommends the protection of forest areas on developable properties to prevent fragmentation of upland forest and to preserve stream valley buffers, page 72. The proposed plan protects the buffer areas as an extension of the existing stream valleys to prevent forest fragmentation. These areas will remain in forest.

**Environmentally Sensitive Development Techniques** – The Olney Master Plan encourages new developments to use environmentally sensitive development techniques that integrate BMPs (best management practices) that maximize stormwater treatment and infiltration, page 75. The proposed plan includes pervious paving for parking areas, the use of dry wells to store rainwater from roof areas, two bio-filters, a sand filter, and two enhanced stormwater management ponds. These environmental features will help to preserve the water quality of the tributaries in the Southeast Quadrant. The applicant has also reduced the on-site impervious level during the review process from 17 to approximately 16 percent. This impervious level is higher than the level expected in residential development (approximately 9 percent), but the proposed 16 percent imperviousness is significantly less than the impervious levels in other houses of worship and institutional uses. The Master Plan does not provide an impervious cap, however the Planning Board’s direction at the time of the sewer-water category change was to minimize impervious surfaces, which the applicant has done.

**Forest Preservation and Restoration** - The Master Plan recommends the maximum forest retention, and new forest planting in the adjacent environmental buffer areas through conservation easements as part of the development process, page 79. The proposed plan retains the forest in all of the stream buffer areas. In addition, the proposed plan as conditioned will retain forest and provide new planting adjacent to the environmental buffer in addition to the minimum requirements of the Forest Conservation Law.

## **Roads and Transportation Facilities**

**Master-Planned Roadways and Bikeways** - The Olney Master Plan recommends a shared-road bikeway facility (B-12) along Emory Church Road between Georgia Avenue to the west and the eastern terminus of the paved section of the roadway at Norbrook Village/Trotter’s Glen Golf Course. This bikeway is connected to the Batchellors Forest Road shared-road bikeway facility (B-1) via a shared-use path extension (B-13) from the Emory Church Road terminus.

**Access** - Access to the property is proposed from Emory Church Road via a driveway located near the southeast corner of the property. The applicant is proposing to provide a public improvement easement along the Emory Church Road frontage, and construct frontage improvements along Emory Church Road as required by MCDOT to provide a minimum 20-foot wide roadway pavement between Georgia Avenue and

the church driveway. The applicant is also proposing to construct a five-foot wide sidewalk along the entire Emory Church Road property frontage.

**Local Area Transportation Review and Policy Area Mobility Review** - The proposed place of worship is exempt from adequate public facilities review requirements, per Section 50-35(k)(6) of the Subdivision Regulations. The staff recommendation includes a condition that prohibits any weekday educational or daycare uses that will generate peak-hour trips. Any establishment of weekday uses in the future would require an amendment to this Preliminary Plan and an adequate public facilities review.

### **Public Facilities**

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The Montgomery County Fire and Rescue Service has determined that the property has appropriate access for fire and rescue vehicles. Electrical and telecommunications services are also available to serve the Property.

### **Environment**

#### **Previous Actions and Discussions**

The 14.4-acre property is zoned RNC. In February 2008, the applicant sought the extension of public water and sewer service for the use of the site by the First Baptist Church of Wheaton. At its February 21, 2008, hearing, the Planning Board recommended approval of community sewer service for this property (WSCCR 07A-OLN-02, Doherty Estates) subject to approval of a Preliminary Plan that conforms to the intent of the Olney Master Plan for this area. The Planning Board stated:

The Olney Master Plan recommends minimizing impervious surface in the Batchellors Forest Tributary and maintaining existing forest cover to protect the stream quality. It also recommends minimizing the visibility of parking lots, excessive size, height and scale of building, and intrusive lighting. Development of this property should maximize efforts to be protective of the water quality and rural character of this area. (February 26, 2008 letter from Planning Board Chairman Royce Hansen to the County Executive and County Council President).

The County Council acted on April 8, 2008, to “maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned on the Planning Board’s approval of a Preliminary Plan that conforms to the intent of the Olney Master Plan. Note: In its review of the applicant’s Preliminary Plan, the Planning Board is asked to ensure that potential road improvements (such as to Emory [Church] Road) are minimized as are any deleterious environmental impacts (such as reductions in ground water quality).” (Montgomery County Council Resolution 2008-16-500).

The Planning Board’s discussion on February 21, 2008, recognized that the site is not in a special protection area (SPA), and there is no specific numeric limit for imperviousness in this part of the County. The Planning Board’s discussion indicated that a 9 percent impervious limitation should be used as a goal, but recognized that an institutional use may not be able to meet the 9 percent limitation. The Board members suggested that the applicant may be able to achieve the goal of water resource protection by using engineering devices and measures such as stormwater management infiltration measures, porous pavement, green roofs, and other techniques.

## Olney Master Plan Recommendations for the Environment

The recommendations in the Master Plan are highlighted below.

- “The Southeast Quadrant of Olney contains the headwaters of Northwest Branch and significant environmental resources, some of them on vacant and redevelopable parcels....The challenge here [in the southeast quadrant] is to preserve the environmental resources and rustic character of Batchellors Forest Road through zoning and other regulatory controls.” (page 13)
- “The 38.6-acre Danshes, the 14.3-acre Doherty [the subject site], and the 8.0-acre Barnes properties are currently zoned RE-2. Since these properties cannot be served by public sewer through gravity, they are not recommended to be in the public sewer service envelope. Consistent with other similar properties in the Southeast Quadrant, they should be rezoned to RNC on septic systems and community water. Recommendation: Rezone the Danshes, Doherty [the subject site] and Barnes properties to the RNC Zone on community water and septic with 0.2 units per acre.” (page 37)
- “Recommendations: A. Habitat Protection on Lands Proposed for Development: 1. Protect forest areas on developable properties to prevent fragmentation of upland forests and to preserve forested stream valley buffers. Where sewer service is available, cluster homes to preserve priority forests intact. Where development would involve clearing high priority forests, acquire parkland as recommended in the Land Use and Parks chapters of the Plan. 2. Restore wetlands and forest in stream buffers and restore forest gap areas as part of development plans.” (page 72)
- “Management strategies recommended for watershed protection areas in the Countywide Stream Protection Strategy (CSPS) and employed in this Master Plan include: expanded stream valley park acquisition or dedication, increased forested buffer requirements, expanded protection for wetland recharge and hydrology, and impervious surface reduction strategies.” (page 73)
- “The majority of the potential residential development is in the Southeast Quadrant, which contains the headwaters of the Northwest Branch. One of the goals of this Master Plan is to control water quality impacts of new development by adopting land use and zoning recommendations that result in imperviousness levels compatible with the existing water quality in each subwatershed.” (page 75)
- “Recommendations: 1. Encourage new developments to use environmentally sensitive development techniques that integrate BMP’s that maximize stormwater treatment and infiltration, such as: a. Minimization of impervious surfaces; b. Disconnection of runoff, sheet flow to buffers, grass channels; and c. Bioretention.” (page 76)
- “Recommendations: 2. Maximize forest retention and new forest planting in and adjacent to environmental buffer areas through conservation easements as part of the development process.” (page 79)
- “The County’s policies on the provisions of community sewer service are governed by the Water and Sewer Plan, the County’s General Plan, master plan, the state’s Smart Growth policies and other policies,” such as the PIF. (page 142)

Based on the recommendations and discussions of the Montgomery County Council and the Montgomery County Planning Board, as well as the language in the Olney Master Plan (2005), staff has worked with the applicant to achieve a reduced level of imperviousness. Measures such as forest retention, reforestation of environmental buffers and infiltration of stormwater are consistent with the recommendations in the Master Plan to preserve the existing high water quality in the watershed and the broader, high quality environmental resources (e.g., forest).

## Environmental Guidelines

The project proposes encroachment into the stream/environmental buffer for the construction of stormwater management outfalls, a stormwater management facility, sanitary sewer connection, the driveway to access the property, and off-site construction along Emory Church Road. Staff has worked with the applicant to avoid and minimize encroachments into the buffer. Section V(A)(1) of the *Environmental Guidelines* (MNCPPC January 2000), provides recommended guidelines for stream buffers. These guidelines allow for infrastructure uses in the stream buffers if they are found by staff to be necessary, unavoidable, and minimized. These guidelines also note that stormwater management facilities are generally discouraged within stream buffers:

Maximum long-term effectiveness of stormwater management facilities is an important objective of an overall stream protection strategy, and must be considered together with the buffer objectives in siting decisions. As a general rule, minimized buffer intrusions are allowed for construction of suitable SWM facilities or non-erosive storm drain outfalls, and unavoidable and consolidated sanitary sewer connections.

The *Environmental Guidelines* allow for SWM facilities in the stream buffer on a case-by-case basis and provide additional guidance to consider when determining the appropriateness of a SWM facility in the buffer. Staff has determined that this facility is necessary in this location in order to manage the runoff from a portion of the proposed driveway, that the encroachment has been minimized (the proposed driveway is adjacent to the location of the existing driveway and is limited by the constraints of the existing streams, environmental buffer, and the need for adequate site distance), and that existing sensitive areas have been avoided to the greatest extent possible (i.e., there is no impact to forest, wetlands, wetland buffers, floodplain, steep slopes, or habitat for rare, threatened, and endangered species). Staff has determined that the proposed buffer encroachment is unavoidable and has been minimized to the greatest extent possible. Staff supports the plan's proposal to mitigate for the 0.12 acres of unforested, on-site buffer encroachment due to the construction of the driveway and associated SWM facility through forest planting within the environmental buffer at a ratio of 2:1 (0.24 acres of forest planting : 0.12 acre of buffer encroachment). The applicant has also proposed to remove an existing, in-stream concrete structure and yard waste that are located in the environmental buffer in the northeast corner of the property. This plan is in compliance with the *Environmental Guidelines*.

## Forest Conservation

As required by the County Forest Conservation Law (Section 22A of the County code), a final forest conservation Plan (FFCP) for the project dated July 12, 2011 [Appendix E], was submitted with the preliminary subdivision and Site Plans.

**Applicant's FFCP Proposal** - The FFCP proposes to retain 6.15 acres and clear 1.9 acres of existing on-site forest. Approximately 1.05 acres of the 1.9 acres of designated forest clearing is outside of the proposed limits of disturbance (LOD), but is counted as forest cleared because the plan does not propose to protect this forest in a Category I conservation easement. The applicant has proposed a Category II conservation easement for 0.93 acres of the 1.05 acres of forest. There is no reforestation requirement. The applicant proposes to provide 1.20 acres of forest planting within the unforested portions of the environmental buffer. The planting is consistent with both the 2005 Olney Master Plan, and the CSPA, which recommends increased forest buffer requirements for areas designated as watershed protection areas.

The entire 1.20 acres of forest and the reduced imperviousness on this property to meets the Master Plan recommendations.

**FFCP Proposal Based on Staff’s Recommended Conditions of Approval** - Staff’s recommended conditions of approval for the FFCP result in the removal of 0.97 acres of forest and the retention of 7.08 acres of forest outside of the proposed LOD. The amount of forest planting would remain unchanged, and would continue to yield 1.20 acres of forest planting in the environmental buffer, of which 0.24 acres of planting would serve to mitigate for the proposed environmental buffer encroachment. The recommended conditions of approval would no longer result in the remaining 0.96 acres of forest planting to be designated as a forest mitigation bank for other development projects, because a minimum of 1.00 acre is required in Section 22A-13b of the Forest Conservation Law.

Table 1: Final Forest Conservation Plan

	Forest Clearing	Forest Retention	Forest Planting
Applicant’s Submitted FFCP	1.9 acres – includes 0.12 ac. forest not cleared but not protected in any conservation easement and 0.93 ac. forest not cleared but not protected in <u>Category I</u> conservation easement (applicant proposes Category II easement)	6.15 acres	1.20 acres, comprised of: <ul style="list-style-type: none"> <li>• 0.24 ac. mitigation for environmental buffer encroachment</li> <li>• 0.96 ac. available as forest bank for other development projects</li> </ul>
FFCP with Staff’s Recommended Conditions of Approval	0.97 acres	7.08 acres – all forest not cleared to be protected with a Category I conservation easement	1.20 acres, comprised of: <ul style="list-style-type: none"> <li>• 0.24 ac. mitigation for environ. buffer encroachment</li> <li>• 0.96 ac. To meet Master Plan recommendation and to mitigate for the removal of specimen trees as identified in the variance request</li> </ul>

*“Forest conservation begins with the preservation of existing trees and forest wherever possible, and ends with planting additional trees to compensate for unavoidable loss”* (Trees Approved Technical Manual 1992). To meet this goal of the County Forest Conservation Law on this project, staff recommends as a condition of approval that the entire area of forest retention and proposed forest planting that is located outside of the limits of disturbance (LOD) be protected in a Category I conservation easement. This includes 0.12 acres of existing, high priority forest, which the FFCP shows as “Area of forest outside of LOD to be counted as removed not to be cleared as part of this application”, and not protected in any easement, and 0.93 acres of existing, high priority forest, which the FFCP shows to be protected in a Category II conservation easement. The FFCP does not show these two areas of forest (1.05 acres) to be protected in a Category I conservation easement, so they must be counted as forest cleared. The Olney Master Plan includes recommendations to protect forest areas on developable properties to prevent fragmentation of upland forests, to preserve priority forests intact, and to maximize forest retention and new forest planting in and adjacent to environmental buffer areas through conservation easements as part of the development process. In addition, Section 22A-12(b) of the County Forest Conservation Law states that the primary objective of the FCP should be to retain existing forest and trees and avoid reforestation. Additionally, this

property is zoned RNC, and is in an agricultural and resource area. For such an area, there are special provisions outlined in Section 22A-12(f)(2) which states that *“Forest retention should be maximized where possible...”* There is more discussion on this provision in the section below of this memorandum. Section 22A.00.01.08(B) of the County Forest Conservation Regulations states that if existing forest cannot be retained, the applicant must show how techniques for retention have been exhausted and why priority forests are not being retained. The FFCP does not demonstrate why these areas of high priority forest cannot be retained and protected in a Category I conservation easement. Therefore, the applicant’s proposal of not protecting the 1.05-acre high priority forest with a Category I conservation easement does not comply with either the provisions of the County Law and Regulations or the recommendations of the Master Plan.

**Development in an Agricultural and Resource Area (Sections 22A-12(f))** - The property, zoned RNC, is in an agricultural and resource area and therefore a minimum amount of forest must be retained onsite. Section 22A-12(f) of the County Forest Conservation Law states:

*(1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.*

*(2) Retention, reforestation and afforestation. Forest retention must be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:[...]*

*(A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.*

For this site, 25% of the net tract area is 3.7 acres. The applicant proposes to retain 6.15 acres of forest, and is therefore in compliance with this provision of the County Forest Conservation Law. The additional forest planting is required to meet the recommendations in the Olney Master Plan to enhance the forest and provide additional tree canopy, and to mitigate for the loss of individual specimen trees.

Provided that staff’s recommended conditions of approval are adopted, the proposed project that is in front of the Planning Board for review meets the County Forest Conservation Law’s requirement to maximize forest retention (Section 22A-12(f)(2)) and also meets the minimum onsite forest requirement for a property located in an agricultural and resource area (Section 22A-12(f)(2)(A)).

### **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. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ) requires a variance.

The applicant submitted a variance request on July 1, 2010 for the impacts or removal of trees. The applicant proposed to remove fourteen (14) trees that are 30 inches and greater, DBH, and to impact, but retain, eight (8) others that are considered high priority for retention under Section 22A-12(b)(3) of the



County Forest Conservation Law (the variance for tree impacts is required for seven of the eight trees included in the request because one of the trees (Tree # 75) is dead).

Table 2: Trees proposed to be removed

Tree Number	Species	DBH (Inches)	Status/Comments
1	American Beech	30	Good condition; To be removed for building construction
8	White Ash	42	Poor condition; To be removed for building construction
9	White Ash	38	Fair condition; To be removed for building construction
10	Red Maple	35	Good condition; To be removed for parking lot and SWM construction
12	Red Maple	32	Good condition; To be removed for driveway construction
13	Norway Maple	37	Fair condition; To be removed for building construction
14	Red Maple	32	Poor condition; To be removed for driveway construction
15	Red Maple	38	Fair/Poor condition; To be removed for driveway construction
16	Red Maple	30	Good condition; To be removed for driveway construction
17	Red Maple	49	Good condition; To be removed for building construction
18	Red Oak	30	Poor condition; To be removed for road construction (Emory Church Rd.)
41	White Ash	45	Fair/Good condition; To be removed for parking lot construction
71	White Ash	52	Good condition; To be removed for parking lot construction
94	White Oak	31	Good condition; Off-Site; To be removed for road construction (Emory Church Rd.)

Table 3: Trees to be affected but retained

Tree Number	Species	DBH (Inches)	CRZ Impact	Status
2	Red Oak	44	15%	Good condition; grading for building, parking lot
3	Red Oak	35	3%	Good/Fair condition; grading for building, parking lot
36	White Ash	30	5%	Good/Fair condition; grading for parking lot
88	White Oak	43	15%	Good condition; Off-Site; road construction (Emory Church Rd.)
92	Tuliptree	49	35%	Good condition; Off-Site; road construction (Emory Church Rd.)
93	Tuliptree	41	35%	Fair condition; Off-Site; road construction (Emory Church Rd.)
98	White Oak	53	10%	Good condition; SWM facility outfall construction

The applicant has offered the following justification of the variance request:

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

**Response (Macris, Hendricks, and Glascock (MHG) July 1, 2010):** *“The subject property consists of one parcel with a total tract area of 14.40 acres along Emory Church Road. The property currently is developed with a single family home. There is 8.05 acres of forest onsite of which 7.16 acres is being preserved and 0.78 acres of forest is being replanted. The eight trees that are being impacted but saved will receive only minor impacts based on the theoretical critical root zone per Montgomery County standards on measuring critical root zones. The proposed impacts to these trees are minor and with stress reduction measures including tree protection fence and root pruning these trees should easily be saved. The majority (twelve) of the fourteen specimen trees to be removed are in the non-forested middle of the site with the forest being saved around the perimeter of the site. Because of the large amount of forest being saved, much of which is in the stream valley buffer and contains many specimen trees that are being saved, the non-forested center of the property is the best area for development. The two other specimen trees to be removed are along the roadway. One is in the right-of-way dedication area and the other which is in poor condition and mostly dead is in the public utility easement. Because*

*of transportation improvements being required, these trees cannot be saved. The disturbance to the right-of-way that results in the removal of these trees is a requirement for approval of the project.”*

Development on the property is constrained by environmental features including streams, wetlands, 100-year floodplain, and the associated buffers in the southwest corner and along the eastern edge of the property. Additionally, the existing high quality forest surrounds the borders of this property, resulting in a developable area that is limited to the central portion of the property. The developable area that is outside of the buffers and existing forest contains several large trees that are subject to the variance provision. Staff has reviewed this application and based on the environmental constraints of the property, staff agrees that there is an unwarranted hardship.

*(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

**Response (MHG July 1, 2010):** *“The inability to remove the subject trees would limit the development of the property. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.”*

The RNC zone allows for the development of religious institutions and given the available developable area of this property, outside of the environmental constraints, it would be difficult to construct a religious institution on this property without impacting trees subject to the variance provision. Staff has reviewed the application and agrees that enforcing the rules of the variance provision would deprive the landowner of rights commonly enjoyed by others.

*(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

**Response (MHG July 1, 2010):** *“A Stormwater Management Concept was submitted for the property and approved by the Department of Permitting Services on December 14, 2009. This approval confirms that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site. A copy of the approval memo is attached.”*

While the applicant’s stormwater management requirements as determined by the Department of Permitting Services (DPS) do not comply with the State of Maryland’s current regulations for Environmental Site Design (ESD), they do have a concept that has been approved by DPS. In addition, the applicant has proposed additional stormwater management BMPs that include porous pavement and additional drywells. The applicant has also demonstrated measures to minimize the impervious surface on the site and the plan proposes reforestation in the environmental buffers, which should result in a reduction in stormwater runoff. Staff has reviewed the application and agrees that State water quality standards will not be violated or that a measurable degradation in water quality will not occur.

*(4) Provide any other information appropriate to support the request.*

**Response (MHG July 1, 2010):** *“A copy of the Final Forest Conservation Plan has been provided as part of this variance request. The proposed removal of the fourteen specimen trees are indicated on the plan. Specimen trees to be removed include tree numbers 1, 8, 9, 10, 12, 13, 14, 15, 17, 17, 18, 41, 71, and 94. Specimen trees to be impacted but are being proposed to be saved include tree numbers 2, 3, 36, 75, 88, 92, 93, and 98.”*

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. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

**Variance Findings** - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the applicant as disturbance and removal of the specified trees are due to the development of the site. The trees and their critical root zones lie within the developable area of the site. The proposed development activities that result in the removal and impacts to trees subject to the variance requirement are concentrated in the most developable area of the site, given the environmental constraints. With the exception of impacts deemed necessary for infrastructure and to meet requirements of outside agencies, the majority of the impacts are to trees located outside of the environmental buffers and high priority, contiguous forest. Staff has determined that the removal and impacts to the trees subject to the variance requirement cannot be avoided. Therefore, staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant. The requested variance is based upon existing site conditions, required site development and stormwater management best management practices as well as required widening of an existing driveway and offsite roadway that are necessary to achieve an adequate development per existing regulations and requirements.

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 proposed site design and layout on the subject property 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 Department of Permitting Services has found the stormwater management concept to be acceptable and conditionally approved it on December 14, 2009. The applicant has proposed additional BMP's including porous pavement and additional dry wells. These measures go beyond the minimum requirements of their approved concept. In addition, the granting of this variance request will not result in the removal of any trees located within the environmental buffers and the impacts to the critical root zones are minimal. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

**Mitigation for Trees Subject to the Variance Provisions** - There are 14 trees proposed for removal in this variance request. There will also be some disturbance within the CRZ of another 7 trees, but they are good candidates for retention. Staff believes if the FFCP is approved with the recommended conditions, that the

forest planting within the environmental buffers that the applicant has proposed will mitigate for the loss of these trees and no further mitigation is required. The trees subject to this variance to be impacted but retained are good candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

**County Arborist's Recommendation on the Variance** - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist. On May 19, 2011, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Appendix B).

**Variance Recommendation** - Staff recommends that the variance be granted.

### **Minimization of Impervious Surfaces**

There are numerous recommendations in the Olney Master Plan referring to the minimization of impervious surfaces:

- "Management strategies recommended for watershed protection areas in the Countywide Stream Protection Strategy (CSPS) and employed in this Master Plan include: expanded stream valley park acquisition or dedication, increased forested buffer requirements, expanded protection for wetland recharge and hydrology, and impervious surface reduction strategies." (page 73)
- "The majority of the potential residential development is in the Southeast Quadrant, which contains the headwaters of the Northwest Branch. One of the goals of this Master Plan is to control water quality impacts of new development by adopting land use and zoning recommendations that result in imperviousness levels compatible with the existing water quality in each subwatershed." (page 75)
- "Recommendations: 1. Encourage new developments to use environmentally sensitive development techniques that integrate BMP's that maximize stormwater treatment and infiltration, such as: a. Minimization of impervious surfaces; b. Disconnection of runoff, sheet flow to buffers, grass channels; and c. Bioretention." (page 76)

The Planning Board provided some direction to the applicant regarding imperviousness for this project at the February 2008 hearing for the water and sewer category change request. The applicant has provided an informal sketch, dated July 13, 2011, that documents the proposed level of imperviousness for the project (Appendix E). Staff required the applicant to demonstrate efforts to avoid and minimize the level of imperviousness. Per a March 8, 2011 letter provided by the applicant's engineer, Macris, Hendricks and Glascock (MHG), the initial plan prepared for the water and sewer category change hearing had a layout that resulted in 26.4% imperviousness. In response to staff's concerns raised during the water and sewer category change application review, a plan with a revised layout that resulted in 18.9% imperviousness was presented at the February 21, 2008 Planning Board hearing.

The Planning Board discussion indicated that the 9% impervious limitation that staff at the water and sewer category change hearing had suggested (based on imperviousness levels typically associated with RNC development) should be used as a goal for the applicant, but also recognized that an institutional use may

not be able to fully meet the 9% limitation. The applicant subsequently received conditional approval for the water and sewer category change from both the Planning Board and the County Council.

The March 8, 2008 letter from MHG further states that the pre-application plan for this property was submitted on January 15, 2009 and based on the M-NCPPC comments, the plans were further revised to reflect an impervious level of 18.0% and then to 17.0%.

The letter by Reverend D. Edward Williams, Senior Pastor of the First Baptist Church of Wheaton outlines investigations into alternative means of further reducing imperviousness onsite that include onsite, structured parking, or the use of an existing offsite parking lot with a shuttle service to the church. The applicant determined that structured parking was cost prohibitive, and they also felt that it would be contrary to the desires expressed by the community and the County Council to maintain a "low profile". The pastor noted that the church had contact with a representative from a nearby religious institution located across Georgia Avenue in regards to the option of offsite parking and shuttle service for overflow needs, but that neither their facility nor their parking is complete so they are not able to commit to that scenario at this time.

A revision to the parking lot layout that is reflected on the Final FCP further reduced the amount of impervious area on the site to 16.0%. An additional 11,446 square feet of impervious surface will be constructed as part of the required improvements to Emory Church Road, resulting in an overall impervious area of 17.1% for the project. Per the *Environmental Guidelines* (MNCPPC January 2000), impervious surfaces of public improvements as required by other agencies along the project's frontage are included in the calculation of impervious areas. Staff has recommended as a condition of approval that the level of imperviousness on the site not exceed 17.1%. This limitation is based on the calculations included on the informal sketch entitled "Impervious Area Exhibit", as prepared by MHG on July 13, 2011.

Based on the recommendations and discussions of the Montgomery County Council and the Montgomery County Planning Board, as well as the language in the Olney Master Plan (2005), staff has worked with the applicant to achieve a reduced level of imperviousness that included among other things, a redesign from a one-story to a two-story building and a revised parking lot layout. Additional measures have also been provided such as forest retention, reforestation of environmental buffers, and infiltration of stormwater beyond what is required by the DPS approved stormwater management concept plan that would help to preserve the existing high water quality and the broader, high quality environmental resources (e.g., forest) in the watershed.

Staff finds that the recommended imperviousness, forest retention and protection in a Category I conservation easement, additional forest planting areas within the environmental buffer, and the additional stormwater management features provide the appropriate measures to protect the sensitive environmental resources in the southeast quadrant of Olney, as recommended in the Olney Master Plan. The forestation of the stream buffers, and the protection of all retained and planted forest in a Category I conservation easement maximizes the benefits provided by these natural areas. The porous pavement, dry well storage area for the roof drains and the oversized stormwater management.

### **Stormwater Management**

The proposed storm water management concept approved on December 14, 2009, and reconfirmed on June 3, 2010, consists of on-site channel protection measures via construction of two detention ponds; on-site water quality control and onsite recharge via construction of a Montgomery County Sand Filter (MCSF), two Bio Filters, a Dry Well Trench, and other non-structural measures.

### **Compliance with the Subdivision Regulations and Zoning Ordinance**

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed size, width, shape and orientation of the proposed lot are appropriate for the location of the subdivision.

The parcels were reviewed for compliance with the dimensional requirements for the RNC zone as specified in the Zoning Ordinance, and will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 5 on the next page. The application has been reviewed by other applicable county agencies, and they have recommended approval of the plan.

Table 5: Preliminary Plan Data Table and Checklist

<b>Plan Name: First Baptist Church of Wheaton</b>				
<b>Plan Number: 120100250</b>				
<b>Zoning: RNC</b>				
<b># of Lots: 1</b>				
<b># of Outlots: N/a</b>				
<b>Dev. Type: Institutional</b>				
<b>PLAN DATA</b>	<b>Zoning Ordinance Development Standard</b>	<b>Proposed for Approval by the Preliminary Plan</b>	<b>Verified</b>	<b>Date</b>
Minimum Lot Area	25,000 SF	14.1 ac. minimum	NB	7/15/11
Lot Width	100 ft. Min.	790 ft. minimum	NB	7/15/11
Lot Frontage	25 ft. Min.	784 ft. minimum	NB	7/15/11
Setbacks				
Front	15 ft. Min.	Must meet minimum <sup>1</sup>	NB	7/15/11
Side	15 ft. Min.	Must meet minimum <sup>1</sup>	NB	7/15/11
Rear	35 ft. Min.	Must meet minimum <sup>1</sup>	NB	7/15/11
Rural Open Space	65% Min.	65.4%	NB	7/15/11
MPDUs	N/a		NB	7/15/11
TDRs	N/a		NB	7/15/11
Site Plan Req'd?	Yes		NB	7/15/11
<b>FINDINGS</b>				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	NB	7/15/11
Road dedication & frontage improvements		Yes	Agency letter	6/28/11
Environmental Guidelines		Yes	Staff memo	7/15/11
Forest Conservation		Yes	Staff memo	7/15/11
Master Plan Compliance		Yes	Staff memo	7/15/11
<b>ADEQUATE PUBLIC FACILITIES</b>				
Stormwater Management		Yes	Agency letter	12/14/09
Water and Sewer (WSSC)		Yes	Agency comments	6/14/10
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	6/14/10
Well and Septic		N/a	Agency letter	6/14/10
Local Area Traffic Review		N/a	Staff memo	7/15/11
Policy Area Mobility Review		N/a	Staff memo	7/15/11
Transportation Management Agreement		No	Staff memo	7/15/11
Fire and Rescue		Yes	Agency letter	

<sup>1</sup> As determined at Site Plan approval.

## PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

The Preliminary Plan and associated Forest Conservation Plan with conditions meet all requirements established in the Subdivision Regulations, Zoning Ordinance, and Forest Conservation Law and are in substantial conformance with the recommendations of the Olney Master Plan. Therefore, staff recommends approval of the Preliminary Plan and associated Forest Conservation Plan subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for a 788-seat church. The subject property is not approved for any weekday educational or daycare uses that will generate peak-hour trips.
- 2) The applicant must comply with the conditions of approval for the Final Forest Conservation Plan, dated July 12, 2011. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The final sediment control plan must be consistent with final limit of disturbance as shown on the Final Forest Conservation Plan dated July 12, 2011 and as approved by the M-NCPPC staff.
- 4) The record plat must reflect a Category I easement over all forest retention and forest planting areas that are located outside of the limits of disturbance and the entire stream valley buffer area.
- 5) Forest retention and forest planting areas must not be designated as a forest mitigation bank to be used by other development projects to satisfy their forest conservation requirements.
- 6) The applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easement.
- 7) The Final Forest Conservation Plan must show the approximate location of the in-stream concrete structure and yard waste and proposed methods of removal from the environmental buffer that will minimize disturbance to the stream and other resources.
- 8) Impervious surfaces on the site, including required offsite improvements to Emory Church Road, must not exceed 17.1 percent.
- 9) The applicant must dedicate and the record plat must show dedication of 30 feet of right-of-way, as measured from the centerline, along the property frontage for Emory Church Road.
- 10) The applicant must provide and the Record Plat must show a public improvement easement (PIE) along the property frontage of Emory Church Road.
- 11) The applicant must construct frontage improvements along Emory Church Road as required by Montgomery County Department of Transportation (MCDOT) in its letter of June 28, 2011. The improvements must be under permit and bond prior to the approval of the record plat by MCDPS.
- 12) The applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a five-foot-wide sidewalk along the property frontage on Emory Church Road, unless construction is waived by MCDPS.
- 13) Prior to recordation of the plat, the applicant must grant to the M-NCPPC a rural open space easement over no less than 65% of the net lot area of the subject property as shown on the Preliminary Plan and record the easement, in a form approved by the Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).
- 14) The applicant must comply with the conditions of the MCDPS stormwater management approval dated December 14, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan.
- 15) The applicant must comply with the conditions of the MCDOT letter dated June 28, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan.



- 16) The applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 17) No clearing, grading or recording of plats prior to certified Site Plan approval.
- 18) Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at Site Plan.
- 19) Site Plan #820100080 must be approved by the Planning Board and the certified plan signed by staff prior to the approval of the record plat.
- 20) The record plat must show necessary easements.
- 21) 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 Site Plan review. 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."

## SECTION 3: SITE PLAN REVIEW

### FINDINGS

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

Neither a development plan, diagrammatic plan, schematic development plan nor a project plan were required for the subject site.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Rural Neighborhood Cluster (RNC) Zone. The intent of the RNC Zone is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large-lot development. The proposed development meets the intent of the zone by preserving environmentally sensitive natural resources including two streams with associated buffers and existing mature forest within the property. The project also preserves rural community character by strategically widening Emory Church Road to maintain the greatest number of existing trees on the north side of this road. The RNC Zone allows the proposed church use. The project meets all of the applicable requirements of the RNC Zone as demonstrated in the following Data Table.

Table 6: Data Table for the RNC Zone, Optional Method of Development

Development Standard	Permitted/Required	Proposed for Approval & Binding on the Applicant
<b>Site Area</b>		
Min. Area of Development (acres) 59-C-9.574(a)	10	14.4 (627,359 SF)
Right-of-Way Dedication (acres)	n/a	0.27 (11,783 SF)
Min. Lot Area (SF) 59-C-9.42	25,000	14.13 (615,576 SF)
<b>Setbacks (feet)</b>		
Min. Setback from Street 59-C-9.574(d)(ii)	15	230
<b>Min. Yard Setback</b>		
- East Side yard, abutting lot to the east is zoned RE-2, assume optional method of development	17	240
- West Side yard, abutting lot to the west is zoned RNC, assume optional method of development	15	370
- Rear yard, abutting lot to the north is zoned RNC, assume optional method of development	35	270

Accessory Structures Setbacks 59-C-9.574(d)(vii)		
- Rear	5	5
- Side	5	5
- Street	60	60
<b>Min. Lot width (feet)</b>		
Along front street line 59-C-9.43	25	784
<b>Max. Building Height (feet)</b>		
59-C-9.574(d)(v)	35	35 <sup>(a)</sup>
<b>Max. Lot Coverage (%)</b>		
59-C-9.46	10% (61,558 SF) <sup>(b)</sup>	4% (24,500 SF) <sup>(b)</sup>
<b>Rural Open Space (%)</b>		
59-C-9.574(h)	65% (400,124 SF)	65.4% (402,350 SF)
<b>Common Open Space (SF)</b>		
59-C-9.574(e)	n/a <sup>(c)</sup>	n/a <sup>(c)</sup>
<b>Parking</b>		
Total Parking Spaces	1 space/4 seats	
- Main sanctuary (500 seats)		
- Platform (48 seats)		
- Chapel (24 seats)		
- Overflow seating (216 seats)		
Total seats 788	197 spaces	197 spaces
Parking Distribution		
- Standard (8.5'x18')	n/a	190
- Accessible (8'x18') w/ access aisle		+ 7
Total automobile spaces		197
- Motorcycle spaces (4'x18') (59-E-2.3(d))	2% of vehicle spaces	4
- Bicycle spaces (59-E-2.3(a))	1 per 20 vehicle spaces	10
Parking Facility Internal Landscaping (%) (59-E-2.73)	5% (3,769 SF)	13.6% (10,232 SF)
Parking Setback from adjoining RE-2 land (59-E-2.81(a))	17	320

<sup>(a)</sup> The building height limits do not apply to steeples or belfries per Section 59-B-1.1.

<sup>(b)</sup> Calculated as a percentage of the net lot area that is covered by buildings only.

<sup>(c)</sup> Required for residential neighborhoods of 10 dwelling units or more.

<sup>(d)</sup> The internal area of the surface parking facility is 75,383 SF.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

- a. **Locations of buildings and structures** - The locations of the proposed building and structures are adequate, safe, and efficient. The proposed building is located in the middle of the site, in a cleared ridge, in roughly the same location as the existing house. This location avoids environmental buffers and existing forest onsite. The two-story building with a maximum height of 35 feet is adequately setback from the neighboring properties and Emory Church Road, which effectively minimizes any potential negative impacts due to proximity. The 46,500

SF church with a capacity of 788 seats will be constructed in two phases. The main building encompassing 30,500 SF will be built in Phase I and the adjoining sanctuary of approximately 16,000 SF in Phase II. At completion, the building and sanctuary will cover approximately 4.0% of the net lot area.

The parking lot with 197 spaces is located immediately to the north of the building. This location adequately limits visibility of the surface parking lot from Emory Church Road and avoids environmentally sensitive areas. This location safely and efficiently directs traffic to the interior of the site and avoids conflicts near the intersection with Emory Church Road. As conditioned, staff recommends a revision to the parking lot layout to have three instead of four driving aisles while maintaining the same number of parking spaces. This is accomplished by eliminating the last row of parking spaces with its access drive aisle and extending the remaining rows to the east to capture the same number of spaces that were deleted. The net total of parking spaces remains the same with the benefit of less impervious surface and more open space available for church activities and gatherings without the need to encroach into the existing forest.

- b. **Open Spaces** - The open spaces provided are adequate, safe, and efficient. The RNC Zone requirement for Common Open Space is not applicable to this project because this is not a residential development of 10 dwelling units or more. The RNC Zone requirement for Rural Open Space is applicable and the project meets this requirement by providing 9.2 acres (402,350 SF) or 65.4% of the net lot area. Rural Open Space is intended to protect rural features and other sensitive areas and to maximize common boundaries with rural open space on adjacent tracts. The 9.2 acres of Rural Open Space includes all areas outside the limits of disturbance and overlaps with the environmentally sensitive areas on site including the two stream valley buffers. The Rural Open Space adequately meets the intent of the zone by preserving environmentally sensitive natural resources.
- c. **Landscaping and Lighting** - The landscaping provided is adequate, safe, and efficient. The landscaping is limited to the parking lot, access driveway, and areas around the building. The parking lot internal landscaping consists of shade trees and ornamental trees in the parking medians. A mix of shade trees and evergreen trees lines the access drive and efficiently contributes to the screening and delineation of the adjacent stormwater management facilities on both sides of the driveway. Also, this landscaping adequately softens the views of the building from Emory Church Road. Foundation plantings consisting of ornamental trees, deciduous and evergreen shrubs, ornamental grasses and groundcovers add scale to the building and contribute to a sense of arrival. The landscaping of the storm water management facilities will be reviewed, approved and inspected by DPS, Water Resources Section. The remainder of the site is either forested or is being used to meet the afforestation requirements.

As proposed, the lighting consists of pole mounted light fixtures with a maximum height of 20 feet located on the east side of the private driveway leading up to the church building, on the perimeter of the surface parking lot and in the parking lot islands. However, staff recommended that the lighting be reduced in height to 12 feet, which is more residential in character and reduces visibility from adjacent properties and thus provides compatibility with the neighborhood. The lighting proposed will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. As conditioned, the lighting recommended by Staff is adequate, safe and efficient.

- d. **Recreation Facilities** - The Project is not subject to the Recreation Guidelines as this is not a residential development. Nonetheless, the Project proposes a play area adjacent to the sanctuary in Phase II, a lawn area adjacent to the south of the building for children in first grade through the youth group, and an open area north of the parking lot for picnics and open play. The play area adjacent to the sanctuary in Phase II is intended for small children to play after church events while the adults are socializing prior to leaving the site. Given its proximity to the parking lot and lack of setbacks, Staff conditioned that this play area be fenced with a gate in order to address safety concerns. As conditioned, the recreation facilities are safe, adequate, and efficient.
- e. **Pedestrian and Vehicular Circulation Systems** - The pedestrian and vehicular circulation systems are safe, adequate, and efficient. The church, which envisions that the majority of its parishioners will travel by automobile to and from the site, seeks to discourage parking along Emory Church Road. This, combined with the goal of reducing impervious surfaces, has led to not having a sidewalk connecting the public right-of-way to the building. Pedestrian circulation is provided only from the parking lot to the building. A walking aisle is located across all the parking rows that effectively directs pedestrians to the building's entrance and to a sidewalk across the building's frontage.

Vehicular access to the site is limited to one entrance from Emory Church Road, which leads up to the church building and associated parking lot. The applicant worked closely with MCDOT and the M-NCPPC staff to locate the site's access point at a location that would provide adequate sight distance. MCDOT has confirmed that the proposed access point to the site is safe and adequate [Appendix B]. The parking lot efficiently allows for vehicular (including emergency vehicles) movement. As conditioned, the layout will continue to maintain safe, adequate, and efficient pedestrian and vehicular circulation.

- 4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development.*

The structures and uses proposed are compatible with other uses and Site Plans, and with existing adjacent development. The church use is compatible with existing residential uses and places of worship surrounding the site. An existing church, Oakdale Emory United Methodist Church, is located 1,000 feet to the west on Emory Church Road. The location of the proposed building in the middle of the site allows for maximizing the setbacks from all four property boundaries, and preserving sensitive environmental resources. The setbacks ranging from 230 feet on the south side, 240 on the east, 370 on the west, and 270 on the north sides, reduces the visual impact of the proposed building and establishes compatibility with the surrounding uses. In addition, significant areas of forest will be retained along all property lines to further screen the project from adjacent properties. The entrance to the site is proposed to be heavily landscaped which integrates this site into the surrounding natural setting. The height of the proposed building at 35 feet (or 2 stories) is generally compatible with the surrounding building heights. The RE-2 Zone adjacent to the site to the east allows a maximum height of 50 feet under the standard method of development.

- 5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

This site is subject to the County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420080900 was originally approved on March 19, 2008, and recertified on June 28, 2010. As conditioned, the FFCP will result in the removal of 0.97 acres of forest and the retention of 7.08 acres of forest outside of the proposed LOD. The amount of forest planting will yield 1.20 acres of forest planting in the environmental buffer, of which 0.24 acres of planting will serve as mitigation for the proposed environmental buffer encroachment. As conditioned, the remaining 0.96 acres of forest planting would no longer result in a forest mitigation bank for other development projects.

This application requires a variance to the Forest Conservation Law, granted under the provisions of Section 22A-21, because this site did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, and it proposes to remove and impact trees greater than 30 inches DBH. The Applicant has requested a variance to remove fourteen (14) trees greater than 30 inches DBH, and to impact, but retain, eight (8) others that are considered high priority for retention (the variance for tree impacts is required for seven of the eight trees included in the request because one of the trees (Tree # 75) is dead. Based on the findings described in the Preliminary Plan section, the M-NCPPC Staff and the County Arborist in the Montgomery County Department of Environmental Protection recommend approval of the variance request from the Forest Conservation Law with mitigation. As conditioned, the 0.96 acres of forest planting will not be used by the applicant as a forest mitigation bank.

The project, as amended by staff's conditions of approval, meets the County Forest Conservation Law's requirement to maximize forest retention (Section 22A-12(f)(2)) and also meets the minimum onsite forest requirement for a property located in an agricultural and resource area (Section 22A-12(f)(2)(A)).

The proposed storm water management concept approved on December 14, 2009, and reconfirmed on June 3, 2010, consists of on-site channel protection measures via construction of two detention ponds; on-site water quality control and onsite recharge via construction of a Montgomery County Sand Filter (MCSF), two Bio Filters, a Dry Well Trench, and other non structural measures.

## RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan 820100080, First Baptist Church of Wheaton, for a 46,500 SF church, on 14.4 gross acres. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on March 28, 2011 are required except as modified by the following conditions.

### Conformance with Previous Approvals

1. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan No. 120100250, or as amended.

### Environment

2. Forest Conservation & Tree Save

The development must comply with the conditions of approval for the Final Forest Conservation Plan dated July 12, 2011. The applicant must meet all conditions prior to the recording of a plat(s) or the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.

3. Stormwater Management

- a) The proposed development is subject to the Stormwater Management Concept approval conditions dated December 14, 2009, and reconfirmed on June 3, 2010, unless amended and approved by the Montgomery County Department of Permitting Services.
- b) Show locations and details of proposed porous pavement, stormwater management drywells, and any other stormwater management structures that are not included as part of the MCDPS Stormwater Management Concept plan approval on the Certified Site Plan. The applicant must be responsible for the maintenance of these features.

### Transportation & Circulation

4. Transportation

The Applicant must limit development on the property to a 46,500 square-foot church (or a place of worship), with a maximum of 788 seats and no on-site weekday educational institution or daycare that will generate peak-hour trips.

### Site Plan

5. Site Design

- a) Revise the parking lot layout to eliminate the last row of parking spaces and northernmost aisle and extend the remaining rows to the east with the same number of deleted spaces as shown on the Final Forest Conservation Plan dated July 12, 2011.
- b) Provide a vehicular guard rail between the parking lot edge and the retaining wall abutting the parking lot's eastern edge.
- c) Provide fencing with a gate for the play area adjacent to the sanctuary in Phase II in order to address safety concerns.
- d) Provide enhanced architectural treatment, such as fenestration, on the second story of the southeast building elevation.

6. Landscaping

Extend the foundation plantings around the southwest and southeast sides of the building.

7. Lighting

- a) The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b) All onsite down-light fixtures must be full cut-off fixtures.
- c) Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d) Illumination levels shall not exceed 0 (zero) footcandles (fc) at any property line abutting county roads and residential properties.
- e) The height of the light poles shall not exceed 12 feet including the mounting base.

8. Landscape Surety

The applicant shall provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a) The amount of the surety shall include plant material, on-site lighting, and site furniture within the relevant phase of the development. Surety to be posted prior to issuance of first building permit within each relevant phase of development and shall be tied to the development program.
- b) Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial bond amount.
- c) Completion of plantings by phase, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d) Provide a Site Plan Surety and Maintenance Agreement that outlines the responsibilities of the applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

9. Development Program

The applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and the M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) On-site lighting must be installed within six months after the parking lot construction is completed. Landscaping associated with the parking lot may wait until the next growing season. All other landscaping must be installed prior to final use and occupancy of the building and may be phased appropriately to reflect the two phases for the buildings.
- c) On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any final use and occupancy permit for the building and may be phased appropriately to reflect the two phases for the buildings.
- d) Pedestrian pathways and seating areas associated with each building and parking area must be completed as construction of each building and parking area are completed.
- e) The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.



10. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and information provided subject to staff review and approval:

- a) Include the Final Forest Conservation Plan approval, Stormwater Management Concept approval, development program, inspection schedule, and Site Plan resolution on the approval or cover sheet.
- b) Add a note to the Site Plan stating that the M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading.
- c) Modify the data table to reflect development standards enumerated in the staff report.
- d) Ensure consistency off all details and layout between Site Plan and landscape plan.
- e) Label and dimension setbacks on the Site Plan.
- f) Show and label amenities in the open area adjacent to the southern façade of the building.

## **APPENDICES**

- A. Prior approvals
- B. Reviewing Agency Approvals and correspondence
- C. Correspondence from the community
- D. Applicant's correspondence
- E. Final Forest Conservation Plan (FFCP) dated July 12, 2011 & Impervious exhibit dated July 13, 2011

# Appendix A

Resolution No.: 16-500  
Introduced: January 29, 2008  
Adopted: April 8, 2008

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: County Council

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**SUBJECT:** Amendments to the Comprehensive Water Supply and Sewerage Systems Plan

**Background**

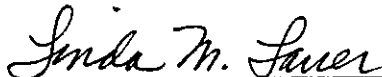
1. Section 9-501 et seq. of the Environmental Article of the Maryland Code, requires the governing body of each County to adopt and submit to the State Department of the Environment a comprehensive County Plan, and from time to time amend or revise that Plan for the provision of adequate water supply systems and sewerage systems throughout the County.
2. Section 9-507 of the Environmental Article of the Maryland Code provides that the Maryland Department of the Environment (MDE) has 90 days to review a county governing body's action to amend the County's Water and Sewer Plan. Upon notice to the County, MDE may extend that review period for another 90 days, if necessary. At the conclusion of this review, MDE must either approve or reject the Council's action on each of these amendments, or the action is confirmed by default. Any action approved or taken by this resolution is not final until that action is approved by the MDE or the period for final MDE action has expired.
3. In accordance with the State law on December 30, 1969, by Resolution No. 6-2563, the County Council adopted a *Comprehensive Ten-Year Water Supply and Sewerage Systems Plan* which was approved by the State Department of the Environment.
4. The County Council has from time to time amended the Plan.
5. On, January 17, 2008, the County Council received recommendations from the County Executive regarding 12 Water and Sewer Plan amendments.
6. Recommendations on these amendments were solicited from the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission Staff, and affected municipalities.
7. A public hearing was held on February 26, 2008.

8. The Transportation and Environment Committee discussed these amendments on March 13, 2008 and made recommendations to the Council.
9. The County Council held a worksession on April 1, 2008.

**Action**

The County Council for Montgomery County, Maryland approves the following amendments to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan as shown in the attachments to this resolution.

This is a correct copy of Council action.



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Linda M. Lauer, Clerk of the Council

## COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN

### January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments

Montgomery County uses water and sewer service area categories, in part, to identify those properties that should use public water and/or sewer service versus those that should use on-site systems, usually wells and/or septic systems. Categories 1 and 3 identify properties approved for public service. Categories 4 and 5 identify properties that currently should use on-site systems, but are proposed for public service in the future. Category 6 identifies properties that should use on-site systems, where public service is not planned for at least the next ten years. Property owners file category change map amendment requests in seeking to move their property from one category to another, usually based on anticipated development plans. The following chart presents the County Council's actions on water/sewer category map amendment requests filed with DEP and transmitted to the Council for consideration in January 2008.

Cloverly - Norwood Planning Area										
Property Information and Location Property Development	Applicant's Request County Council Action									
<b>WSSCR 07A-CLO-05: Julian Patton, et al. (Proposed PIF User: Sts. Constantine &amp; Helen Greek Orthodox Church)</b>										
<ul style="list-style-type: none"> <li>▪ 701 Norwood Rd., Cloverly</li> <li>▪ Pt. Parcel P915, Snowdens Manor Enlarged (dist.-acct. no. 05-00273546)</li> <li>▪ Map tile – MD: JS42; WSSC: 222NW01</li> <li>▪ North side of Norbeck Rd. (MD 28) east of Norwood Rd.</li> <li>▪ Cloverly Master Plan (1997)</li> <li>▪ Northwest Branch Watershed (MDE Use IV)</li> <li>▪ RE-2 Zone; approx. 27 ac.</li> <li>▪ <u>Existing use</u>: vacant</li> <li>▪ <u>Proposed use</u>: place of worship, Sts. Constantine &amp; Helen Greek Orthodox Church relocating to Mont. Co. from Wash., DC</li> </ul>	<table border="0"> <tr> <td>Existing –</td> <td><b>Requested –</b></td> <td>Service Area Categories</td> </tr> <tr> <td>W-3</td> <td>W-3 (no change)</td> <td></td> </tr> <tr> <td>S-6</td> <td><b>S-3</b></td> <td></td> </tr> </table> <p><b>County Council Action</b></p> <p><b>Defer action on the request for S-1, pending interagency and County Council review of a development plan for this specific site provided by the church.</b></p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	Existing –	<b>Requested –</b>	Service Area Categories	W-3	W-3 (no change)		S-6	<b>S-3</b>	
Existing –	<b>Requested –</b>	Service Area Categories								
W-3	W-3 (no change)									
S-6	<b>S-3</b>									
<b>WSSCR 07A-CLO-07: Marc Schrecengost &amp; Spring Lawn Farm Homeowners' Association</b>										
<ul style="list-style-type: none"> <li>▪ 17518 Country View Way, Ashton</li> <li>▪ Lot 22, Ashton Manor (dist.-acct. no. 08-03134305) – owner: M. Schrecengost; and Outlot F, Ashton Manor (dist.-acct. no. 08-03129536) – owner: Spring Lawn Farm HOA</li> <li>▪ Map tile – MD: JT41; WSSC: 223NW01</li> <li>▪ South side of Country View Way opposite Country View Ct.</li> <li>▪ Sandy Spring – Ashton Master Plan (1998)</li> <li>▪ Northwest Branch Watershed (MDE Use IV)</li> <li>▪ RE-2 Zone; 4.00 ac.</li> <li>▪ <u>Existing use</u>: one single-family house (c. 1997) &amp; vacant outlot.</li> <li>▪ <u>Proposed use</u>: two single-family houses (existing house to remain)</li> </ul>	<table border="0"> <tr> <td>Existing -</td> <td><b>Requested –</b></td> <td>Service Area Categories</td> </tr> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-1*</td> <td><b>S-1: allow two (2) sewer hookups</b></td> <td></td> </tr> </table> <p>* Restricted to one (1) sewer hookup only</p> <p><b>County Council Action</b></p> <p><b>Deny the request for an additional sewer hookup; maintain S-1 for one sewer hookup only.</b></p> <p><i>Note: The applicant may not file a new request for this property before April 8, 2009, without prior approval from DEP.</i></p>	Existing -	<b>Requested –</b>	Service Area Categories	W-1	No Change		S-1*	<b>S-1: allow two (2) sewer hookups</b>	
Existing -	<b>Requested –</b>	Service Area Categories								
W-1	No Change									
S-1*	<b>S-1: allow two (2) sewer hookups</b>									
<b>WSSCR 07A-CLO-09: Neil and Laura Pullen</b>										
<ul style="list-style-type: none"> <li>▪ 1300 Harding La., Cloverly</li> <li>▪ Parcels P317, Snowdens Manor Enl (dist./acct. no. 05-00252203) and P332, Family Cemetery (no. 05-00280484) <sup>1</sup></li> <li>▪ Map tile: MD – KS22; WSSC – 221NE02</li> <li>▪ North side of Harding La., west of Pamela Dr.; either side of Spotswood Dr. at east end</li> <li>▪ Cloverly Master Plan (1997)</li> <li>▪ Paint Branch Watershed (MDE Use III, Mont. Co. Special Protection Area (SPA))</li> <li>▪ RE-1 Zone; 3.67 ac.</li> <li>▪ <u>Existing use</u>: 1 single-family house (c. 1933).</li> <li>▪ <u>Proposed use</u>: 3-lot residential subdivision (existing house to be replaced); preappl. plan no. 7-20070210 "Pullen Property".</li> </ul> <p><sup>1</sup> This 2,600 sq. ft. parcel, owned by Edith Turner, contains a cemetery enclosed by the Pullen's parcel. DEP has included it with this request for general sewer planning purposes. No new development is expected on this property.</p>	<table border="0"> <tr> <td>Existing -</td> <td><b>Requested -</b></td> <td>Service Area Categories</td> </tr> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-6</td> <td><b>S-3</b></td> <td></td> </tr> </table> <p><b>County Council Action</b></p> <p><b>Approve S-1 for one sewer hookup only. <sup>2</sup> Defer action on unrestricted approval for S-1 pending further M-NCPPC and DEP evaluation of the applicants' subdivision plans in light of the master plan's sewer service recommendations.</b></p> <p><i>Note: The Council intends that deferred amend-ments reach a resolution of the cited issues and return for further Council consideration within approximately one year. Subsequent administrative delegation action is possible upon agency agreement on a revised plan.</i></p> <p><sup>2</sup> This connection/hookup <u>cannot</u> be used for a private institutional facility without subsequent review and approval by the County Council.</p>	Existing -	<b>Requested -</b>	Service Area Categories	W-1	No Change		S-6	<b>S-3</b>	
Existing -	<b>Requested -</b>	Service Area Categories								
W-1	No Change									
S-6	<b>S-3</b>									

**COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN  
January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments**

<b>Goshen – Woodfield – Cedar Grove Planning Area</b>							
Property Information and Location Property Development	Applicant's Request County Council Action						
<b>WSSCR 07A-DAM-08: Bethel World Outreach Ministries</b>							
<ul style="list-style-type: none"> <li>• 10725 Brink Rd., Clarksburg</li> <li>• Parcel P999, Thomas Hog Pasture Case (dist.-acct. #02-00028903)</li> <li>• Map tile – MD: FV122; WSSC: 230NW11</li> <li>• North side of Brink Rd., opposite Glendevon Ct.</li> <li>• Preservation of Agriculture and Rural Open Space Master Plan (1980)</li> <li>• Middle &amp; Upper Great Seneca Creek Watersheds (MDE Uses I &amp; III<sup>3</sup>)</li> <li>• RDT Zone; 119.37 ac.</li> <li>• <u>Existing use:</u> farm. <u>Proposed use:</u> 800-seat place of worship; Bethel World Outreach Church, relocating from downtown Silver Spring; plan no. 7-20070240 "Bethel World Outreach Center".</li> </ul> <p><sup>3</sup> A 10.3-acre portion of the northwest corner of the site lies within the Wildcat Branch subwatershed (MDE Use III) of Upper Great Seneca Creek.</p>	<table border="0"> <tr> <td style="border-bottom: 1px solid black;"><u>Existing</u></td> <td style="border-bottom: 1px solid black;"><u>Requested – Service Area Categories</u></td> </tr> <tr> <td>W-6</td> <td>W-6 w/multi-use water system approval</td> </tr> <tr> <td>S-6</td> <td>S-6 w/multi-use sewerage system approval</td> </tr> </table> <p><b>County Council Action</b></p> <p>Defer action on the request for multi-use water and sewer system approval, pending the applicant's submittal of a proposed use that is consistent with ZTA 07-07.</p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	<u>Existing</u>	<u>Requested – Service Area Categories</u>	W-6	W-6 w/multi-use water system approval	S-6	S-6 w/multi-use sewerage system approval
<u>Existing</u>	<u>Requested – Service Area Categories</u>						
W-6	W-6 w/multi-use water system approval						
S-6	S-6 w/multi-use sewerage system approval						
<b>WSSCR 08A-GWC-01: Kirk Canaday</b>							
<ul style="list-style-type: none"> <li>• 8300 Block <sup>4</sup>, Warfield Rd., Gaithersburg</li> <li>• Parcel P554, Williams Range Near Goshen (dist.-acct. #01-00010841)</li> <li>• Map tile – MD: GU123; WSSC: 228NW08</li> <li>• North side of Warfield Rd., west of Doubleland Rd.</li> <li>• Preservation of Agriculture and Rural Open Space Master Plan (1980)</li> <li>• Middle Great Seneca Creek Watersheds (MDE Use I)</li> <li>• RE-2 Zone; 2.71 ac.</li> <li>• <u>Existing use:</u> vacant <u>Proposed use:</u> one new single-family house</li> </ul> <p><sup>4</sup> The applicant's reported street address, 8333 Warfield Rd., does not yet appear in the State's property tax account records.</p>	<table border="0"> <tr> <td style="border-bottom: 1px solid black;"><u>Existing</u></td> <td style="border-bottom: 1px solid black;"><u>Requested – Service Area Categories</u></td> </tr> <tr> <td>W-3</td> <td>W-3 (no change)</td> </tr> <tr> <td>S-6</td> <td>S-3</td> </tr> </table> <p><b>County Council Action</b></p> <p>Deny the request for category S-3; maintain S-6. DEP and DPS need to consider a sewer sanitary survey for this area to determine the extent of septic problems.</p> <p><i>Note: The applicant may not file a new request for this property before April 8, 2009, without prior approval from DEP.</i></p>	<u>Existing</u>	<u>Requested – Service Area Categories</u>	W-3	W-3 (no change)	S-6	S-3
<u>Existing</u>	<u>Requested – Service Area Categories</u>						
W-3	W-3 (no change)						
S-6	S-3						

<b>Olney Planning Area</b>							
Property Information and Location Property Development	Applicant's Request County Council Action						
<b>WSSCR 07A-OLN-02: The First Baptist Church of Wheaton*</b>							
<ul style="list-style-type: none"> <li>• 3110 Emory Church Rd., Olney</li> <li>• Parcel P077, Chas &amp; William (dist./acct. #08-00705848)</li> <li>• Map tile: WSSC - 223NW03; MD - HS563</li> <li>• North side of Emory Church Rd., west of Norbrook Dr.</li> <li>• Olney Master Plan (2005)</li> <li>• Northwest Branch Watershed (MDE Use IV)</li> <li>• RNC Zone; 15.0 ac.</li> <li>• <u>Existing use:</u> single-family residence. <u>Proposed use:</u> place of worship (500-seat sanctuary, fellowship hall, classrooms, offices); First Baptist Church of Wheaton, relocating from its existing site on Georgia Ave. in Wheaton</li> </ul> <p>* Original owner/applicant: Frances Doherty Estate. The church acquired the property on 7/1/07.</p>	<table border="0"> <tr> <td style="border-bottom: 1px solid black;"><u>Existing –</u></td> <td style="border-bottom: 1px solid black;"><u>Requested – Service Area Categories</u></td> </tr> <tr> <td>W-6</td> <td>W-1</td> </tr> <tr> <td>S-6</td> <td>S-1</td> </tr> </table> <p><b>County Council Action</b></p> <p>Maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan.</p> <p><i>Note: In its review of the applicant's preliminary plan, the Planning Board is asked to ensure that potential road improvements (such as to Emory Road) are minimized as are any deleterious environmental impacts (such as reductions in ground water quality).</i></p>	<u>Existing –</u>	<u>Requested – Service Area Categories</u>	W-6	W-1	S-6	S-1
<u>Existing –</u>	<u>Requested – Service Area Categories</u>						
W-6	W-1						
S-6	S-1						

**COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN**  
**January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments**

<b>Potomac - Cabin John Planning Area</b>										
Property Information and Location Property Development	Applicant's Request County Council Action									
<b>WSSCR 07A-POT-03: Leroy Pingho</b>										
<ul style="list-style-type: none"> <li>▪ 10011 Chapel Rd.</li> <li>▪ Lots 1, Block b, Potomac Farm Estates (dist./acct.: 10-00854471)</li> <li>▪ Map tile - WSSC: 213NW10; MD: FP343</li> <li>▪ East side of Chapel Rd. north of River Rd.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Rock Run Watershed (MDE Use I)</li> <li>▪ RE-2 Zone; 3.52 ac.</li> <li>▪ <u>Existing use</u>: 1 single-family house (c. 1959).</li> <li>▪ <u>Proposed use</u>: Service for the existing house.</li> </ul>	<table border="1"> <thead> <tr> <th>Existing –</th> <th>Requested –</th> <th>Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-6</td> <td><b>S-3</b></td> <td></td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Approve S-1 (for service at the edge of the Potomac Master Plan public sewer envelope.)</b></p> <p><i>Notes:</i>  DEP staff confirmed that WSSC had already constructed a non-abutting pressure sewer connection for this property in 1998; service does not require a sewer main extension.</p> <p><i>Approval of this request does not extend or alter the public sewer envelope recommended in the Potomac Subregion Master Plan.</i></p>	Existing –	Requested –	Service Area Categories	W-1	No Change		S-6	<b>S-3</b>	
Existing –	Requested –	Service Area Categories								
W-1	No Change									
S-6	<b>S-3</b>									
<b>WSSCR 07A-POT-05: Frank Islam &amp; Debbie Driesman</b>										
<ul style="list-style-type: none"> <li>▪ 10111 Norton Rd. &amp; 10621 River Rd.</li> <li>▪ Lots 5 &amp; 6, Block C, Potomac Farm Estates (dist./acct.: 10-00851637, 10-00859655)</li> <li>▪ Map tile - WSSC: 213NW10; MD: FP33</li> <li>▪ East corner, intersection of River Rd. (MD 190) and Norton Rd.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Watts Branch and Potomac River Watersheds (MDE Use I)</li> <li>▪ RE-2 Zone; 8.81 ac.</li> <li>▪ <u>Existing use</u>: 2 single-family houses (c. 1951 &amp; 1960)</li> <li>▪ <u>Proposed use</u>: Residential redevelopment of the 2 existing lots</li> </ul>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested –</th> <th>Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-6</td> <td><b>S-3</b></td> <td></td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Approve S-3 (for service at the edge of the Potomac Master Plan public sewer envelope.)</b></p> <p><i>Note: Approval of this request does not extend or alter the public sewer envelope recommended in the Potomac Subregion Master Plan.</i></p>	Existing	Requested –	Service Area Categories	W-1	No Change		S-6	<b>S-3</b>	
Existing	Requested –	Service Area Categories								
W-1	No Change									
S-6	<b>S-3</b>									
<b>Travilah - Cabin John Planning Area</b>										
Property Information and Location Property Development	Applicant's Request: County Council Action									
<b>WSSCR 07A-TRV-08: Mary Giles Davis</b>										
<ul style="list-style-type: none"> <li>▪ 13100 Valley Dr., Rockville</li> <li>▪ Lot 4, Block 10, North Glen Hills Sect. 2 (dist.-acct.# 04-00079760)</li> <li>▪ Map tile - WSSC: 217NW09; MD: FR61</li> <li>▪ West side of Valley Dr., south of Cleveland Dr.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Watts Branch Watershed (MDE Use I)</li> <li>▪ RE-1 Zone; 1.12 ac.</li> <li>▪ <u>Existing use</u>: single-family house (c. 1952)</li> <li>▪ <u>Proposed use</u>: service for the existing single-family house to relieve a failed septic system</li> </ul>	<table border="1"> <thead> <tr> <th>Existing –</th> <th>Requested –</th> <th>Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>No Change</td> <td></td> </tr> <tr> <td>S-6</td> <td><b>S-3</b></td> <td></td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Deny the request for S-3; maintain S-6. The applicant should work with DPS staff to identify possible on-site septic solutions.</b></p> <p><i>Note: The applicant may not file a new request for this property before April 8, 2009, without prior approval from DEP.</i></p>	Existing –	Requested –	Service Area Categories	W-1	No Change		S-6	<b>S-3</b>	
Existing –	Requested –	Service Area Categories								
W-1	No Change									
S-6	<b>S-3</b>									

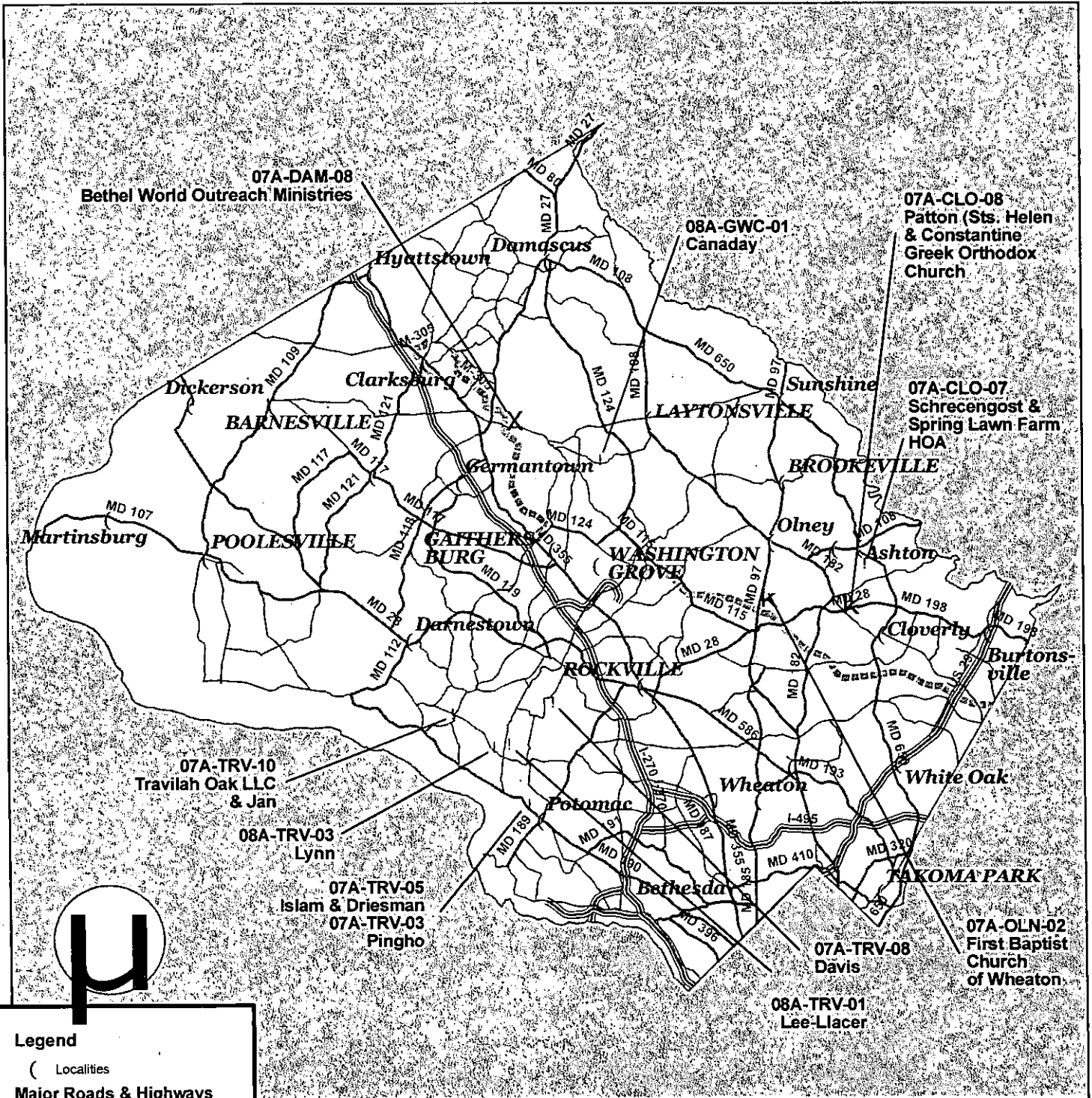
**COMPREHENSIVE WATER SUPPLY AND SEWERAGE SYSTEMS PLAN**  
**January 2008 Amendment Transmittal: Water/Sewer Category Map Amendments**

**Travilah - Cabin John Planning Area**

Property Information and Location Property Development	Applicant's Request: County Council Action						
<b>WSSCR 07A-TRV-10: Travilah Oak, LLC; Han &amp; J. Jan</b>							
<ul style="list-style-type: none"> <li>▪ 12940 – 12960 Travilah Rd., Potomac: Potomac Oak Shopping Center</li> <li>▪ *Lots 1/2, 3, &amp; 4 (N780, N726, &amp; N679), Boylestons Discovery (dist.-acct.# 06-00397857, 06-02232731, &amp; 06-03063708)<sup>5</sup></li> <li>▪ Map tile - WSSC: 217NW13; MD: ER41</li> <li>▪ Southwest corner, intersection of Glen and Travilah Rds.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Watts Branch Watershed (MDE Use I)</li> <li>▪ C-1 Zone; 5.02 ac.</li> <li>▪ <u>Existing use</u>: commercial retail shopping center.</li> <li>▪ <u>Proposed use</u>: service for the existing shopping center and proposed commercial office space.</li> </ul> <p><i>Note:</i><sup>5</sup> <i>The Jans own only Lot 3; all other properties involved are owned by Travilah Oak, LLC.</i></p>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>W-3</td> </tr> <tr> <td>S-6</td> <td>S-3</td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Defer action, at the applicant's request, pending additional discussions between the applicant and the neighboring community.</b></p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	Existing	Requested – Service Area Categories	W-1	W-3	S-6	S-3
Existing	Requested – Service Area Categories						
W-1	W-3						
S-6	S-3						
<b>WSSCR 08A-TRV-01: Reynaldo &amp; Zorayda Lee-Llacer</b>							
<ul style="list-style-type: none"> <li>▪ 12009 Piney Meetinghouse Rd., Potomac</li> <li>▪ Lot 36, Piney Glen Farm (dist.-acct.# 10-01814620)</li> <li>▪ Map tile - WSSC: 215NW11; MD: FQ122</li> <li>▪ East side of Piney Meetinghouse Rd., south of Greenbriar Preserve Dr.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Watts Branch Watershed (MDE Use I) – Piney Branch subwatershed (Mont. Co. SPA)</li> <li>▪ RE-2 Zone; 2.54 ac.</li> <li>▪ <u>Existing use</u>: single-family house (c. 1980) and guest/caregiver's cottage.</li> <li>▪ <u>Proposed use</u>: service for the existing residences; special exception (S-2674) pending for continuance of the guest house.</li> </ul>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>No Change</td> </tr> <tr> <td>S-6</td> <td>S-3</td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Defer action on the request for S-1 pending a resolution of the special exception case (S-2674) for the accessory house on the property.</b></p> <p><i>Note: The Council intends that deferred amendments reach a resolution of the cited issues and return for further Council consideration within approximately one year.</i></p>	Existing	Requested – Service Area Categories	W-1	No Change	S-6	S-3
Existing	Requested – Service Area Categories						
W-1	No Change						
S-6	S-3						
<b>WSSCR 08A-TRV-03: Sprigg and Christina Lynn</b>							
<ul style="list-style-type: none"> <li>▪ 11621 Glen Rd., Potomac</li> <li>▪ Parcel P156, Piney Grove Etc (dist.-acct.# 06-00405218)</li> <li>▪ Map tile - WSSC: 215NW11; MD: FQ122</li> <li>▪ Northeast side of Glen Rd., west of Partridge Run La.</li> <li>▪ Potomac Subregion Master Plan (2002)</li> <li>▪ Watts Branch Watershed (MDE Use I)</li> <li>▪ RE-2 Zone; 2.34 ac.</li> <li>▪ <u>Existing use</u>: single-family house (c. 1910).</li> <li>▪ <u>Proposed use</u>: service for the expansion of the existing single-family house; replace aging septic system.</li> </ul>	<table border="1"> <thead> <tr> <th>Existing</th> <th>Requested – Service Area Categories</th> </tr> </thead> <tbody> <tr> <td>W-1</td> <td>No Change</td> </tr> <tr> <td>S-6</td> <td>S-1</td> </tr> </tbody> </table> <p><b>County Council Action</b></p> <p><b>Approve S-3 (for service at the edge of the Potomac Master Plan public sewer envelope.)</b></p> <p><i>Note: Approval of this request does not extend or alter the public sewer envelope recommended in the Potomac Subregion Master Plan.</i></p>	Existing	Requested – Service Area Categories	W-1	No Change	S-6	S-1
Existing	Requested – Service Area Categories						
W-1	No Change						
S-6	S-1						



## Water/Sewer Map Amendment Locator County Executive's January 2008 Transmittal



**Legend**

- ( Localities
- Major Roads & Highways**
- County Roads
- State Roads & Highways
- === U.S. & Interstate Highways
- ▬▬▬ Proposed Roads
- ! Category Change Request
- K PIF-Based Category Change Request
- X Multi-Use System Category Change Request



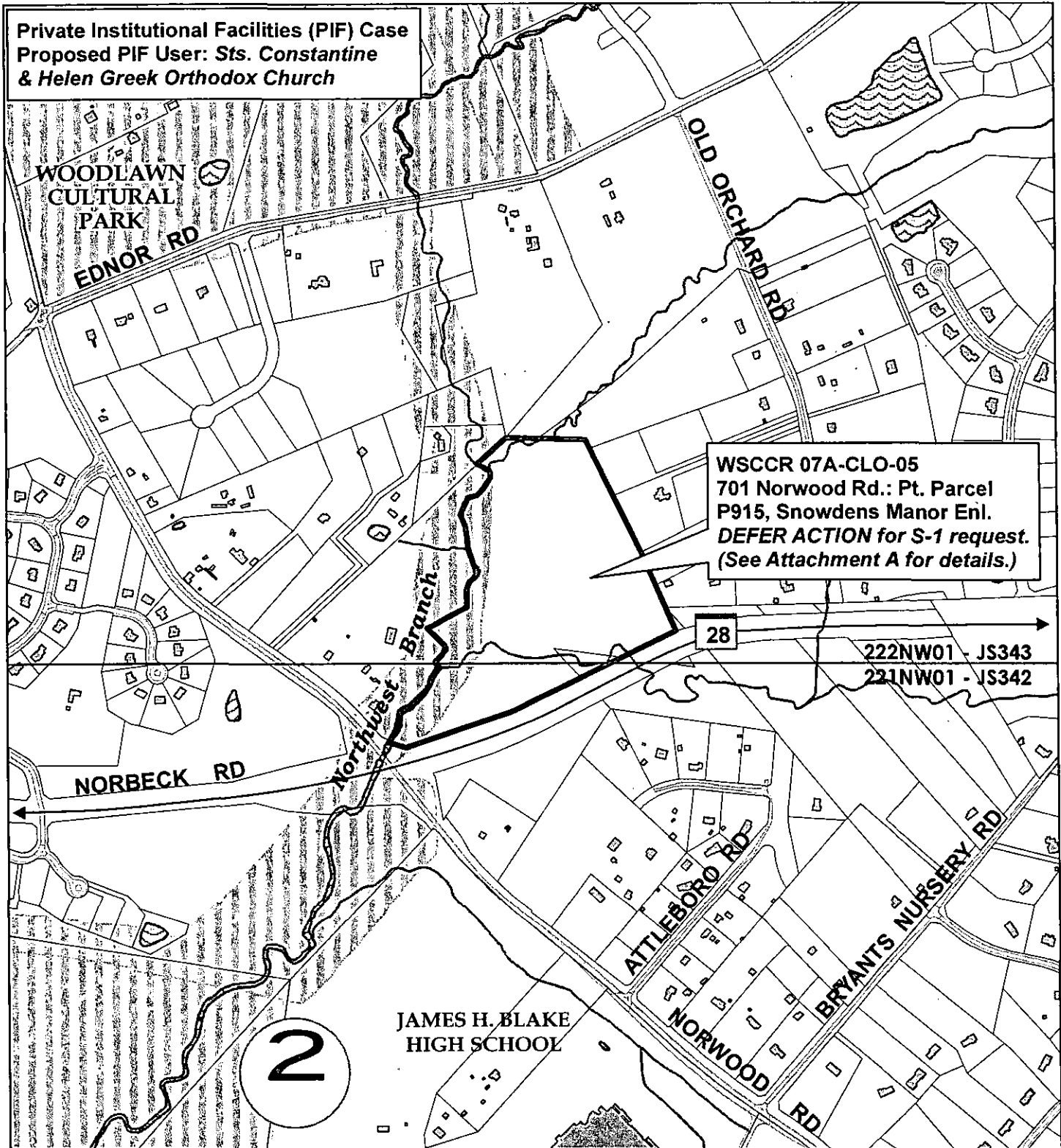
**Montgomery County, Maryland  
2003 Comprehensive Water Supply  
and Sewerage Systems Plan**



DEP Water and Wastewater  
Policy Group

**Service Area Category Change Map: WSCCR 07A-CLO-05 (Julian Patton, et al.)**

Private Institutional Facilities (PIF) Case  
 Proposed PIF User: *Sts. Constantine  
 & Helen Greek Orthodox Church*



**WSCCR 07A-CLO-05**  
 701 Norwood Rd.: Pt. Parcel  
 P915, Snowdens Manor Enl.  
**DEFER ACTION** for S-1 request.  
 (See Attachment A for details.)

28  
 222NW01 - JS343  
 221NW01 - JS342

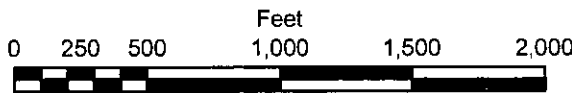
2

**Legend**

- Subject Site
- WSSC Tile Grid
- Buildings
- Parks: Existing & Proposed
- Ponds/Lakes
- Streams

Cloverly - Norwood Planning Area

Northwest Branch Watershed

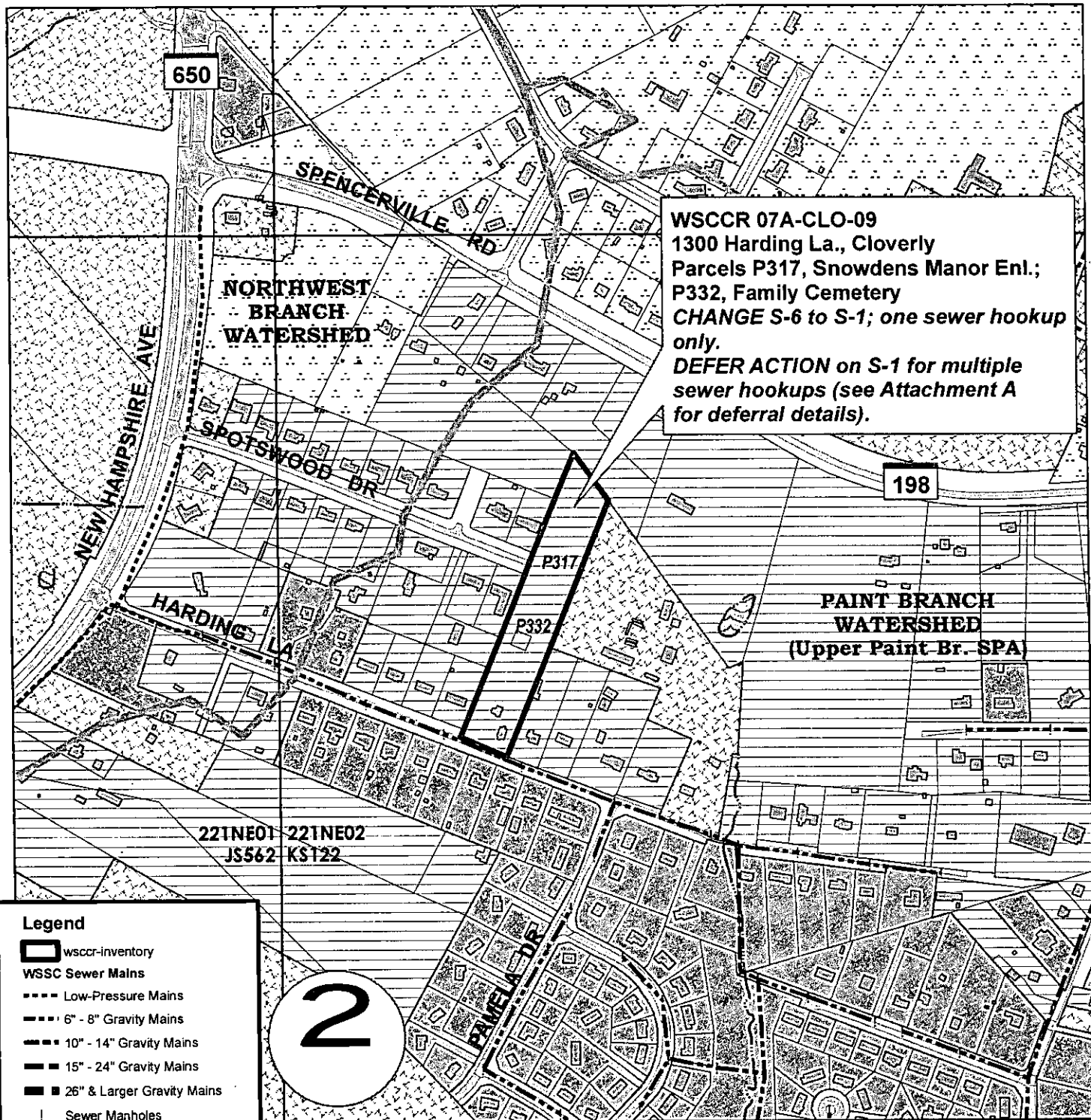


**Montgomery County, Maryland**  
 2003 Comprehensive Water Supply  
 and Sewerage Systems Plan



DEP Water and Wastewater  
 Policy Group

## Sewer Service Area Categories Map WSSCR 07A-CLO-09 (Neil & Laura Pullen)

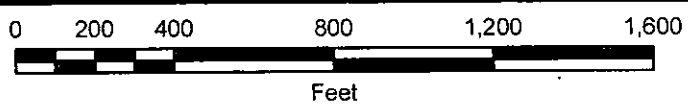


**WSSCR 07A-CLO-09**  
 1300 Harding La., Cloverly  
 Parcels P317, Snowdens Manor Enl.;  
 P332, Family Cemetery  
**CHANGE S-6 to S-1; one sewer hookup only.**  
**DEFER ACTION on S-1 for multiple sewer hookups (see Attachment A for deferral details).**

**Legend**

- wsscr-inventory
- WSSC Sewer Mains
- Low-Pressure Mains
- 6" - 8" Gravity Mains
- 10" - 14" Gravity Mains
- 15" - 24" Gravity Mains
- 26" & Larger Gravity Mains
- Sewer Manholes
- Buildings
- Sewer Categories**
- S-1
- S-3
- S-4
- S-5
- S-6

2

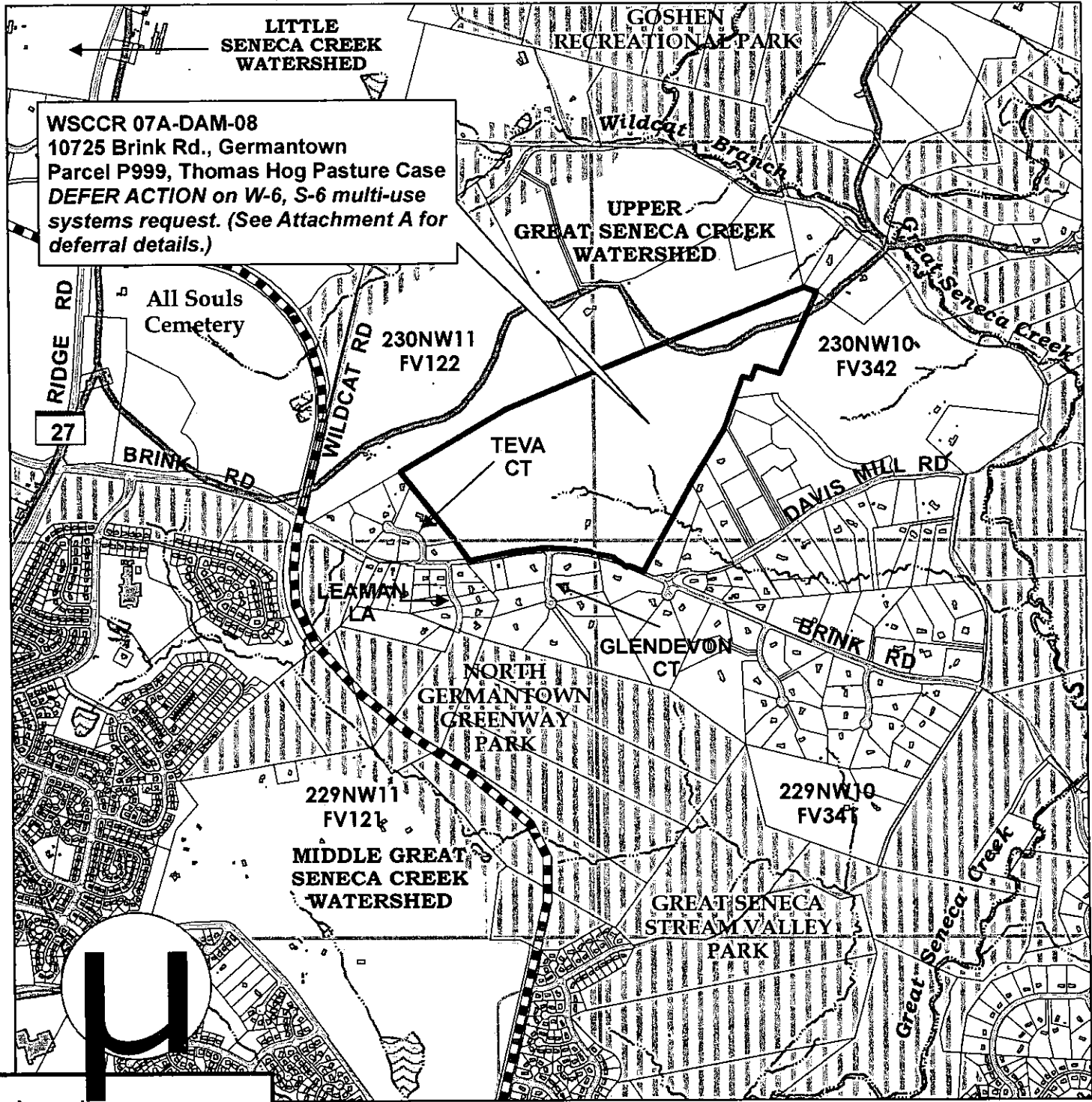


**Montgomery County, Maryland**  
 2003 Comprehensive Water Supply  
 and Sewerage Systems Plan



DEP Water and Wastewater  
Policy Group

## Service Area Category Change Request Map WSSCR 07A-DAM-08 (Bethel World Outreach Ministries)

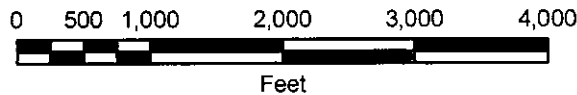


**WSSCR 07A-DAM-08**  
 10725 Brink Rd., Germantown  
 Parcel P999, Thomas Hog Pasture Case  
**DEFER ACTION** on W-6, S-6 multi-use  
 systems request. (See Attachment A for  
 deferral details.)

**Legend**

- WSSC Tile Grid
- Buildings
- Parklands
- Major Watersheds
- Ponds & Lakes, Major Streams
- Streams
- Proposed Roads

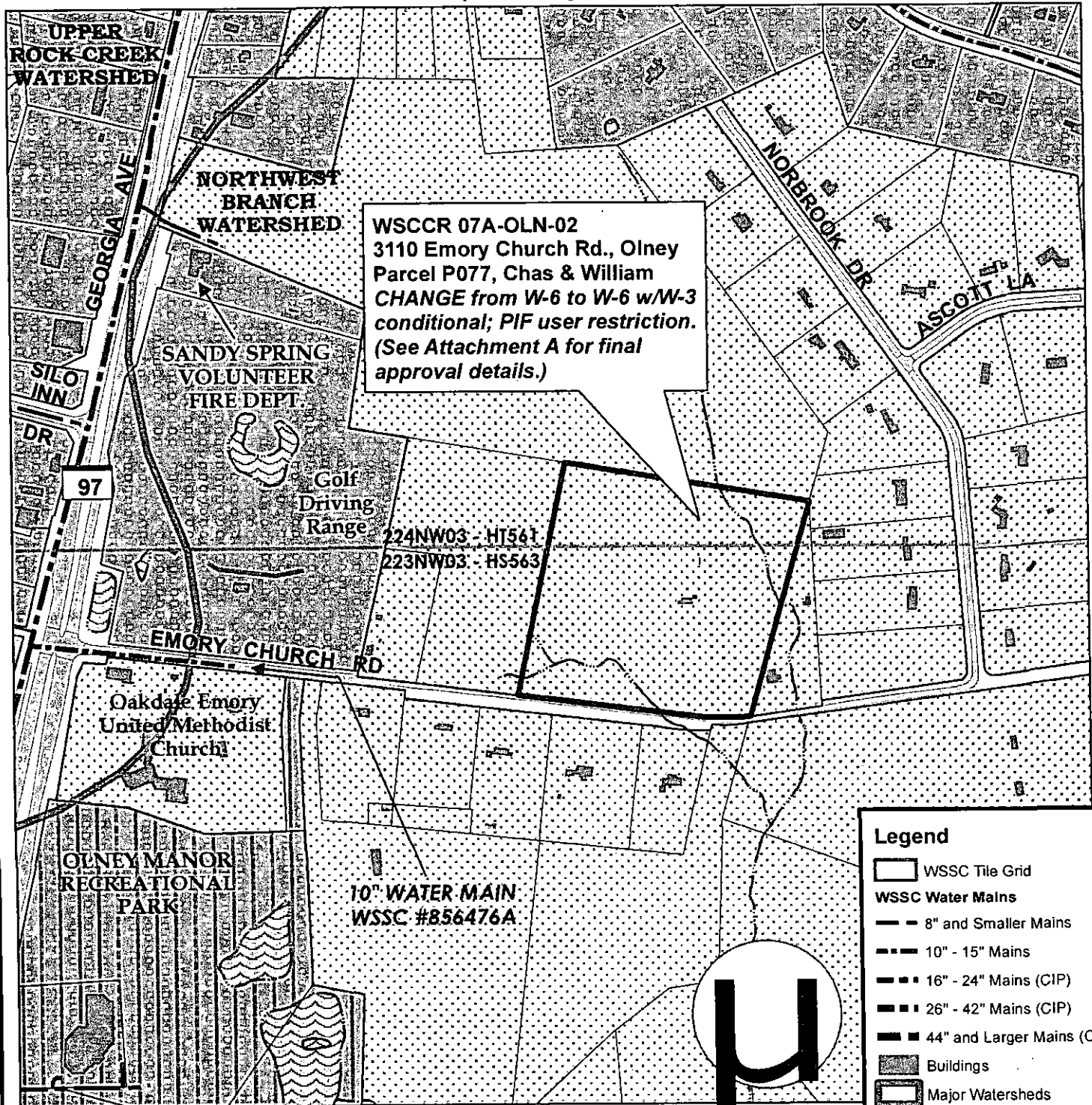
Site: Goshen - Woodfield - Cedar Grove Planning Area



**Montgomery County, Maryland**  
 2003 Comprehensive Water Supply  
 and Sewerage Systems Plan

DEP Water and Wastewater  
 Policy Group

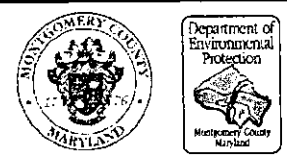
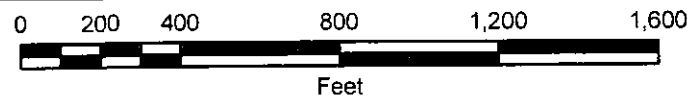
## Water Service Area Catagories Map WSSCR 07A-OLN-02 (First Baptist Church of Wheaton)



**Legend**

- WSSC Tile Grid
- WSSC Water Mains**
- 8" and Smaller Mains
- 10" - 15" Mains
- 16" - 24" Mains (CIP)
- 26" - 42" Mains (CIP)
- 44" and Larger Mains (CIP)
- Buildings
- Major Watersheds
- Parklands
- Water Categories**
- W-1
- W-3
- W-4
- W-5
- W-6

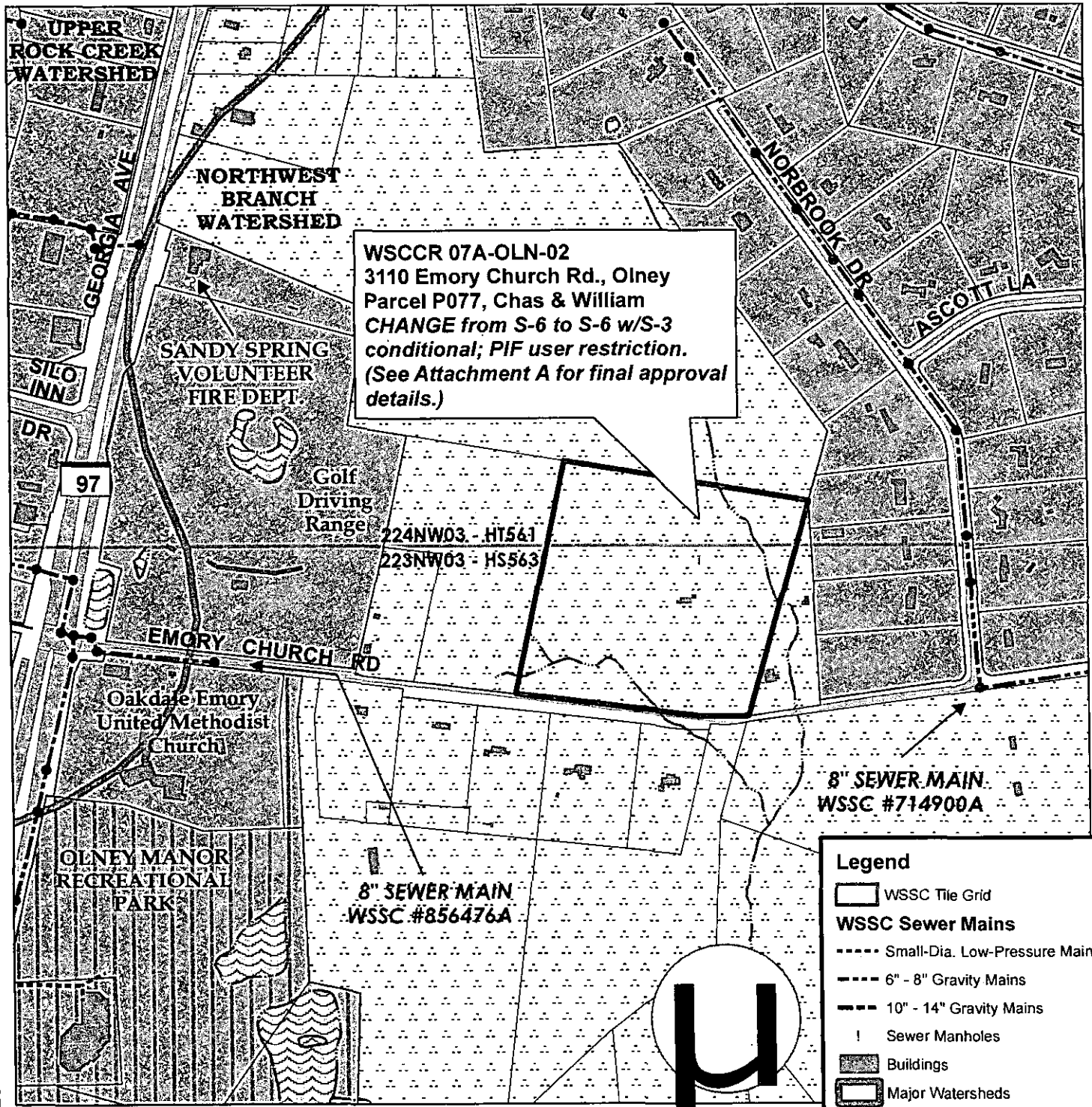
Olney Planning Area



DEP Water and Wastewater Policy Group

**Montgomery County, Maryland  
2003 Comprehensive Water Supply  
and Sewerage Systems Plan**

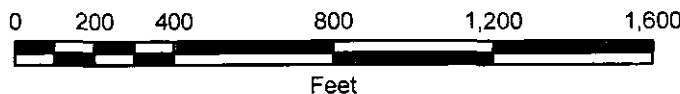
## Sewer Service Area Categories Map WSSCR 07A-OLN-02 (First Baptist Church of Wheaton)



**Legend**

- WSSC Tile Grid
- WSSC Sewer Mains**
- Small-Dia. Low-Pressure Mains
- 6" - 8" Gravity Mains
- 10" - 14" Gravity Mains
- Sewer Manholes
- Buildings
- Major Watersheds
- Parklands
- Sewer Categories**
- S-1
- S-3
- S-4
- S-5
- S-6

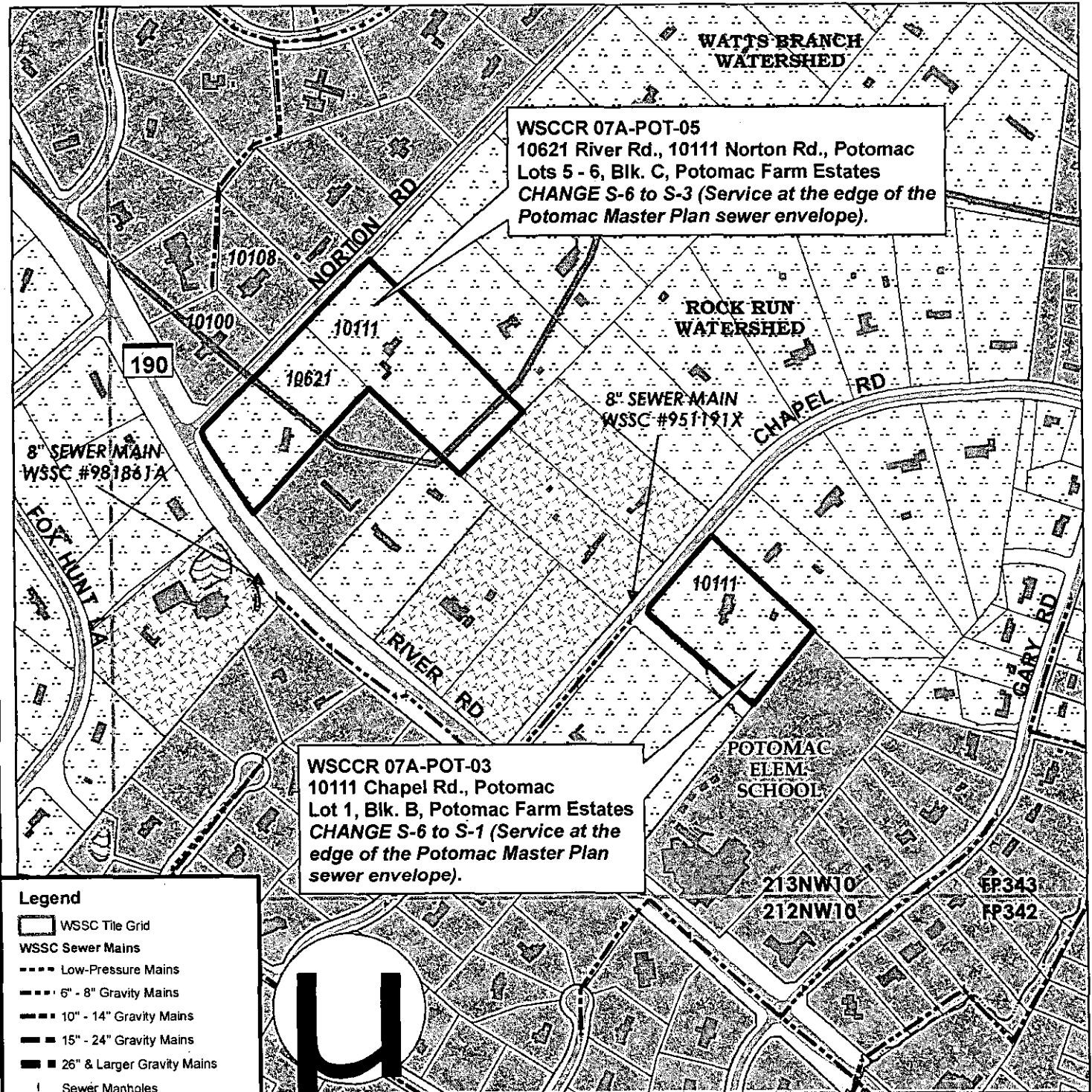
Olney Planning Area



DEP Water and Wastewater Policy Group

**Montgomery County, Maryland  
2003 Comprehensive Water Supply  
and Sewerage Systems Plan**

## Sewer Service Area Categories Map WSSCRs 07A-POT-03 (Pingho) & 07A-POT-05 (Islam & Driesman)



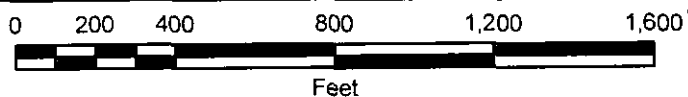
**WSSCR 07A-POT-03**  
10111 Chapel Rd., Potomac  
Lot 1, Blk. B, Potomac Farm Estates  
*CHANGE S-6 to S-1 (Service at the edge of the Potomac Master Plan sewer envelope).*

**WSSCR 07A-POT-05**  
10621 River Rd., 10111 Norton Rd., Potomac  
Lots 5 - 6, Blk. C, Potomac Farm Estates  
*CHANGE S-6 to S-3 (Service at the edge of the Potomac Master Plan sewer envelope).*

**Legend**

- WSSC Tile Grid
- WSSC Sewer Mains**
- Low-Pressure Mains
- 6" - 8" Gravity Mains
- 10" - 14" Gravity Mains
- 15" - 24" Gravity Mains
- 26" & Larger Gravity Mains
- Sewer Manholes
- Buildings
- Sewer Categories**
- S-1
- S-3
- S-4
- S-5
- S-6
- Major Watersheds

Potomac - Cabin John Planning Area

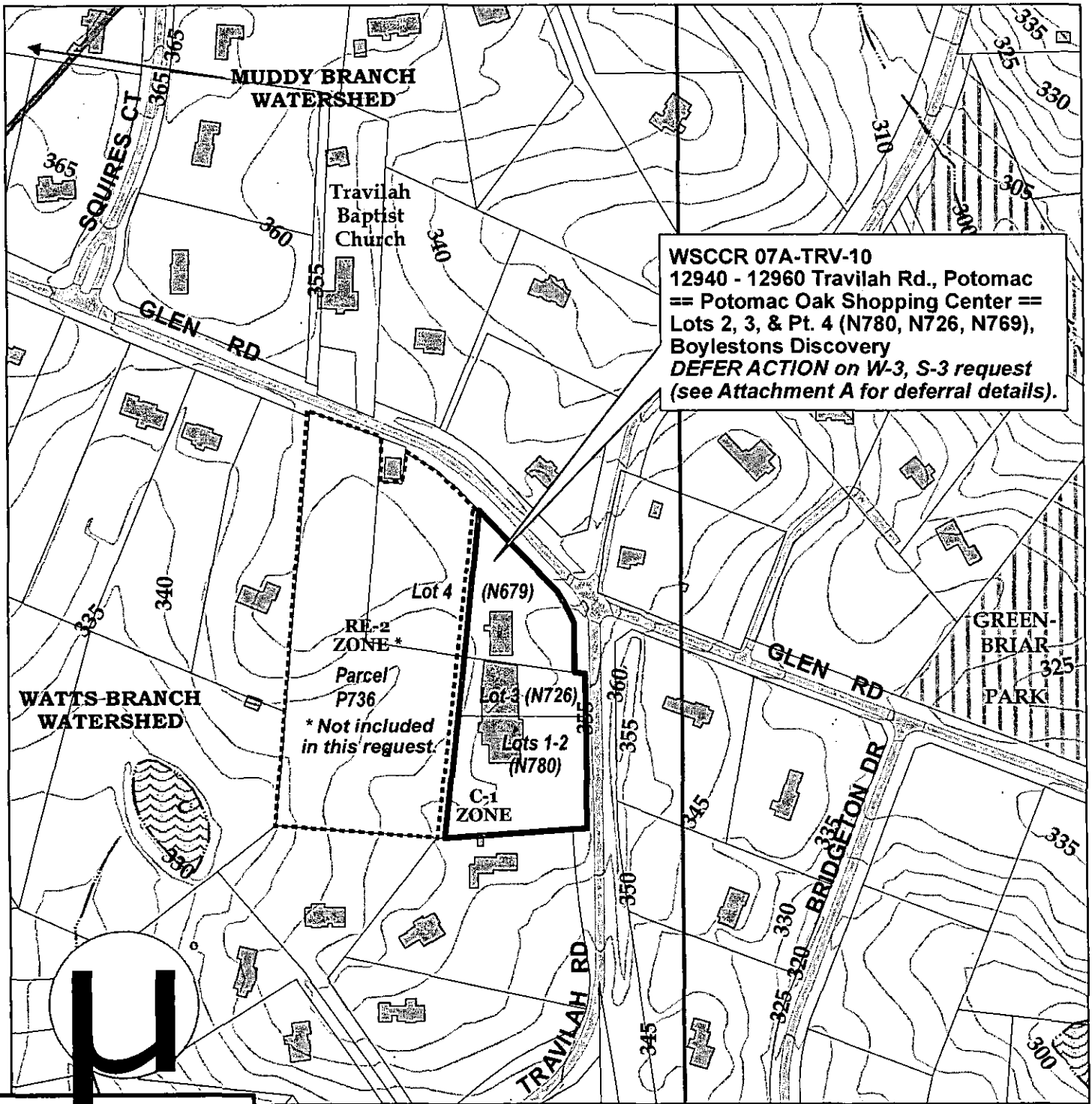


**Montgomery County, Maryland**  
**2003 Comprehensive Water Supply**  
**and Sewerage Systems Plan**



DEP Water and Wastewater  
Policy Group

## Service Area Category Change Request Map WSSCR 07A-TRV-10 (Travilah Oak, LLC; Han & J. Jan)



**WSSCR 07A-TRV-10**  
 12940 - 12960 Travilah Rd., Potomac  
 == Potomac Oak Shopping Center ==  
 Lots 2, 3, & Pt. 4 (N780, N726, N769),  
 Boylestons Discovery  
**DEFER ACTION** on W-3, S-3 request  
 (see Attachment A for deferral details).

\* Not included in this request.

**Legend**

- WSSC Tile Grid
- Topography (5 ft. c.i.)
- Buildings
- Major Watersheds
- Parks

Travilah Planning Area

Feet

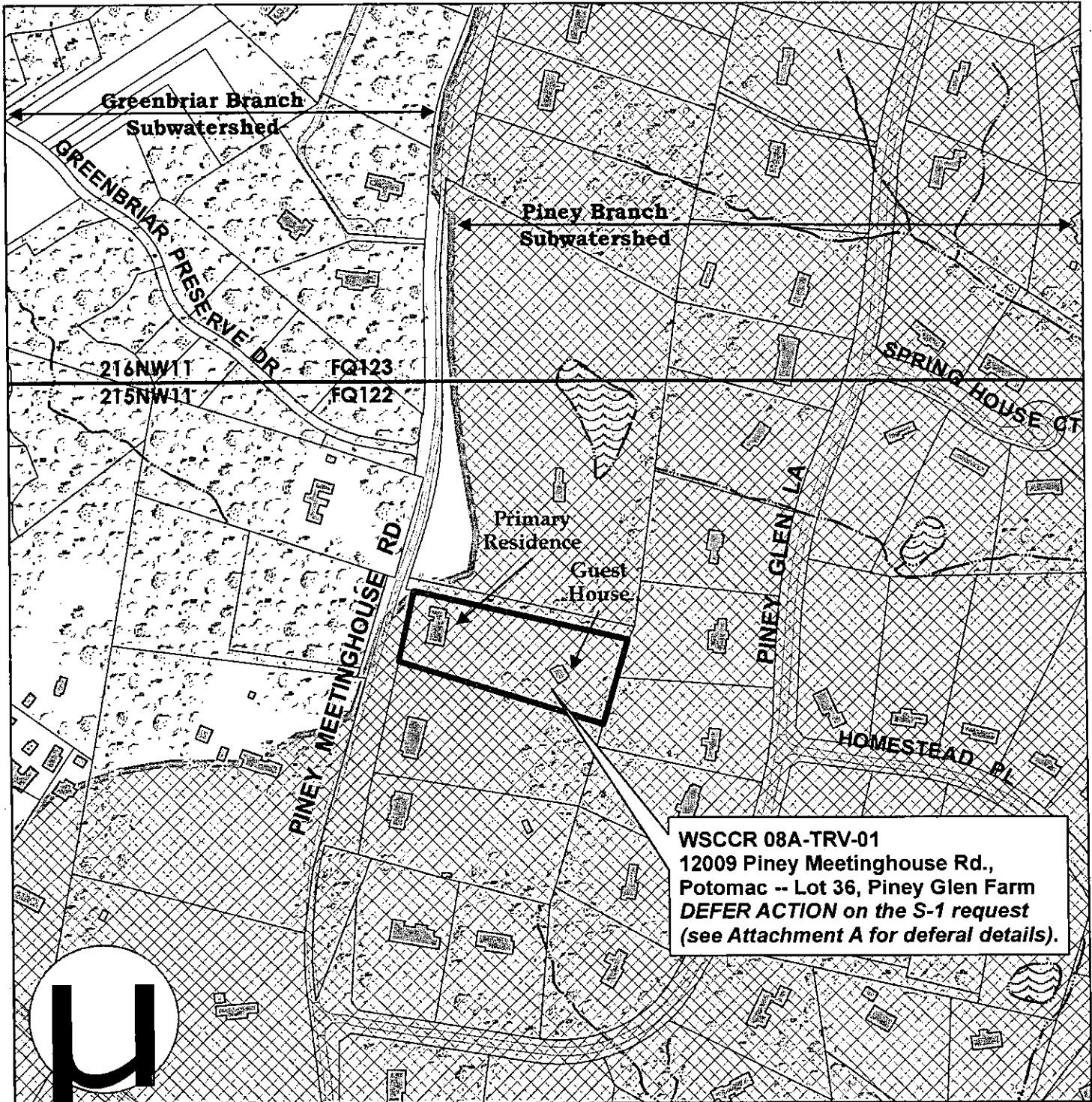
**Montgomery County, Maryland**  
 2003 Comprehensive Water Supply  
 and Sewerage Systems Plan



DEP Water and Wastewater  
Policy Group






### Service Area Category Change Request Map WSSCR 08A-TRV-01 (Reynaldo & Zorayda Lee-Llacer)



WSSCR 08A-TRV-01  
12009 Piney Meetinghouse Rd.,  
Potomac -- Lot 36, Piney Glen Farm  
**DEFER ACTION** on the S-1 request  
(see Attachment A for deferral details).

**Legend**

-  WSSC Tile Grid
-  Buildings
-  Piney Branch Subwatershed
-  Ponds/Lakes
-  Streams
-  Woodlands

Travilah Planning Area

Watts Branch Watershed

0 100 200 400 600 800



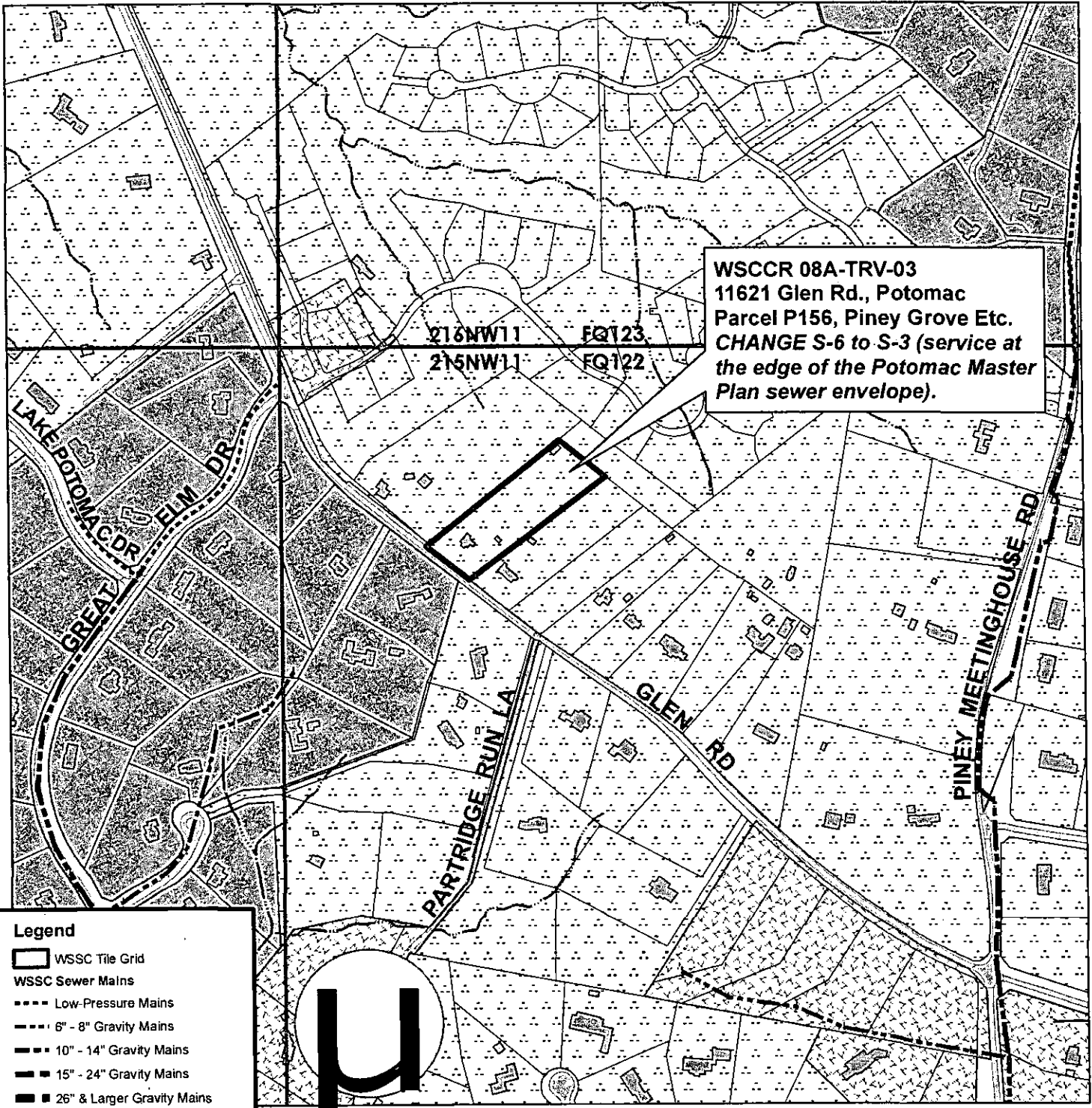
Feet

Montgomery County, Maryland  
2003 Comprehensive Water Supply  
and Sewerage Systems Plan



DEP Water and Wastewater  
Policy Group

## Sewer Service Area Categories Map WSSCR 08A-TRV-03 (Sprigg & Christina Lynn)

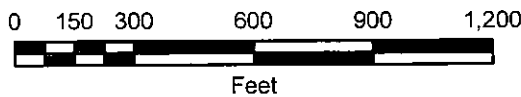


**Legend**

- WSSC Tile Grid
- WSSC Sewer Mains**
- Low-Pressure Mains
- 6" - 8" Gravity Mains
- 10" - 14" Gravity Mains
- 15" - 24" Gravity Mains
- 26" & Larger Gravity Mains
- Sewer Manholes
- Buildings
- Sewer Categories**
- S-1
- S-3
- S-4
- S-5
- S-6

Travilah Planning Area

Watts Branch Watershed



**Montgomery County, Maryland**  
2003 Comprehensive Water Supply  
and Sewerage Systems Plan



DEP Water and Wastewater  
Policy Group

## Appendix B

## Pereira, Sandra

---

**From:** Nelson, Katherine  
**Sent:** Friday, July 08, 2011 9:40 AM  
**To:** 'Levchenko, Keith'  
**Cc:** Soukup, Alan; Lieb, David; Pereira, Sandra  
**Subject:** RE: Council resolution on water/sewer cat. change for Wheaton Baptist Church site in Olney

Thanks Keith, this helps.  
Katherine

---

**From:** Levchenko, Keith [mailto:Keith.Levchenko@montgomerycountymd.gov]  
**Sent:** Friday, July 08, 2011 9:38 AM  
**To:** Nelson, Katherine  
**Cc:** Soukup, Alan  
**Subject:** RE: Council resolution on water/sewer cat. change for Wheaton Baptist Church site in Olney

Katherine:

I am out of the office today and don't have easy access to the Council's resolution language but I think the Council's approval basically was conditioned upon the Planning Board approving a site plan that was consistent with Master Plan recommendations. I don't think the Council would want to specify the exact size of a sanctuary. In this case, the Council basically gave the issue to the Planning Board to decide, since the Planning Board had recommended conditional approval. I've copied Alan in case he has anything else to add.

I'll be back in the office on Monday in case you need to discuss this further.

Keith

**From:** Nelson, Katherine [mailto:Katherine.Nelson@montgomeryplanning.org]  
**Sent:** Tue 7/5/2011 4:34 PM  
**To:** Levchenko, Keith  
**Subject:** FW: Council resolution on water/sewer cat. change for Wheaton Baptist Church site in Olney

Keith,

Our staff is in the preliminary/site plan process with the Wheaton Baptist Church. Did the Council's approval of sewer service bind the applicant to a 500-seat sanctuary? This number is not mentioned under the "County Council Action", but it is in the description of the "proposed use". As you can see from the message below, the Church is now proposing a much larger sanctuary.

Thanks,  
Katherine

---

**From:** Pereira, Sandra  
**Sent:** Tuesday, July 05, 2011 4:18 PM  
**To:** Nelson, Katherine  
**Cc:** Boyd, Fred; Kishter, Mary Jo; Braunstein, Neil; Carter, John; Lieb, David  
**Subject:** FW: Council resolution on water/sewer cat. change for Wheaton Baptist Church site in Olney

Katherine,

Thanks so much for offering to follow-up with Council in regards to the action below and the specific mention of a 500-seat sanctuary. The current preliminary and site plan applications propose a 788-seat sanctuary and we need confirmation that this does not conflict with the action for the water/sewer category change.

Sandra

**From:** Bunnag, Candy

**Sent:** Thursday, February 17, 2011 5:09 PM

**To:** Kishter, Mary Jo; Braunstein, Neil; Pereira, Sandra; Afzal, Khalid; Boyd, Fred; Kronenberg, Robert; Eapen, Cherian

**Subject:** Council resolution on water/sewer cat. change for Wheaton Baptist Church site in Olney

The Council resolution is at:

[http://www.montgomerycountymd.gov/content/council/pdf/res/20080408\\_16-500.pdf](http://www.montgomerycountymd.gov/content/council/pdf/res/20080408_16-500.pdf)

For the site, the action is:

Olney Planning Area										
Property Information and Location Property Development	Applicant's Request County Council Action									
<b>WSCCR 07A-OLN-02: The First Baptist Church of Wheaton*</b>										
<ul style="list-style-type: none"><li>• 3110 Emory Church Rd., Olney</li><li>• Parcel P077, Chas &amp; William (dist./acct. #08-00705848)</li><li>• Map tile: WSSC - 223NW03; MD - HS563</li><li>• North side of Emory Church Rd., west of Norbrook Dr.</li><li>• Olney Master Plan (2005)</li><li>• Northwest Branch Watershed (MDE Use IV)</li><li>• RNC Zone; 15.0 ac.</li><li>• <u>Existing use:</u> single-family residence.</li><li>• <u>Proposed use:</u> place of worship (500-seat sanctuary, fellowship hall, classrooms, offices); First Baptist Church of Wheaton, relocating from its existing site on Georgia Ave. in Wheaton</li><li>• <i>* Original owner/applicant: Frances Doherty Estate. The church acquired the property on 7/1/07.</i></li></ul>	<table border="1"><thead><tr><th>Existing –</th><th>Requested –</th><th>Service Area Categories</th></tr></thead><tbody><tr><td>W-6</td><td>W-1</td><td></td></tr><tr><td>S-6</td><td>S-1</td><td></td></tr></tbody></table> <p><b>County Council Action</b></p> <p><b>Maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan.</b></p> <p><i>Note: In its review of the applicant's preliminary plan, the Planning Board is asked to ensure that potential road improvements (such as to Emory Road) are minimized as are any deleterious environmental impacts (such as reductions in ground water quality).</i></p>	Existing –	Requested –	Service Area Categories	W-6	W-1		S-6	S-1	
Existing –	Requested –	Service Area Categories								
W-6	W-1									
S-6	S-1									

candy



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
*County Executive*

Robert G. Hoyt  
*Director*

May 19, 2011

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: First Baptist Church of Wheaton, pre-application 720090050, preliminary plan 820100080, site plan 120100250 applied for on 5/5/2010, NRI/FSD 420080900 applied for on 5/12/2010

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the applications for the above referenced requests are required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and were submitted after this date, I am providing the following recommendation pertaining to two requests for variances received on April 20, 2011, and May 5, 2011.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

Françoise Carrier

May 19, 2011

Page 2

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.
2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for variances conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

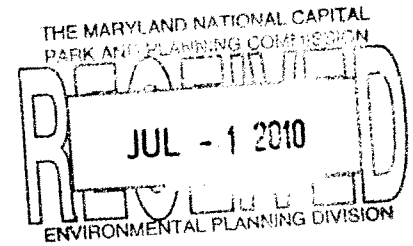
If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Acting Chief



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

December 14, 2009

Carla Reid  
Director

Mr. Pearce C. Wroe  
Macris, Hendricks & Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request  
for First Baptist Church of Wheaton  
Preliminary Plan #: Pending  
SM File #: 234723  
Tract Size/Zone: 15.00 acres / RNC  
Total Concept Area: 15.00 acres  
Lots/Block: N/A  
Parcel(s): P077  
Watershed: Northwest Branch

Dear Mr. Wroe:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via construction of two detention ponds; on-site water quality control and onsite recharge via construction of a Montgomery County Sand Filter (MCSF), two Bio Filters, a Dry Well Trench, and other nonstructural measures.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. Maryland Department of the Environment regulations require all final sediment control and stormwater management plans approved on or after May 4, 2010 to comply with the most recent changes to the Maryland Stormwater Design manual. The stormwater concept herein approved is **NOT** in compliance with these most recent changes. If the sediment control permit for this project is not issued by the May 4 deadline, the stormwater concept must be formally revised to fully comply with the new requirements. This may require significant modifications to the proposed site layout in order to meet the full requirements for Environmentally Sensitive Design (ESD). The proposed stormwater concept plan herein approved is not reflective of an ESD approach. \* See Footnote to Condition 4
5. Both proposed ponds must be designed as "Shallow Facilities", which would not be subject to MD-378 pond specifications. The required extended detention time for Class IV watersheds such as this one is 12-hours. The conceptual computations appear to use a 24-hour detention time.



This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at 240-777-6338.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm mce

cc: C. Conlon  
M. Pfefferte  
SM File # 234723

QN - ON; Acres: 15  
QL - ON; Acres: 15  
Recharge is provided

\* Subsequent to the approval of this concept, the State of Maryland adopted Emergency Regulations that permit projects meeting certain specific conditions to be designed under regulations in force prior to May 4, 2009. In addition, Montgomery County Department of Permitting Services adopted a policy that states: "projects submitted prior to January 31, 2009 do not need to comply with the new standards as long as those plans were submitted for review by January 31, 2010." Although not specifically stated in the MCDPS policy it is understood that approvals must be pursued in a diligent manner.

Footnote Approved By:



for the MCDPS on

6/3/10

Richard R. Brush



DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

Arthur Holmes, Jr.  
Director

June 28, 2011

Mr. Neil Braunstein, Coordinator  
Area 1  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 120100250  
First Baptist Church of Wheaton

Dear Mr. Braunstein:

We have completed our review of the unsigned amended preliminary plan dated March 23, 2011. An earlier version of this plan was reviewed by the Development Review Committee at its meeting on June 14, 2010. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Necessary dedication for widening of Emory Church Road in accordance with the master plan.
2. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
3. Grade establishments for all new public streets and/or pedestrian paths must be approved prior to submission of the record plat.
4. A Public Improvements Easement may be necessary along Emory Church Road, in order to accommodate the required sidewalk construction. Prior to submission of the record plat, the applicant's consultant will need to determine if there is sufficient right of way to permit this sidewalk construction. If not, the applicant will need to either dedicate additional right of way or execute a Declaration of Public Improvements Easement document. That document is to be recorded in the Land Records of Montgomery County, with the liber and folio referenced on the record plat.

**Division of Traffic Engineering and Operations**

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878  
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080  
trafficops@montgomerycountymd.gov



5. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
6. Wells and septic systems cannot be located within the right of way nor slope or drainage easements.
7. We have accepted the consultant's January 2011 amended storm drain capacity and impact studies and the storm drainage improvements proffered by that study.
8. We have conditionally accepted the improvements proposed on the November 24, 2010 "Sight Distance Study Plan." Prior to release of the site access and Use & Occupancy permits, we recommend the applicant be required to reassess the sight distances that resulted from the regarding effort, to ensure that visibility of at least two hundred (200) feet to the east was achieved.
9. Trees in the County rights of way – spacing and species to be in accordance with the applicable DOT standards. Tree planning within the public right of way must be coordinated with Brett Linkletter, the Manager of the MCDOT Division of Highway Services, Tree Maintenance Unit at (240) 777-7651.
10. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Ms. Atiq Panjshiri of that Department at (240) 777-6352 to discuss the parking lot design.
11. Provide on-site handicap access facilities, parking spaces, ramps, etc. in accordance with the Americans With Disabilities Act.
12. Where perpendicular parking spaces border a sidewalk, a two (2) foot vehicle overhang is assumed. The applicant should either provide a seven (7) foot wide sidewalk or wheelstops within those parking spaces.
13. For any parking facility containing more than fifty (50) parking spaces, the applicant needs to furnish bicycle parking facilities as required Section 59 E-2.3 of the Montgomery County Code. Accordingly, the applicant should provide either bike lockers or inverted "U" type bike racks.
14. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.

15. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
16. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
17. Due to environmental limitations (streams and wetlands) within the property adjacent to the Emory Church Road right-of-way, we support not requiring a public utility easement within the roadway frontage of this project.
18. Permit and bond will be required as a prerequisite to MCDPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
  - A. Across the Emory Church Road site frontage, widen the existing pavement to twenty (20) feet, construct variable width sod shoulder, construct a five (5) foot wide concrete sidewalk, and grade back to natural ground at a 2:1 slope\*. Sod or seed as directed all other areas from the edge of the shoulder to the property line.


\* To minimize the impact of the variable width sod shoulder and the concrete sidewalk on the existing trees, we support eliminating the typical side ditch (allow sheet flow to the nearby stream) and allowing the sidewalk to meander around those trees. Prior to issuance of any permits or commencement of any construction activities, we recommend the applicant's representatives meet on site with appropriate M-NCPPC staff, the DPS Right-of-Way Inspector, and Mr. Brett Linkletter (the Manager of the MCDOT Tree Maintenance Unit) to determine the specific alignment for the sidewalk and any necessary tree removal actions.
  - B. Construct triple thirty (30) inch and twin fifteen (15) inch reinforced concrete culverts across Emory Church Road as proposed in the January 2011 amended storm drain study and subsequent plans. Construct headwalls and provide stream stabilization to result in non-erosive flow velocities. The enclosed storm drainage and engineered channels will need to be in accordance with the MCDOT Storm Drain Design Criteria within the County rights-of-way and all drainage easements.
  - C. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
  - D. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.

Mr. Neil Braunstein  
Preliminary Plan No. 120100250  
June 28, 2011  
Page 4

- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. Sam Farhadi, our new Development Review Area Engineer for this vicinity at [sam.farhadi@montgomerycountymd.gov](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-2197.

Sincerely,



Gregory M. Leck, Manager  
Development Review Team

m:/subd/gml/docs/pp/120110250, 1<sup>st</sup> Baptist Church of Wheaton.doc

Enclosure

cc: D. Edward Williams; First Baptist Church of Wheaton  
Paul Newman; Macris, Hendricks & Glascock, P.A.  
Scott D. Roser; Macris, Hendricks & Glascock, P.A.  
Rose Krasnow; M-NCPPC Area 1  
Robert Kronenberg; M-NCPPC Area 1  
Cherian Eapen; M-NCPPC Area 1  
Cathy Conlon; M-NCPPC DARC  
Preliminary Plans Notebook  
Preliminary Plan Folder

cc-e: Rick Brush; MCDPS WRM  
Atiq Panjshiri; MCDPS RWPR  
Henry Emery; MCDPS RWPR  
Brett Linkletter; MCDOT DHM  
Dan Sanayi; MCDOT DTEO  
Sam Farhadi; MCDOT DTEO



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## FIRE MARSHAL COMMENTS

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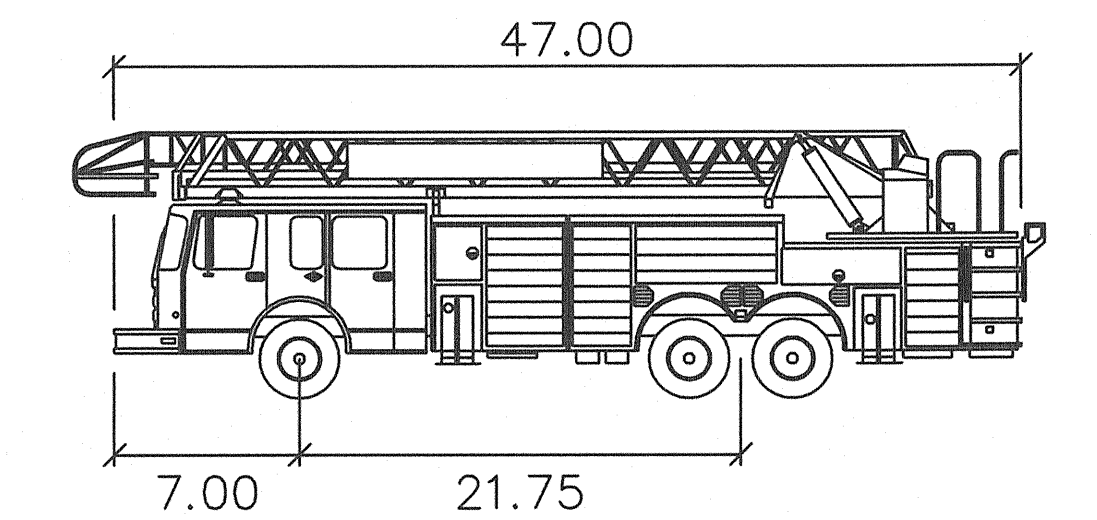
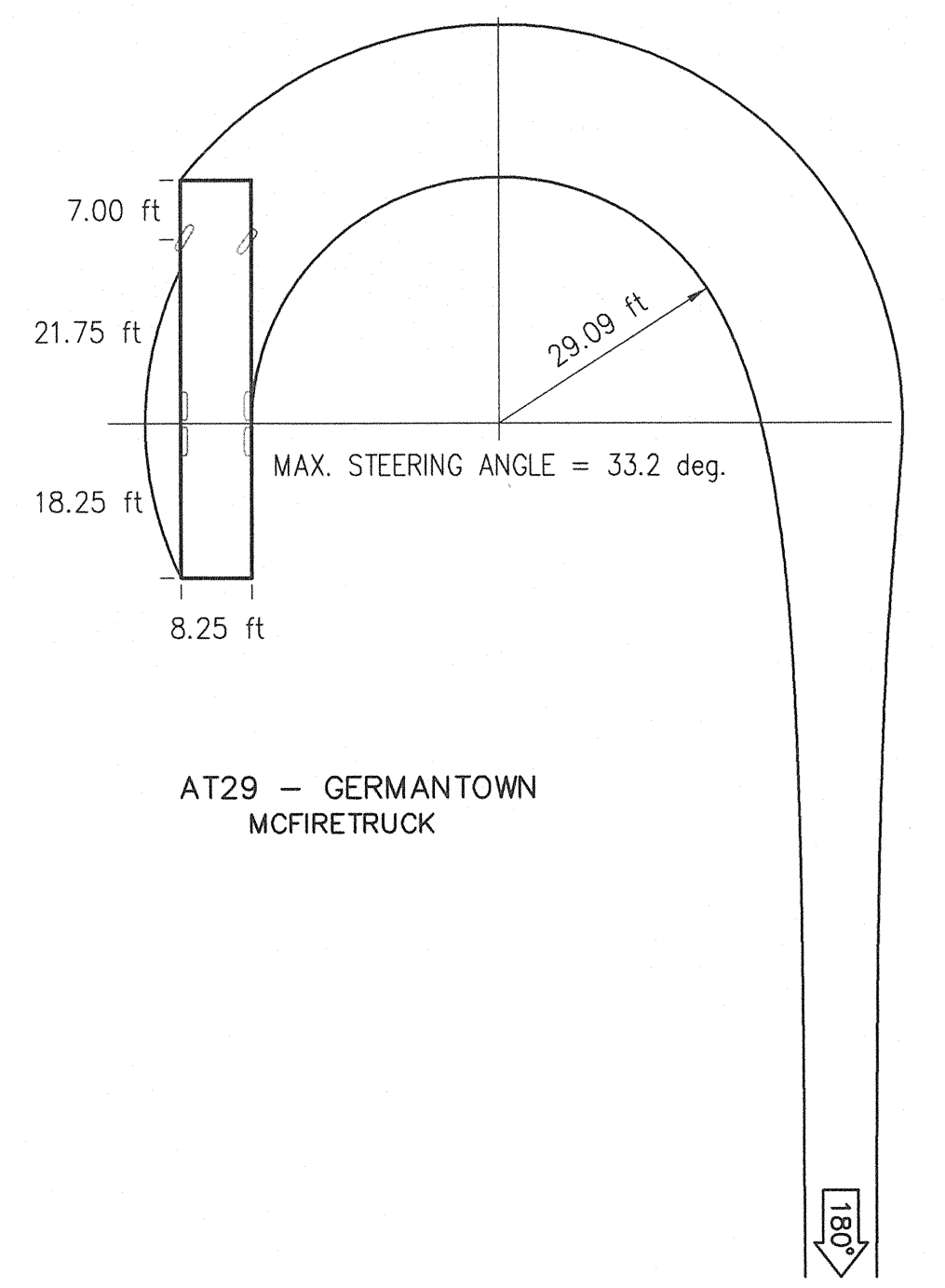
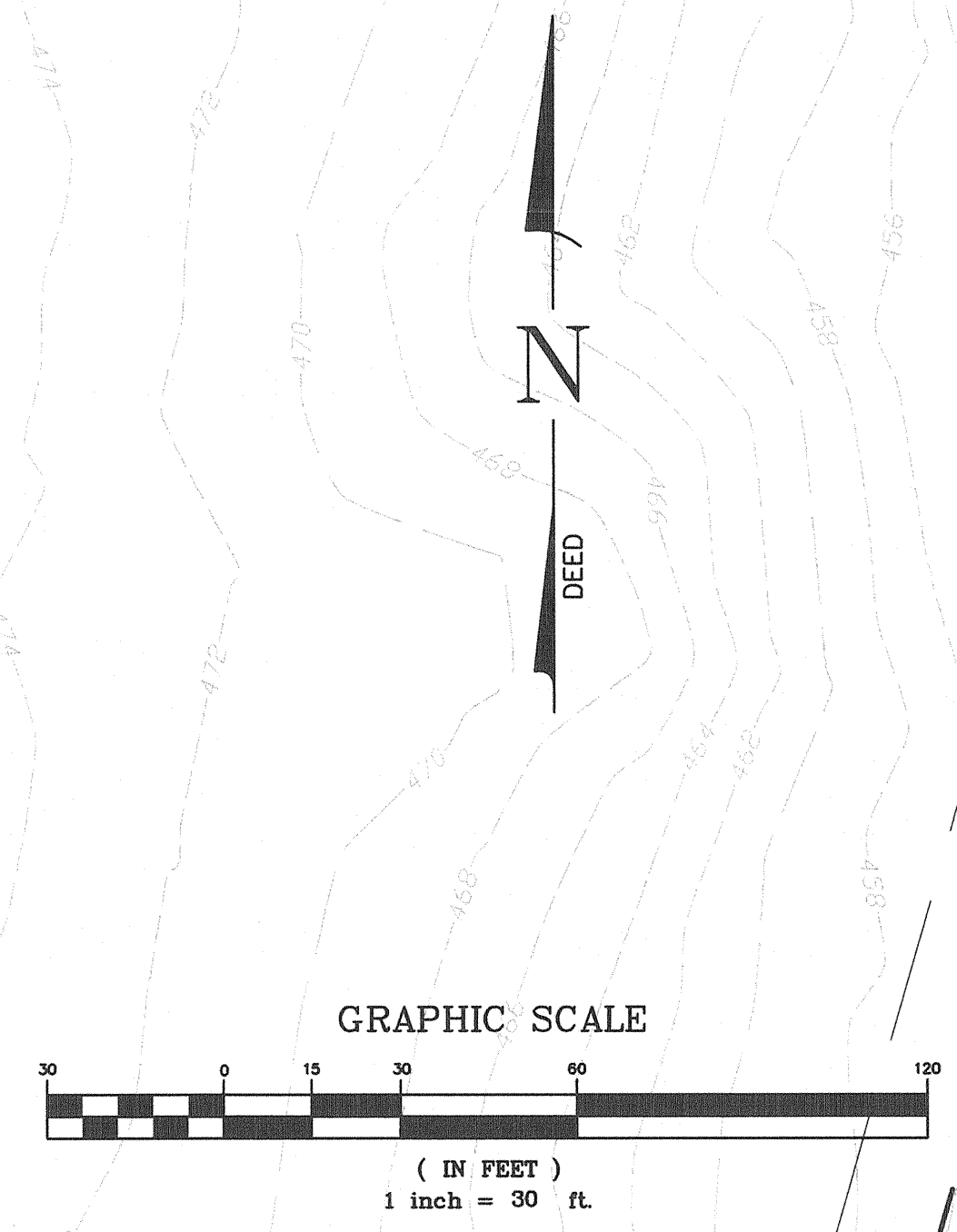
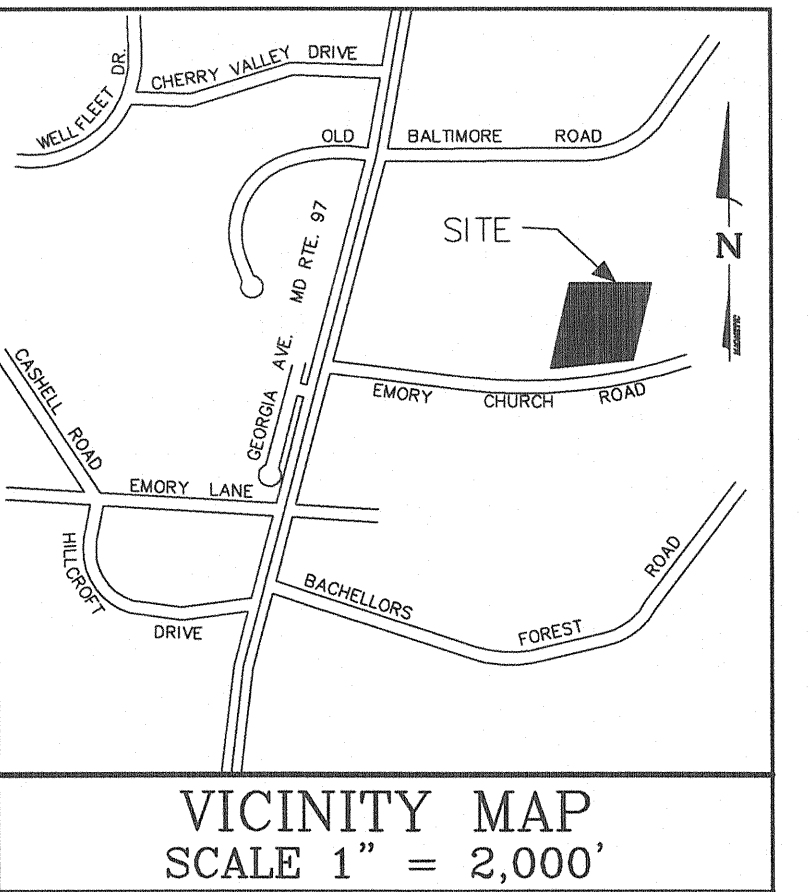
**DATE:** 06-Jul-11  
**TO:** Ray Burns  
Macris, Hendricks & Glascock  
**FROM:** Marie LaBaw  
**RE:** First Baptist Church of Wheaton  
720090050 120100250 820100080

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### PLAN APPROVED

1. Review based only upon information contained on the plan submitted **09-Jun-11** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

W. MONTGOMERY CO. L34001 F.258



FIRE TRUCK		feet
Width	: 8.25	FIRE CODE ENFORCEMENT
Track	: 8.25	Fire Department Access Elevation
Lock to Lock Time	: 6.00	Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from omissions, errors, or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation.
Steering Angle	: 33.2	See Plan 48 thru 76/11

INDICATES FIRE LANE  
 F.H. FIRE HYDRANT



**Professional Certification:**  
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer under the laws of the State of Maryland, License No. 16905, Expiration Date: 4-21-2012  
 Stephen E. Crum, P.E.

N183  
 Robert A & M B English  
 Parcel 3  
 Powell's Addition To Batchelors Forest  
 Plat No. 4595

N184  
 Charles M JR & J R Graefe  
 Parcel 4  
 Powell's Addition To Batchelors Forest  
 Plat No. 18641

P303  
 Charles M JR  
 & J R Graefe,  
 L10018 F.693

P220  
 Helen M Polinger  
 L7018 F.636  
 Owner:  
 First Baptist Church of Wheaton  
 10914 Georgia Ave  
 Wheaton MD, 20902  
 Phone: 301.949.6585  
 Fax: 301.949.8470  
 Contact: Ed Williams

NO.	DATE	DESCRIPTION	BY
1	8-3-10	Revised per MCFRS comments	RJB

TAX MAP HS53 WSSC 222NW03

**FIRE CODE ENFORCEMENT SITE PLAN  
 PARCEL 77  
 FIRST BAPTIST CHURCH OF WHEATON  
 3110 EMORY CHURCH ROAD  
 8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND**

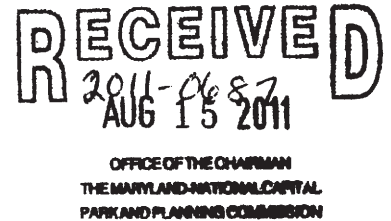
	Macris, Hendricks & Glascock, P.A. Engineers • Planners Landscape Architects • Surveyors	Proj. Mgr.	RJB
		Date	7-7-10
9220 Wightman Road, Suite 120 Montgomery Village, Maryland 20886-1279	Phone 301.670.0840 Fax 301.948.0693 www.mhga.com	Scale	1"=30'
		Project No.	07.106.21
		Sheet	1 of 1

## Appendix C





THE LAW OFFICE OF  
Michele  
Rosenfeld LLC



August 12, 2011

Ms. Francoise Carrier  
Chairman, Montgomery County  
Planning Board  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20190

RE: First Baptist Church of Wheaton  
Preliminary Plan No. 120100250  
Site Plan No. 820100080  
Variance Request: Forest Conservation Plan 820100080/120100250

Board Hearing Date: September 8, 2011

Dear Ms. Carrier:

Pursuant to the Board's Rules of Procedure I am making the following requests on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth (abutting property owners) with respect to the above-referenced preliminary plan, site plan and variance applications:

1. Request for additional time to present testimony (Planning Board Rules of Procedure Section 4.7.3).

The public hearing in this case involves several layers of regulatory review, each one with independent standards and required statutory findings. Accordingly, it is an exceptionally complicated case that merits additional time for my clients to present their testimony and evidence. As a combined subdivision and site plan hearing, my clients must present their case with respect to each regulatory proceeding at one hearing.<sup>1</sup> In addition, the applicant has requested a variance pursuant to the County's Forest Conservation Law, which implicates a third substantive decision that the Board must make under the County's Forest Conservation Law.<sup>2</sup>

To further complicate matters, as a threshold matter my clients maintain that the application does not – and cannot – meet the standards established by the County's Ten Year Water and Sewer Plan and, in particular, the Private Institutional Facilities

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<sup>1</sup> Specifically, the standards of review governing subdivisions contained in Section 50-25 of the Montgomery County Subdivision Regulations and those governing site plans contained in Section 59-D-3 of the Montgomery County Zoning Ordinance.

<sup>2</sup> See Section 22A-21 of the County's Forest Conservation Law.

Policy ("PIF Policy") contained therein. This issue is one that the Board does not address as a matter of course in subdivision and site plan hearings. In this case, however, the Council left the final decision regarding the sewer category change in the hands of the Board when it granted "conditional" approval conditioned upon Planning Board approval of a preliminary plan. With the PIF Policy a central – yet atypical – factor in this case, my clients also require additional time to properly present fact-specific information on this issue to the Board. My clients, who have actively followed this application for years, are uniquely impacted by the proposal and ask for a total of 30 minutes to present their testimony and evidence to the Board in a comprehensive manner.

2. Request for cross examination (Planning Board Rules of Procedure Section 4.6).

Staff has advised me that they expect to recommend approval of the preliminary and site plans. Any such approval must necessarily be based on staff's conclusion that the preliminary plan application (a) conforms to the master plan; and (b) is eligible for public sewer under the County's PIF Policy. As aggrieved parties in this contested case, my clients request the right to cross-examine the following witnesses on the following subjects:

1. The applicant's land planner and engineer with respect to master plan and PIF Policy issues;
2. Any Park and Planning representative who submits written information or presents oral testimony with respect to master plan and/or PIF Policy issues; and
3. Any County representative who testifies with respect to the PIF Policy.

Upon review of the staff report, and/or upon consideration of testimony presented at the hearing, my clients may elect to forego cross-examination of any one or all of these witnesses.

We respectfully request your decision well in advance of the hearing on these two requests so that we may proceed accordingly.

Sincerely,



Michele Rosenfeld

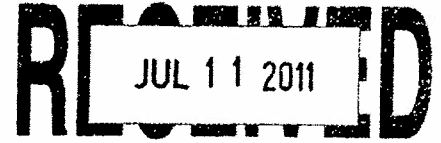
Cc: Dr. David Reile  
Dr. Barbara Suddarth



THE LAW OFFICE OF  
Michele  
Rosenfeld LLC

July 8, 2011

THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION



OFFICE OF THE GENERAL COUNSEL  
MONTGOMERY REGIONAL OFFICE

Mr. Neil Braunstein  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Preliminary Plan No. 120100250  
First Baptist Church of Wheaton

Dear Mr. Braunstein:

I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth with respect to the upcoming preliminary plan hearing that you advised me late last week (upon my inquiry) is currently scheduled for July 28. My clients returned from an out-of-state business trip earlier this week and have advised me that they have vacation plans and will be out of town on the 28<sup>th</sup> and will not return to Maryland until August 4.

My clients do not wish to cancel their vacation plans or incur the potential penalties they may suffer if they cancel the reservations that they have made. In addition, they are unable to reschedule their planned vacation later in the summer in part because their son must be back in time to attend school (which for him begins on August 15).

As you are well aware, Drs. Reile and Suddarth own a home on property that abuts the subject property and arguably are the neighbors most directly impacted by the proposed development. As you also are aware, they have actively followed the application process, including taking the time to meet several times over the course of the past year or two with staff both at Park and Planning and other agencies in anticipation of being prepared for, and participating in, any public hearing that the Board would hold on this matter. In addition, Dr. Reile is President of the Southeast Rural Olney Civic Association (SEROCA) and would be unable to participate in the proceedings in this capacity, either.

Please reschedule the July 28<sup>th</sup> preliminary plan hearing (and any concurrent site plan hearing if one is scheduled for the same date) to an alternative date when my clients would be able to attend and participate. They have no plans to travel in September. It would be highly prejudicial to my clients' property interests if they were unable to participate in this contested evidentiary case. Thank you in advance for your consideration of this request and please advise me at your earliest convenience of staff's decision.

Sincerely,

Michele Rosenfeld

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
Mr. David Lieb, Associate General Counsel  
Ms. Sandra Pereira, MNCPPC



THE LAW OFFICE OF  
**Michele**  
**Rosenfeld** LLC

March 18, 2011

Mr. Sandra Pereira  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Site Plan No. 820100080  
First Baptist Church of Wheaton

Dear Ms. Pereira:

I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. Enclosed please find a copy of minutes from the May 12, 2010 and June 9, 2010 meetings of the Greater Olney Citizens' Association ("GOCA") (Attachments One, Two).

These minutes reflect that GOCA considered FBCW's proposed development last spring. GOCA considered the plan in May, and before taking a position tabled the issue and asked that FBCW attend the next GOCA meeting to explain its development proposal. As stated in the June 9, 2010 minutes FBCW "refused" the invitation to meet with GOCA, and instead simply provided a letter. In June, GOCA voted (20 – 0) to oppose the 800-seat institution on grounds including: (1) the proposal will cause excessive traffic; (2) the proposal is not in keeping with the Master Plan; and (3) the proposal creates a parking lot in the middle of a residential community. (See highlighted text in Attachments One, Two.)

Please note in that, as reflected in these minutes, the Southeast Rural Olney Civic Association (SEROCA) also has opposed the FBCW development. One of SEROCA's primary concerns is that the 800-seat institutional use would be located in the center of, and overwhelm, the surrounding residential community of only 33 homes. Another primary concern is the environmental impact of an institution of this size being built at this location.

Please include a copy of these minutes in the above-referenced site plan record. Thank you in advance for your help.

Sincerely,



Michele Rosenfeld

Enclosure

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
Mr. Matt Zaborsky, President, GOCA  
Mr. Chuck Graefe, Vice-President SEROCA  
Mr. David Lieb, Associate General Counsel  
Mr. Neil Braunstein, MNCPPC

## MINUTES – May 12, 2009

The meeting was called to order by President Sharon Dooley at 7:50 p.m. The minutes from the April meeting were approved. The agenda was accepted.

### Public Comments

- Matt Zaborsky asked that when signing in folks indicates on the sign in sheet by use of a "D" or an "A" whether they are representing their community as a delegate or alternate. Matt advised us that prior to the June meeting there would be a Community Conversation starting at 7:00 p.m. re the deer problem and would be called Deerzilla as named by the Washington Post.
- Representatives from the Olney Farmers and Artisans Market talked of events that would be taking place each Sunday during the market time featuring a different merchant each week and culminating with a final event in October to be hosted by the Sandy Spring Museum in conjunction with their Gala.
- Dan Zabairi was passing around a petition to be signed by all who would like to in attempt to get rid of the speed cameras that are popping up all over our area and Montgomery County as a whole. He was hoping to have the issued place on the next ballot for a referendum. He suggested for more information that folks go to the web site about this MDSCamera.com.
- In Helene Rosenheim's absence, Jackie and Danny Benn circulated sign-up sheets for volunteers for Olney Days events for Saturday and Sunday.
- Sharon Dooley reported that in thanks to a large community effort which she spearheaded, the route 53 ride-on bus had been SAVED. Sharon wanted to thank all those who signed the petitions and came out to hearings in force.

### SPECIAL PRESENTATION

**Legislative Wrap-Up:** The first and major part of the special presentation featured representatives from Annapolis. Introduced to the meeting were Senator Rhona Kramer, Delegate Karen Montgomery, Delegate Anne Kaiser Delegate Herman Taylor, Delegate Roger Manno, and Delegate Ben Kramer. Each presenter was allowed 5-10 minutes to describe their individual areas of representation. Senator Rhona Kramer expressed the difficulties her Budget and Taxation Committee had faced this year. Important to our area was the funding received for the Olney Theater and OBGC Boys and Girls Club. This was in the form of capital funding that she had worked on along with the Delegates. Delegate Karen Montgomery gave the meeting a very brief overview of Health and Government operations including help to small businesses with few than 19 employees to offer health insurance. Delegate Anne Kaiser talked about Ways and Means which was her area of focus. She appreciated the help she received from citizens and gave a shout out to Louis Wilen for bringing to her attention the Homestead Credit act which had now saved the state more than was even originally projected. She asked that other citizens step forward as Louis had done and if you think something should be a law then call it in because possibly it could become a law. Delegate Herman Taylor stated that he was the House Economics Matters Committee Chair. He talked of working as a team and applauded Delegate Karen Montgomery for her work this past session. He went on to outline some bills that had passed this session particularly bills helping owners of small businesses and private contractors. Delegate Roger Manno thanked the folks he represented who were present at the meeting for helping elect him to his first term. He had worked on the Small Business Health Insurance Expansion Act, Health Care Discrimination and End-of-Life counseling along with many other bills. Delegate Ben Kramer spoke briefly about the Judiciary Committee and a focus of their work had been on protecting senior residents. He also talked about reform for hate crimes, gender crimes and crimes against the disabled. The presenters then answered a range of questions from the assembled including issues pertaining to the ICC, the intersection at 97/28, speed cameras, and budgetary issues. The Senator and Delegates were thanked by Sharon Dooley for attending and were invited to stay if they wished for the rest of the meeting.

**SEROCA's position concerning development of 3110 Emory Church Road by First Baptist Church of Wheaton:** Chuck Graefe of SEROCA read a statement outlining SEROCA's opposition to the proposed development of 3110 Emory Church Road by the First Baptist Church of Wheaton. Among SEROCA's reasons for opposition was the fact that this 800 seat institution would be situated in the center of a residential community of 33 homes which would be overwhelmed by a church of this size particularly on Sunday mornings. SEROCA was also concerned of the environmental impact by having an institution of this size built. SEROCA asked that GOCA join SEROCA in opposing this development. Discussion of the matter included a suggestion that the Church be given a chance to come to talk to GOCA at the next meeting and explain their position. **A motion was proposed by Arnie Gordon and seconded by Bob Beard that: GOCA oppose the proposed construction by First Baptist Church of Wheaton as (1) being the cause of an excessive amount of traffic, (2) not in keeping with the Master Plan and (3) creating a park lot in the middle of a residential community.** During discussion of the motion Matt Zaborsky stated that he felt GOCA was

climbing a slippery slope without hearing from the Church. The church had been invited to attend our meeting in January by Sharon Dooley. Dave Eskenazi wanted to know the timing of the whole process. He wanted to know if a preliminary plan had been done yet or was they still in the stage of working on drawings. He reminded us that GOCA had opposed sewer and water. Dave suggested that Parks and Planning be asked not to proceed until they present to GOCA. After further discussion a **second motion was proposed by Bob Beard and seconded by Barbara Falcigno that: The motion be tabled for 30 days to allow the Church to be invited to present to GOCA. The motion was voted on and passed with 19 votes for the motion, 18 against the motion and no abstentions.**

**Our House:** Benny Bienvenue of Our House was introduced by Sharon Dooley. Benny told us that Our House is located on Zion Road and Route 108 and is a 140 acre property. It is a residential program for at risk kids approximately aged 16-20 whose stay is in the region of 13 months. It provides the kids with an opportunity to learn job skills during the day and academics in the evenings. The proposed development included a green dorm with fleshless toilets as they were reclaiming the water and roof photo electric cell. The dirt was being made into bricks and the construction where possible was being done mostly by the kids. Currently there are 24 resident kids and 11 full time staff but there is a staff of 21 total who man the facility 24/7. Benny described the program as being very successful since few if any of the kids who resided at Our House had reoffended for a success rate of over 80%. The kids are very friendly and very respectful when going into the community. In answer to a question Benny stated that Our House currently has an organic garden and 8 beehives. Benny was thanked for his work with the kids and for his presentation by Sharon Dooley.

## **OFFICERS/COMMITTEE/LIAISON REPORTS**

### **Treasurer's Report:**

In Roy Peck's absence there was no Treasurer's Report.

### **Correspondence Report:**

Ruth advised that there was nothing new to report.

### **Chamber of Commerce Report:**

Joe Buffington passed out fliers and introduced the iBuyOlney.com website and program. He hoped that website would be up and running by June and hoped to have more information available at Olney Days. The program was largely to keep purchasing within the local economy wherever possible which is considered green since it saves on gas and is giving back to the community.

### **Olney Town Center Advisory Committee Report:**

Bob Beard that approximately 2 weeks ago the Library had brought their proposed expansion plans to the Olney Town Center Advisory Committee and that work was due to start September 2010.

### **Civic Federation Report:**

Arnie reported on the huge sad loss of Wayne Goldstein to the Civic Federation and the community. Arnie advised that at the Civic Federation banquet this coming Friday the Parents Coalition of Montgomery County was going to be receiving the Gazette Award for the work they had been doing to question MCPS on its management of the school system. Arnie had testified on 09-01 supporting the zoning text amendment.

### **Membership Report:**

Matt Zaborsky reported that per the GOCA bylaws allowed to vote were 2 delegates from each association that were dues paying, the past presidents and current GOCA officers. We currently have 29 dues paying associations, 7 GOCA officers and 12 past presidents for a total of 77 votes. Per the bylaws a quorum equals 1/5<sup>th</sup> of the official voting membership for 16 minimum official votes. Matt has copies available to send to any delegate who would like a copy and asked they just email their request to him. Matt thanked Dave Eskenazi, Helene Rosenheim and Ron Berger who helped him in compiling the information.

### **Transportation Report:**

Dave Eskenazi reported that all was quiet at the moment. He was working with SHA to schedule a walking tour of the planned ICC and is awaiting a date. Those walking will need to wear heavy shoes. Sneakers will not work.

**President's Report:**

Sharon thanked Roger Manno and others who went to bat for us along with others to get a delay to the closing of Georgia Avenue. SHA is now putting sidewalks on both sides of Georgia Avenue between Tidewater and Queen Elizabeth. The Welcome to Olney sign is looking somewhat scruffy and there were dead trees found. Good Earth has agreed to donate their labor to pulling out trees and tidying up the area including planting new plants. The Executive Board approved the purchase of the plants since we get a good deal of our profit from the Banners at Georgia and 108. Because the land is owned by the State we do need the State's permission to remove the dead trees and currently the application is in process. Benny Bienvenue offered for his kids from Our House to paint the sign any time that was needed. Sharon received an application going to the Planning Board shortly about the Marian Brothers property. Manor Oaks is very concerned about this construction. Sharon mentioned the huge accident at Georgia Avenue and Owens Boulevard which is a notoriously bad intersection at day and night. Sharon was hoping that in talks with Parks and Planning when discussing the proposed Marian Brothers property a case could be made for putting in a turn lane or even protected turn lane at that intersection.

**OLD BUSINESS****Olney Days 2009 Report:**

Jackie and Danny Benn gave a brief report in Helene's absence. They informed us that the Montgomery section of the Washington Post on Thursday was stating that Olney Days was a best bet. It was hoped that REMAX would have a hot air balloon offering rides and some of the other highlights were a roaming juggler, concerts and of course the favorite fire engine rides. The evening on Saturday was going to culminate with fireworks. Sunday along with the car show at Fletchers and the parade a new event was the concert at Olney Town Center featuring local school bands and a professional band.

**ANNOUNCEMENTS:**

Sharon reminded all who were eligible of the election on Tuesday, May 19 2009 and informed all of a forum to be held at Sherwood High School at 7:00 p.m. on May 13, 2009.

The meeting was adjourned by unanimous motion at 10:10 p.m.

Respectfully submitted,

Lori Wilen

Lori Wilen, Recording Secretary

**PEOPLE IN ATTENDANCE:**

Ellen Bogage (Victoria Springs); Danny Benn (Fair Hill Farm); Jackie Benn (Fair Hill Farm); Roger Manno (State Delegate); Arnie Gordon (Norbeck Meadows); Tara Holl-Lombard (Olney Farmers and Artisans Market); Ruth Laughner (Williamsburg Village); Daniel Walsh (Cherrywood); Herman Taylor (State Delegate); Joe Corbett (Williamsburg Village); Brad Branch (Olney Mill); Anne Kaiser (State Delegate); Benny Bienvenue (Our House); Theresa Kyne Robinson (Olney Oaks); Chuck Graefe (SEROCA); Jon Morrison (Oak Grove); Ben Kramer (D-19); Sen. Rhona Kramer (D-14); Daniel Zubairi (MRE); Bob Beard (Homeland Village); Joe Buffington (Olney Chamber of Commerce); Steve Cohen (Oak Grove); Lisa Stancik (HVCA); Karen Montgomery (Brookeville); Ron Berger (NMCA); Jim Haddow (Halowell); Matt Zaborsky (Norbeck Meadows); Sharon Dooley (James Creek); Lori Wilen (Cherrywood); Ed Weisel (NMCA); Art Brodsky (Cherrywood); Dave Eskenazi (NMCA); Barbara Falcigno (Olney Oaks); Louis Wilen (Cherrywood); Gus Tseronis; Selen Singleton (Office of Donna Edwards); Astrid Pages (James Creek); John Webster (Manor Oaks); Carol Sullivan (Cherrywood); Christie Berman; Guled Kassim, Walter Lee (Townes); Terri Hogan (Gazette); Paul Jarosinski (Cherrywood); Charles Kuebler (James Creek)



## MINUTES – June 9, 2009

The meeting was called to order by President Sharon Dooley at 7:45 p.m. The minutes from the May meeting were approved. The agenda was accepted.

### Public Comments

- Matt Zaborsky handed out flyers and brochures regarding deer, deer management and Lyme disease that had been left from the Community Conversation prior to the meeting.

### SPECIAL PRESENTATION

**Sherwood High School:** Two representatives from Sherwood High School gave a very brief overview of the fashion show that had come to fruition at Sherwood High School on April 17, 2009. The proceeds from the evening were to benefit families in need. The show raised \$590 in ticket sales and \$50 in donations. GOCA had agreed to help with distribution of the funds so Sherwood High School presented a check in the sum of approximately \$395 for GOCA to use towards charitable needs in the Olney Community.

**Montgomery General Hospital:** Pete Monge, President of Montgomery General Hospital talked briefly about the proposed construction at Montgomery General Hospital. There are plans to build two buildings. One of the buildings housing medical offices is owned by Foulger Pratt and we were expecting a representative from the company to come and talk in detail. The other building is to be owned by the hospital and one proposed use is outpatient services. Questions were asked about any changes that might have been made to the first building from the original plans and Mr. Monge stated that the buildings were being moved more towards the thrift shop and they had been lowered more to street level. Construction had not yet begun. The first building is approximately two years away from being completed and the second would follow at a later time.

**Maryland National Capital Parks and Planning proposal for Marian Father's property:** Representatives from Maryland National Capital Parks and Planning outlined a proposal submitted to them by the developers for the Marian Fathers property adjacent to Manor Oaks. They outlined a preliminary development proposal to build 56 houses which would comprise of single family and attached duplex homes on 23-acre property at 19191 George Avenue in Brookeville. The proposal called for leaving the current Marian Fathers facility as it is. Some questions that were raised included concerns regarding the proximity of the attached homes to Georgia Avenue; the unit mix; access to the homes and guest parking for the attached homes. Representatives did state that the elementary school for this proposed development was not over capacity and that there were no plans currently for improving the Owens and Georgia Avenue intersection. It was also suggested that the developers consider more recreational areas within the development besides the one small proposed playground. GOCA officers plan to submit their specific concerns in writing to Parks and Planning.

### OLD BUSINESS

#### Tabled Resolution on First Baptist Church of Wheaton:

For those who had not been present at the May meeting and for those who needed a little reminder, Bob Twerkowski, President of SEROCA, gave a brief overview the area and proposed development by the First Baptist Church of Wheaton. Sharon Dooley, President of GOCA said she had written to the church inviting them to present at the June meeting and had received a detailed reply which she read in full to the meeting. After the reading of the response, Ellen Bogage, Second Vice-President made a motion seconded by Roy Peck, Treasurer that: **The motion of May 12, 2009 become untabled.** The May 12 motion was read by Matt Zaborsky. In the discussion that briefly followed Dave Eskenazi wanted it to be recorded that GOCA is not anti church. The motion was voted on with 18 votes for the motion; 0 against the motion and 0 abstentions. The motion to untable the motion of May 12, 2009 passed unanimously. During discussion it was agreed that in writing our objection GOCA state that our objection is to date based on the information received to date and should include mention of the First Baptist Church of Wheaton refusing invitations to present their case at a GOCA meeting. The motion that : : **GOCA oppose the proposed construction by First Baptist Church of Wheaton as (1) being the cause of an excessive amount of traffic, (2) not in keeping with the Master Plan and (3) creating a park lot in the middle of a residential community** was voted on. With 20 votes for the resolution, 0 against the resolution and 0 abstentions the motion passed.

Mike Knapp, Councilmember for District 2 spoke to the meeting. He gave an overview on what had been happening in the Council with regards to budget issues. He talked about the collaborative efforts being made between Montgomery County Council and Montgomery County Public Schools. He told the meeting that Police and Fire Rescue services had not been added to and neither would they be cut so they would be maintaining at their current level of manpower. Mr. Knapp talked of the 2 year review of the Growth Policy. We had previously had an in depth presentation at our GOCA meeting in March so were familiar with the issues being discussed by Mr. Knapp. He told us that the Twinbrook master plan had been finalized last year and that this year the Council was focusing on finalizing the master plans for Germantown, Gaithersburg and White Flint. Mr. Knapp told us that the Council was looking at Rosslyn-Ballston corridor as a model of a community with a good infrastructure where jobs, amenities and property values had all increased and traffic problems had decreased. Mr. Knapp then answered questions including the police being allowed to take their police vehicles home with them; speed cameras and the 28 Norbeck Road and 97 Georgia Avenue intersection. Sharon Dooley thanked Mr. Knapp for taking time out of his busy schedule and for leaving a Council meeting to join us tonight.

## **OFFICERS/COMMITTEE/LIAISON REPORTS**

### **Treasurer's Report:**

Current checking account balance stands at \$8848.36 with all bills including fireworks paid in full. There is an outstanding bill for Mr. and Mrs. Olney but Roy was waiting for an amount and he had received and made a deposit of \$215 from an unknown source. Our checking balance includes a \$500 donation from Sandy Spring Bank, a \$500 donation from Graeves and a \$3000 donation from Fletchers.

### **Correspondence Report:**

Ruth advised that there was nothing new to report.

### **Chamber of Commerce Report:**

Joe Buffington told the meeting that the Chamber had installed their new officers for the coming year and given out awards including 4 x \$1000 scholarships to local students. He asked that there be more applicants for Chamber scholarships.

### **Olney Town Center Advisory Committee Report:**

Helene told us that the current focus is guidelines for aesthetics e.g. benches, signage, lamp posts, etc. It was hoped that a representative from Carl Freeman would be at the next GOCA meeting to present and give an update on Town Center.

### **Civic Federation Report:**

Arnie did not run for another term as President at the meeting the previous night and Peggy Downs was the new President. Civic Federation learned from Jim Humphrey, Citizens Zoning Advisory Program that zones were being allowed to change within the Master Plan without an m p revision.

### **Membership Report:**

Matt Zaborsky reported that we were still awaiting one or two checks from associations wishing to become GOCA members.

### **Transportation Report:**

Dave Eskenazi reported that the walking tour along the ICC proposed for Thursday was likely to be rained out as had several prior dates. Dave said that he was in constant email contact with the 15 or so folks proposing to walk.

### **President's Report:**

Sharon reported that unfortunately she had been unable to attend a Manor Oaks meeting that had taken place concerning the Marian Fathers proposed development. She had also learned of a meeting that the Oak Grove community had scheduled but again she was unable to attend. Sharon told us that Parks and Planning were conducting interviews of 8 potential applicants for 1 board position. Sharon told us at future meetings along with a representative from Carl Freeman, we were hoping to hear from Council members Nancy Floreen and Marc Elrich also Joseph Eagan of the Olney Library with an update on their proposed construction.

## **OLD BUSINESS**

**Olney Days 2009 Report:**

Helene thanked everybody who helped to make Olney Days 2009 a great success. Even with the rain starting later the fireworks went off a little earlier than originally scheduled but completed before the downpour. Rocketeria had paid for the concert and it was enjoyed by all who came.

**ANNOUNCEMENTS:**

The Oaks Landfill generator was proposed to be up and running in 30 days. Roy Peck was taking names of those who would like to be included in the bulb dig. These would be back up names because of the delay in the dig taking place it was likely that some would drop out.

The meeting was adjourned by unanimous motion at 10:35 p.m.

Respectfully submitted,

*Lori Wilen*

Lori Wilen, Recording Secretary

**PEOPLE IN ATTENDANCE:**

Ellen Bogage (Victoria Springs); Roy Peck (GOCA Treasurer); Ed Weisel (Norbeck Meadows Civic Association); Charles Kuebler (James Creek Homeowners Association); Dave Eskenazi (Norbeck Meadows Civic Association); Diana Littlefield (Olney Acres); Barbara Falcigno (Olney Oaks); Paul Jarosinski (Cherrywood Homeowners Association); Louis Wilen (Cherrywood Homeowners Association); Brad Branch (Olney Mill Community Association); Sheila Dunn (Manor Oaks); Leisa Sarecky (Manor Oaks); Joe McKenna (Manor Oaks); Linda McKenna (Manor Oaks); Robert Twerkowski (SEROCA); Erin Ruane (Manor Oaks); Carol Sullivan (Cherrywood Homeowners Association); Khalid Abdul (Montgomery County Planning Department); Walter Lee (Townes); Lee Kidd (Cherrywood Homeowners Association); Mike Kelley (Hallowell); Joe Buffington (Olney Chamber of Commerce); Richard "Benny" Bienvenue (Our House); Joe Corbett (Williamsburg Village); Terri Hogan (The Gazette); Helene Rosenheim (Mid County Regional Services Center); Ron Berger (Norbeck Meadows Civic Association); Ruth Laughner (Williamsburg Village); Jim Haddow (Hallowell); Matt Zaborsky (Norbeck Meadows Civic Association); Sharon Dooley (James Creek); Lori Wilen (Cherrywood Homeowners Association); Molline Smith (Montgomery County Planning); Shahriar Etemadi (Montgomery County Planning); Jackie Benn (Fair Hill Farm Homeowners Association); Danny Benn (Fair Hill Farm Homeowners Association)



THE LAW OFFICE OF  
**Michele  
Rosenfeld** LLC

March 18, 2011

Mr. Neil Braunstein  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Preliminary Plan No. 120100250; First Baptist Church of Wheaton

Greater Olney Civic Association's Opposition to FBCW Development Plans  
Southeast Rural Olney Civic Association's Opposition to FBCW Development Plans

Dear Mr. Braunstein:

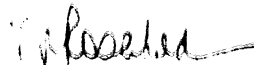
I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. Enclosed please find a copy of minutes from the May 12, 2010 and June 9, 2010 meetings of the Greater Olney Citizens' Association ("GOCA") (Attachments One, Two).

These minutes reflect that GOCA considered FBWC's proposed development last spring. GOCA considered the plan in May, and before taking a position tabled the issue and asked that FBCW attend the next GOCA meeting to explain its development proposal. As stated in the June 9, 2010 minutes FBCW "refused" the invitation to meet with GOCA, and instead simply provided a letter. In June, GOCA voted (20 – 0) to oppose the 800-seat institution on grounds including: (1) the proposal will cause excessive traffic; (2) the proposal is not in keeping with the Master Plan; and (3) the proposal creates a parking lot in the middle of a residential community. (See highlighted text in Attachments One, Two.)

Please note in that, as reflected in these minutes, the Southeast Rural Olney Civic Association (SEROCA) also has opposed the FBCW development. One of SEROCA's primary concerns is that the 800-seat institutional use would be located in the center of, and overwhelm, the surrounding residential community of only 33 homes. Another primary concern is the environmental impact of an institution of this size being built at this location.

Please include a copy of these minutes in the above-referenced preliminary plan record. Thank you in advance for your help.

Sincerely,



Michele Rosenfeld

Enclosures

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
Mr. Matt Zaborsky, President, GOCA  
Mr. Chuck Graefe, Vice-President, SEROCA  
Mr. David Lieb, Associate General Counsel  
Ms. Sandra Pereira, MNCPPC



THE LAW OFFICE OF  
**Michele  
Rosenfeld** LLC

March 21, 2011

Mr. Sandra Pereira  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Site Plan No. 820100080; First Baptist Church of Wheaton

Greater Olney Civic Association's Testimony on Water/Sewer Category Change Request

Dear Ms. Pereira:

I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. Enclosed please find a copy of testimony presented to the Montgomery County Council in February, 2008 by Barbara Falcigno, then President of GOCA, summarizing GOCA's opposition to the proposed water/sewer category change. As detailed in the testimony, GOCA opposed the proposed water/sewer change because it is in contravention of an express recommendation in the Olney Master Plan that this property not be included in the sewer envelope; it exceeds the imperviousness limits that were expected under the master-planned zoning scheme; it will necessitate irreparable changes to the highly rural character of Emory Church Road; and if built, the additional imperviousness is likely to result in a deterioration of the water quality of the surrounding residents who rely on well water, as occurred after the golf driving range at the corner of Georgia Avenue and Emory Church Road was built.

Please include a copy of this correspondence in the above-referenced site plan record. Thank you in advance for your help.

Sincerely,

Michele Rosenfeld

Enclosure

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
Mr. Matt Zaborsky, President, GOCA  
Mr. Chuck Graefe, Vice-President, SEROCA  
Mr. David Lieb, Associate General Counsel  
Mr. Neil Braunstein, MNCPPC

**Barbara Falcigno**  
President  
OLNEY OAKS

**Bob Beard**  
Executive Vice President  
HOMELAND VILLAGE

**Sharon Dooley**  
First Vice President  
JAMES CREEK

**Gina Angiola**  
Second Vice President  
NORBECK HILLS

**Danny Benn**  
Recording Secretary  
FAIR HILL FARM

**Jackie Benn**  
Corresponding Secretary  
FAIR HILL FARM

**Roy Peck**  
Treasurer  
NORBECK MEADOWS

February 26, 2008

Montgomery County Council  
100 Maryland Ave  
Rockville, MD 20850

Dear President Knapp and Councilmembers:

The Greater Olney Civic Association opposes the water and sewer category change for the First Baptist Church of Wheaton on Emory Church Road for several reasons:

- The property is not in the sewer envelope
- It results in high impervious area contradicting the protective zoning
- It changes the rural character of the area
- There is a high probability of affecting neighboring wells

The Olney Master Plan is very clear on page 37 that this property is not to be included in the sewer envelope. Whether or not a property could be in the sewer envelope depended on its ability to be gravity fed. Further restrictions on sewers were placed so that sensitive streambeds would not be disturbed. The community does not want grinder pumps used.

This proposed development contradicts the intent of the zoning. I personally attended every Planning Board and PHED work session on the Olney Master Plan Update. There were numerous sessions on how to protect the Northwest Branch of the Anacostia River which begins in the southeast quadrant of the Olney where this property is located. The community wanted a Special Protection Area (SPA) with an impervious cap. The staff argued that the zoning (RNC 0.2) would produce the same protection without the additional cost burden of a SPA. Therefore there is not a legal impervious limit but there is an implied limit. A private institutional facility will have a much higher impervious surface than residential development. Remember, restoration is much more expensive than preservation.

The southeast quadrant of Olney is a unique area. In several sections, Emory Church Road is only a 1½ lane road and is unimproved in the eastern portions. Placing a private institutional facility along this road will force changes to the rural character of area. There cannot be exceptions because once the character changes, it cannot be changed back. The church is welcome to the community, but it should be on septic like any other development that could occur on this property.

This area did not develop in the building boom of the 1980s because the properties do not perk. The water table is very high. This property rises up the further you move from the road. Therefore, all the drainage from the impervious surfaces will flow down, across the

road, and settle near or on top of the wells of adjacent property owners. There is not enough land to filter out the impurities of the run off water before it enters the ground water. In fact, the quality of residents' well water declined when the golf driving range was built at the corner of Georgia Ave and Emory Church Road. This is the water people drink.

I find it very troubling that the First Baptist Church of Wheaton has never contacted GOCA to share their ideas. I had to learn about details of their plans during the Planning Board testimony on Thursday (2/21/08). There still has been no contact which does not foreshadow a good working relationship with the community. Tonight's testimony is filled with church members here to explain what a wonderful church they are. I agree it is a wonderful group but that has no bearing on the sewer category change.

The category change is not automatic. It is being discussed today because all of the impacts of this development need to be considered by you, the County Council. Protect the rural nature of this area, the headwaters of this watershed, and the current resident's drinking water. Do not approve this category change.

Sincerely,

Barbara Falcigno  
Immediate Past President, Greater Olney Civic Association





THE LAW OFFICE OF  
**Michele  
Rosenfeld** LLC

March 14, 2011

Ms. Sandra Pereira  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Site Plan No. 820100080  
First Baptist Church of Wheaton

Dear Ms. Pereira:

I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. Enclosed please find a copy of a letter dated December 10, 2009 from the Mid-County Citizens Advisory Board to former Chairman Royce Hanson expressing the opposition of this Board to the proposed development of the property located at 3110 Emory Church Road on a number of grounds, including lack of conformance to the Olney Master Plan and environmental and traffic concerns. This evaluation was based on the pre-preliminary plan application, which was materially the same as the pending preliminary and site plan applications. Please include a copy of this letter in the record for the preliminary plan, and advise me if it was included in the file for the pre-preliminary plan.

Thank you in advance for your help.

Sincerely,

Michele Rosenfeld

Enclosure

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
David Lieb, Associate General Counsel  
Mr. Neil Braunstein, MNCPPC



MID-COUNTY CITIZENS ADVISORY BOARD

December 10, 2009

Dr. Royce Hanson, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Proposed Private Institutional Facility Development (PIF) located at 3110 Emory Church Road, Olney, Maryland. (*AKA the Doherty Property*)

Dear Dr. Hanson:

We have received tremendous response from the affected neighborhood in regard to the above proposed PIF development as well as the Olney community. We would also like to voice our opposition based on the following criteria:

- ◆ This proposed development is not in keeping with the Olney Master Plan, approved and adopted April 2005, which states that this property cannot be served by public sewer through gravity. The plan further recommends that this property is not recommended to be in the public sewer service envelope. Recommendation to approve a water and sewer category change has been approved and we understand is currently being contested.
- ◆ Emory Church Road is a narrow dead end secondary residential street (1 and ½ lanes wide at best) that serves approximately 32 homes in the southeast corner of Olney. This proposed 46,500 square structure with parking for approximately 220 vehicles will virtually destroy the peace and tranquility of this rural neighborhood road. Furthermore, this development would necessitate the widening of this road to accommodate increased vehicular traffic and cause the removal of many mature trees.
- ◆ We share the community concern that the amount of impervious surface required for this project will certainly add to the degradation of the already stressed Northwest Branch of the Anacostia River beginning at the headwaters known as Batchellor's Run. This stream has been determined by the Army Corps of Engineers to be in a protected status.

In keeping with the spirit of the community the MCCAB feels a project of this size should not be built on this site. Thank you for your consideration of our concerns.

Sincerely,

Sheldon Fishman  
Chair

cc: County Executive  
County Council

Mid-County Regional Services Center



THE LAW OFFICE OF  
**Michele  
Rosenfeld** LLC

March 7, 2011

Mr. Sandra Pereira  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Site Plan No. 820100080  
First Baptist Church of Wheaton

Dear Ms. Pereira:

Enclosed please find a copy of March 8, 2010 Resolution adopted by the Montgomery County Civic Federation formally opposing above-referenced project. The opposition is based on a number of substantive grounds, including (a) that approval of this project will add to a cumulative effect of private institutional facilities and special exception approvals that threaten the low-density residential character recommended by the Olney Master Plan for this area of Olney; (b) that the proposed project does not conform either to the intent of, or the site specific recommendations included in, the Olney Master Plan. These objections are more fully explained in the Resolution.

Please include a copy of this Resolution in the record for the site plan.

Thank you in advance for your help.

Sincerely,

Michele Rosenfeld

Enclosure

Cc: Mr. Jim Humphrey, Planning and Land Use Committee, Montgomery County Civic Federation  
Dr. David Reile  
Dr. Barbara Suddarth  
Mr. David Lieb, Associate General Counsel  
Mr. Neil Braunstein, MNCPPC

approved by unanimous vote of delegates  
March 8, 2010

Montgomery County Civic Federation Resolution Opposing Proposed First Baptist  
Church of Wheaton Development on Emory Church Road, Olney

Whereas First Baptist Church of Wheaton is proposing to build an 800-seat facility with a 225 space parking lot on a property in an area designated as a semi-rural "green corridor and a gateway to Olney" in the 2005 Olney Master Plan; and

Whereas the cumulative effect of private institutional facilities and special exception uses will permanently damage the low-density residential character that is recommended for this area in the master plan; and

Whereas on April 8, 2008 the County Council approved a category change allowing water and sewer service to this property "conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan" (Resolution 16-500), and the master plan states the property is "not recommended to be in the public sewer service envelope"; and

Whereas, in Resolution 16-500, the Council asks that the Planning Board, in its review of the applicant's preliminary plan, ensure that deleterious environmental impacts are minimized, and installation of public water/sewer lines from Georgia Avenue to the property would cross a headwaters stream of the Northwest Branch and require the removal of centuries old trees in a "High Priority Forest Stand" along side Emory Church Road (shown on Natural Resources Inventory/Forest Stand Delineation for subject property); and

Whereas the proposed facility would significantly increase traffic on the existing, narrow secondary road and negatively impact the quality of life for its residential neighbors, and any widening of the road would impact the stream and forest stand cited above; and

Whereas, the 18% impervious surface land coverage of the planned project would negatively impact stormwater recharge of the local water table, posing a threat to the water supply for nearby residents, all of whom rely on well water for drinking and cooking;

Therefore, the Montgomery County Civic Federation respectfully opposes approval of the First Baptist Church of Wheaton project planned for a site on Emory Church Road in Olney because of the damage this large private institutional facility would do to the low-density residential character of the neighborhood, the probable negative impact on the quantity and safety of the well water relied on by the surrounding residents, and the deleterious effect it would have on the natural environment, and because the proposed project does not conform either to the intent of, or the site specific recommendations included in, the Olney Master Plan.



THE LAW OFFICE OF  
**Michele  
Rosenfeld** LLC

March 4, 2011

Ms. Sandra Pereira  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Site Plan No. 820100080  
First Baptist Church of Wheaton

Dear Ms. Pereira:

I am writing on behalf of my clients, Dr. David Reile and Dr. Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. Enclosed please find a copy of a letter dated September 28, 2010 to David Lieb, Associate General Counsel that summarizes our view that the (FBCW) property does not qualify for an extension of public sewer under the Private Institutional Facilities policy of the County's Ten Year Water and Sewer Plan. Please include a copy of this letter in the site plan record.

Thank you in advance for your help.

Sincerely,

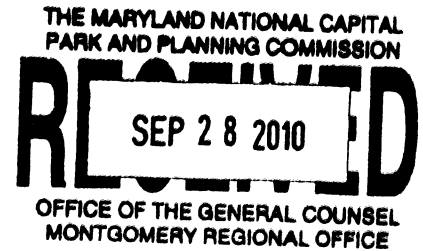
Michele Rosenfeld

Enclosure

Cc: Dr. David Reile  
Dr. Barbara Suddarth  
David Lieb, Associate General Counsel  
Mr. Neil Braunstein, MNCPPC

Michele M. Rosenfeld  
The Law Office of Michele M. Rosenfeld  
11913 Ambleside Drive  
Potomac MD 20854-2107  
rosenfeldlaw@verizon.net  
301-204-0913

September 28, 2010



David Lieb, Associate General Counsel  
MNCPPC  
8787 Georgia Avenue  
Silver Spring MD 20910

RE: Preliminary Plan No. 120100250 and Site Plan No. 820100080  
First Baptist Church of Wheaton

Dear Mr. Lieb:

I am writing on behalf of my clients, David Reile and Barbara Suddarth, who live immediately next to the First Baptist Church of Wheaton (FBCW) property that is now under staff-level preliminary and site plan review. I am following up regarding the Development Review Committee's minutes reflecting the following comments from Montgomery County's Department of Environmental Protection ("DEP") regarding the above-referenced preliminary and site plan applications:

The proposed water and sewer main extensions, as shown on these plans, are consistent with the requirements of the Water and Sewer Plan's private institutional facilities (PIF) policy. The proposed pressure sewer extension to Norbrook Dr. will be dedicated to only the church's use and will not be available to serve any intervening properties.<sup>1</sup>

I question how DEP can reach this conclusion in this case. First, the express language of the PIF policy allows sewer main extensions where the extension "will abut only properties which are otherwise eligible for community service under the general policies of this plan."<sup>2</sup> The proposed sewer extension will abut at least one property that is not otherwise eligible for community service under the County's general PIF policies.

The Court of Special Appeals, in the case of *Bethel World Outreach Church v. Montgomery County, Maryland, et al.*, 184 Md. App. 572; 967 A.2d 232 (2009), has held that if a proposed sewer extension abuts even one property not otherwise eligible for public sewer, then that proposed extension violates the PIF policy. In reaching this conclusion, the Court adopted the interpretation of the PIF policy put forth by Montgomery County.

<sup>1</sup> Exhibit 1: DRC Minutes page 7 ¶ d (emphasis added).

<sup>2</sup> Exhibit 2: 2003 – 2012 Comprehensive Water Supply and Sewerage Systems Plan Chapter 1 Section II.E.4.b.ii.■ (emphasis added).

I have enclosed for your convenience a copy of a legal memorandum submitted by Montgomery County to the Montgomery County Court of Special Appeals in the *Bethel* case. In particular, in its legal argument the County stated that “there is no dispute that Bethel Church did NOT meet th[e] [PIF] policy” because its property would be served by a main that abuts “at least” one property not eligible for community sewer service.<sup>3</sup> The Court of Special Appeals accepted the County’s legal interpretation of the PIF policy and concluded that the water/sewer category change application in the *Bethel* case was properly denied because the sewer extension would “abut one or more ineligible properties in violation of the PIF policy.” *Bethel*, 184 Md. App. at 599, 967 A.2d at 248.

Second, it appears that DEP may have taken the position that FBCW can bring the impermissible extension into conformance with the PIF policy by prohibiting access to the sewer extension to intervening properties through use of the “Limited Access” provision of the PIF policy. The “Limited Access” provision states that “Main extensions outside the acknowledged community service envelopes, where required, shall be designated “Limited Access” consistent with the Limited Access Water and Sewer Mains policy (see Section III.A.2).”<sup>4</sup> This provision of the PIF policy also was addressed by the Court of Special Appeals in the *Bethel* case. The County urged that the Court find that the limited main “exception” does not “swallow” the underlying rule that an extension is impermissible if it would abut an otherwise ineligible property.<sup>5</sup> The Court agreed with the County, concluding that there is nothing in the PIF policy that permits an applicant to “escape” the PIF policy limitation that mains “abut only properties otherwise eligible under the general policies of the plan.” *Bethel*, 184 Md. App. at 599, 967 A.2d at 248.

The proposed sewer main extension to the FBCW property will abut one or more properties that are ineligible for public sewer. Designating the extension a “limited access” extension will not cure this defect. Accordingly, on its face the proposed sewer main extension appears ineligible for public sewer as a matter of law under the County’s PIF policy. I ask that you request that the County’s explanation be given in the context of its prior legal representations to the Court of Special Appeals in the *Bethel* case with respect to the proper application of the PIF policy.

Please note that Planning staff also has asked the applicant for “a more detailed explanation as to why and how this property qualifies for the sewer service under the PIF policy . . . .”<sup>6</sup>

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<sup>3</sup> Exhibit 3: Brief of Appellees, Montgomery County, Maryland and County Council for Montgomery County, Maryland, Court of Special Appeals of Maryland, Case No. 03082 September Term 2007 p. 36.

<sup>4</sup> Exhibit 2: 2003 – 2012 Comprehensive Water Supply and Sewerage Systems Plan Chapter 1 Section II.E.4.iii.c.

<sup>5</sup> Exhibit 3: Brief of Appellees, Montgomery County, Maryland and County Council for Montgomery County, Maryland, Court of Special Appeals of Maryland, Case No. 03082 September Term 2007 p. 39.

<sup>6</sup> Exhibit 1: Excerpted DRC minutes page 5 ¶ b.

Please let me know when you have received an explanation from DEP regarding how DEP staff reached the conclusion that the FBCW's preliminary and site plan applications comply with the County's PIF policy. Thank you in advance for your help, and please let me know if you need any additional information with respect to this request.

Sincerely,



Michele Rosenfeld

Enclosures



**EXHIBIT 1**

6/14/10 DRC MINUTES

AGENCY ATTENDEES

Cathy Conlon, MNCPPC, DRD-Subdivision

Sandra Pereira, DRD-Site Plan

Steve Federline, MNCPPC, EPD

Bill Campbell, MCDPS-swm

Marie LaBaw, MCFRS

Laura Bradshaw, MCDPS-zoning

Ki Kim, MNCPPC, TPD

Greg Leck, MCDOT

Bob Thompson, Verizon

Scott Demler, WSSC

Fred Boyd, MNCPPC, CBP

**10:am            120100250 & 820100080, FIRST BAPTIST CHURCH OF WHEATON**

SUB:

- a. Issues raised in the 8/24/09 meeting regarding the pre-preliminary plan have not been fully addressed by the proposed preliminary plan:
  - i. 50-24(a) – Minimum road improvements needed for this use on a secondary road are 20' wide road surface, open section, shoulder and 5' sidewalk. Revise preliminary plan.
  - ii. 50-26(c) – Adequate site distance must be provided per DOT requirements prior to Planning Board. Additional information to DOT is needed.
  - iii. 50-32 – Controls for environmentally sensitive areas need to be provided per EP comments (tree save plan, impervious surface coverage reduction). Revise preliminary plan.
  - iv. 50-35(l) – Substantial conformance to the master plan has not been achieved. Issues are rural character (building and roadway) and environmental concerns (tree save and imperviousness). Additional justification and/or plan revisions needed.

SP:

- a. Site Plan Cover and Tabulations
  - i. Clarify discrepancies between data table on the plans and data table on the statement of justification.
  - ii. Provide 'rural open space' tabulation.
  - iii. Provide 'parking facility internal landscaping' tabulations and provide exhibit.
  - iv. Correct value for 'min. lot width' along front street line.
- b. Site Plan
  - i. Eliminate excess parking spaces.
  - ii. Consider pervious pavement in the parking lot.
  - iii. Designate area for outdoor activities (picnic, playground etc).
  - iv. Relocate dumpster pad away from main access to the site and provide enclosure details.
  - v. Label building setbacks on site plan.
  - vi. Provide bicycle racks.
  - vii. Provide north-south cross section illustrating grade drop and building height.
- c. Landscape / Planting Plan

- i. Remove planting material on SWM facilities.
- d. Lighting Plan
  - i. Complete photometric plan on sheet E-1 with photometric contours.
  - ii. Photometric cut sheets are not legible.
  - iii. Clarify height of light poles and whether fixtures are full cut-off.
- e. General
  - i. Schedule meeting with Staff to discuss project sequencing.

Note: At DRC Site Plan staff stated that if the overall staff recommendation for the preliminary plan is denial, the site plan would not be presented to the Planning Board until Board action has been taken on the preliminary plan.

EP:

- a. From an environmental perspective, the current proposal does not meet master plan or environmental objectives for lower imperviousness and environmental site design. Changes to the proposed plan in line with recommendations below are necessary to determine consistency of this proposal with the Board's directives. Hold for response to the following issues which are critical to develop staff's ultimate recommendation to the Planning Board:
  - i. **Minimize the amount of impervious surface on the property in order to comply with the recommendations from the Planning Board and the Olney Master Plan (April 2005):**
    - a) **Demonstrate compliance with the Master Plan through the utilization of environmental site design techniques.** Reducing impervious cover and avoiding natural resource/buffer areas are primary techniques. The level of imperviousness provided on the current plan (18%) is excessive and the revised plan must demonstrate a reduction. In addition to directions from the Planning Board, the Olney Master Plan makes the following recommendations on Page 75 (Water Resources):
      - 1. Encourage new developments to use environmentally sensitive development techniques that integrate BMP's that maximize stormwater treatment and infiltration, such as:
        - a. Minimization of impervious surfaces
        - b. Disconnection of runoff, sheet flow to buffers, grass channels; and
        - c. Bioretention
      - 2. Page 79 (Northwest Branch):
        - a. The environmental strategy in the Batchellors Forest tributary includes the application of the RNC Zone to secure almost all of the existing forest, planting of new forest along unprotected stream buffers through development and forest banking...
        - b. The application of the RNC Zone also allows more units to be constructed **with less imperviousness** than the existing zoning would have yielded. While some benefits would result from application of a Special Protection Area with an 8% imperviousness cap, it would not significantly reduce the potential imperviousness in this subwatershed nor likely affect the overall stream conditions.
    - b) **Reduce the number of proposed parking spaces to the minimum required in order to comply with the recommendations from the Planning Board and the**

Olney Master Plan to minimize impervious surfaces and to maximize the retention of existing forest.

- c) Part of the onsite parking requirement, and certainly any desired additional parking in excess of requirements should be provided via **structured parking; parking under the building; and/or shared or shuttle parking.**
  - d) Overall imperviousness may also be reduced by **deleting or reducing the width of the proposed sidewalk; creating a multi-story church structure; and/or including more land to the application thus reducing the overall percentage.**
  - e) Provide factual documentation regarding the investigation of these options (e.g., contracts for potential land acquisition; contacts made regarding offsite shared parking opportunities; communication with other places of worship which provide shuttle service, etc.).
- ii. **Demonstrate all efforts to avoid and minimize encroachment into the environmental buffer.** If the stormwater management feature near the driveway entrance cannot be relocated outside the environmental buffer, "in-kind" compensation at a ratio of 2:1 will be required. "In-kind" compensation is an increase in environmental buffer area. Designate an unforested area that is outside of the environmental buffer as proposed environmental buffer expansion area in order to mitigate for the buffer encroachment.
- iii. Forest Conservation
- a) A variance request with required documentation must be submitted for the proposed removal of, or disturbance to trees  $\geq 30"$  DBH on the property.
  - b) Include notation in the significant tree list that identifies those trees that are proposed to be removed and a separate identifier for those trees that will have more than 30% of the critical root zone impacted.
  - c) Include tree protection measures (fencing, root pruning, etc.) along the entire limits of disturbance where forest or individual trees and their critical root zones will be impacted. This includes individual trees along Emory Church Road.
  - d) Per the recommendations of the Olney Master Plan, all of the environmental buffer should be planted with forest and the area in excess of that which is required by this plan may be used as a forest bank for other development projects.
  - e) There is an area of forest retention in the northwestern part of the site that is within the proposed limits of disturbance. Please revise.
  - f) The NRI/FSD notes the tract area as 15.00 acres; however, the forest conservation plan worksheet notes the total tract area as 14.40 acres. Please clarify.
  - g) Survey the location of the potential County Champion American Chestnut tree (Tree #81) and include a note that this tree was survey located.

SWM:

- a. Concept approved 12/14/10 per MCDPS-SWM interpretation
- b. Floodplain on site; provide an acceptable source for the 100 yr floodplain
- c. Clearly show and label the Stormwater easements;
- d. Provide maintenance access for all SW facilities including a standard driveway apron at each access point;
- e. Remove all landscaping from within the SW easements and add a note to the landscape plan that all landscaping within the SW easements will be reviewed, approved and inspected by the DPS Water Resources Section;
- f. Changes to the site as a result of comments from other agencies may require a revised concept.

TP:

- a. Satisfy Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests by including in the traffic statement that a weekday child daycare facility and a weekday private school are not proposed on the site. If this is not the case, LATR and PAMR may be triggered by the new peak-hour vehicular trips generated within the weekday morning and evening peak periods.
- b. Resolve the difference between the additional numbers of seats for special events -- 220 seats as a plan note versus 300 seats in the traffic statement.
- c. As a house of worship with a total seating capacity of over 800 persons, a traffic circulation study is required that responds to the following issues:
  - i. Does the queue on Emory Church Road require an exclusive/stacking left-turn lane into the site in accordance with MCDOT?
  - ii. With the long driveway between the parking area and curb-cut from Emory Church Road, is the on-site stacking area adequate for the queue of motorists waiting to leave the site?
  - iii. For special events, submit a traffic control plan to efficiently control the traffic in "overflow conditions" at the curb-cut with Emory Church Road and along the property frontage.
- d. Improve site's frontage along Emory Church Road to provide adequate sight distance to the east of the proposed access curb cut.
- e. Widen and show on the plan the paved roadway for Emory Church Road to be as an interim width, 20 feet wide along the site frontage and off-site to connect to the already widened/improved cross-section (to the west or towards Georgia Avenue) to satisfy Fire & Rescue's fire truck access standards.
- f. Improve pedestrian safety and circulation in the parking lot with the following on-site reconfigurations:
  - i. Reconfigure the parking aisles to be perpendicular to the front of the two buildings.
  - ii. Designate a drop-off and pick-up area located in front of the two main building entrances.
- g. Provide 10 inverted-U bike racks at the main entrances between the Phase I & II buildings and possible in a weather protected area.

DOT (DS):

- a. See comments for 7-20090050.
- b. R/W dedication for Emory Church Road per MP.
- c. Recommend driveway width be reduced to 24'.
- d. Label pavement width after widening Emory Church Road.
- e. Provide this office with typical sections for improvements on Emory Church Road. The roadway improvements plan suggests building the sidewalk behind the proposed shoulder; that was not our intention, as it will increase tree removal. We recommend construction of a 7' wide shoulder with a 5' wide concrete sidewalk located 2' behind the edge of pavement. The sidewalk will be allowed to be further away from the road, as necessary, to maintain safe, healthy, mature trees.
- f. Need statement of proposed hours of operation and Church peak hour turning movements at site driveway.
- g. Sight distance study indicates there is not enough sight distance on the left side of driveway but does not indicate how this can be remedied, please provide that information.
- h. Need additional information to complete review of drainage study:
  - i. Show pre and post development flows, velocities, HGL on culvert profiles (10, 50, and 100 year)

- i. Show profile for 30" culvert (between structures 4 and 3) crossing Emory Church Road.
- l. Need private open space covenant.
- j. Need tree protection plan (for trees in the R/W) to be approved by DOT arborist. DOT's intent was to save as many trees as possible if they need to meander the sidewalk behind the trees we will be amendable to this idea (we are trying to be flexible with them).
- k. Recommend providing a lead walk into the site from the proposed sidewalk on Emory Church Road.
- l. Coordinate with DPS about parking lot design.

SHA: no comments provided as part of DRC

MCFRS:

- a. Provide a fire department access plan including, but not limited to, the following:
  - i. Fire department vehicular access within 50' of main side-hinged door.
  - ii. Emory Church pavement width (20 feet unobstructed) and turning radii (25' minimum inside and 50' minimum outside).
  - iii. Fire department vehicular movement through the site.

Note: FRS stated at the DRC that they need clarification of the proposed occupancy level for the building and that, if it is too high, another driveway entrance from Emory Church Road or other compensatory measure may be needed as part of the fire department access plan.

DPS-RP: no issues at this time

MCDPS-zoning:

- a. Development data table must reflect optional method development standards.

UTILITIES:

PEPCO: no comments provided as part of DRC

VERIZON: There should be a 10 foot PIE with an overlapping 20 foot PUE and the PUE should be free and clear of all obstructions and graded at no greater than a 4 to 1 slope that means Bio #3 needs to be moved.

WSSC:

- a. There is an existing WSSC SEP project DA4981Z09 which has been conceptually approved with conditions for this site. Please contact Hansa Desai at (301) 206-8816 for additional information.
- b. Label the existing water and sewer mains with correct sizes and WSSC contract numbers. Also, label the proposed water, sewer and fire hydrants consistent with approved Phase 1 sketch.
- c. Site Utility System reviews are required for projects with proposed water connections greater than 2-inch or sewer connections greater than 4-inch. Contact the WSSC Permit Services Unit on (301) 206-4003 for submittal requirements or view our website on: [http://www.wsscwater.com/dsg-permits/permits\\_doc\\_forms.cfm](http://www.wsscwater.com/dsg-permits/permits_doc_forms.cfm).
- d. Contact the Montgomery County Department of Environmental Protection at (240) 777-7716 for more information on a Service Area Category change request, or to research the property's current Service Category.

CBP:

- a. The 14.4-acre property is located within the 2005 Olney Master Plan in the Northwest Branch watershed. The 2005 Olney Master Plan does not recommend this property for community sewer service, and therefore the property is not within the master plan recommended sewer service envelope. Since the property could not be served by public sewer through gravity, it is recommended for development on septic with a maximum of 0.2 units per acre under the standard method of the RNC Zone. (p. 37)
- b. Although the County Council has granted a conditional sewer category amendment to this project, the applicant should provide a more detailed explanation as to why and how this

- property qualifies for the sewer service under the PIF policy, and how the proposed plan meets the intent of the Olney Master Plan.
- c. In addition to the sewer service issue, there are two other master plan issues with this proposal: environmental impacts; and the low-density character of the Southeast Quadrant where this property is located. Since the Environmental division will provide comments that will cover the master plan recommendations to protect environmental resources in the Southeast Quadrant, the CBP Division comments will address only the issues related to project's impacts on the low-density character of the area.
  - d. The Olney Master Plan recommends preserving "open space, streams, significant forest, and low-density character of the Southeast Quadrant through cluster development, on community sewer where appropriate" (p 23).
  - e. Although Emory Church Road is not a designated rustic road, it has attributes that add to the rural, low-density character of the area. The project, as proposed, will adversely alter the character of the Emory Church Road through road improvements which will require removal of mature, large trees to accommodate road widening, new sidewalk, stormwater management, and grading and other construction related disturbances to the road right-way in front of the property. The character of the area would also be negatively impacted by more than 228 cars traveling on this short stretch of Emory Church Road every Sunday (the project proposes 228 parking spaces, 30 more than the 198 minimum required ).
  - f. In order to accurately visualize the full impact of proposed project's road impacts, staff would like to see a road cross-section at three places along the property frontage delineating the full extent of construction impacts including the a profile of the proposed building. CBP staff recommends the applicant explore ways to address the master plan's recommendation to preserve the character of the area by reducing the number of proposed parking spaces to the minimum required, and even car pooling and other methods to further reduce the number of parking spaces, minimizing the impact of road improvements by reducing the pavement width to minimum needed for safety and removal of the sidewalk, providing shared use (on road) bikeway, and reducing the grading and stormwater management improvements to a minimum. CBP staff also recommends mitigating removal of existing large trees by planting larger new trees than proposed, and planting additional trees between the driveway and the existing tree cover in the front yard to screen the building and the parking area from the road and the surrounding properties.

UD: no comments provided as part of DRC

HP: Five historic resources were identified within 2,000 feet of the proposed development. The proposed development will have no impact on the historic resources. No further review by the Historic Preservation Section is required.

DEP:

- b. The proposed use of public water and sewer service for this project is consistent with the conditionally approved W-3 and S-3 categories designated for this site in the Water and Sewer Plan. Meanwhile, the site retains categories W-6 and S-6, pending final approval for W-3 and S-3. That final approval action by DEP requires the following, as adopted by the County Council for WSCCR 07A-OLN-02 under CR 16-500 (4/8/08):

**"Maintain W-6 and S-6, with advancement to W-3 and S-3 conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan.**  
*"Note: In its review of the applicant's preliminary plan, the Planning Board is asked to ensure that the need for potential road improvements (such as to Emory Road) is minimized as are any deleterious environmental impacts (such as reductions in ground water quality)."*

- c. The finding that the preliminary plan conforms to the intent of the master plan, if warranted, needs to be clearly stated in the Planning Board's action and can be referenced to the Council's conditional category change approval.
- d. The proposed water and sewer main extensions, as shown on these plans, are consistent with the requirements of the Water and Sewer Plan's private institutional facilities (PIF) policy. The proposed pressure sewer extension to Norbrook Dr. will be dedicated to only the church's use and will not be available to serve any intervening properties.
- e. The County is involved with an ongoing suit brought by local residents against the Council's April 2008 category change action for this property. Cliff Royalty in the County Attorney's Office can be contacted for additional information on this case, if needed (240-777-6739 or [Clifford.Royalty@montgomerycountymd.gov](mailto:Clifford.Royalty@montgomerycountymd.gov)).

DHCA: no issues

#### **NEXT STEPS**

- 1) Follow-up meeting between staff and applicant to discuss the DRC comments. DRD Lead Reviewer to coordinate this meeting.
- 2) Applicant to address comments by providing additional information or plan revisions.



EXHIBIT 2

Adopted by the County Council November 18, 2003 (CR 15-396)  
Revised by the County Council November 29, 2005 (CR 15-1234)

## II. POLICIES FOR THE PROVISION OF WATER AND SEWERAGE SERVICE

**E. Special Policies for Water and Sewer Service** -- In addition to the preceding general service policies, the County Council has adopted specific policies for the provision of community water and/or sewer service which create exceptions to the general service policies. The Council has also adopted service recommendations in local area master plans which create exceptions to the general service policies.

**4. Community Service for Private Institutional Facilities** -- This Plan defines private institutional facilities (PIFs) as buildings constructed for an organization that qualifies for a federal tax exemption under the provisions of Section 501 of Title 26 of the United States Code (Internal Revenue Service). The provision of community water and/or sewer service to such facilities shall be addressed on a case-by-case basis by the following policies:

**a. Facilities Located Within the Community Service Envelopes** -- For private institutional facilities located within the acknowledged water and/or sewer envelopes, service area category changes may be approved by DEP through the administrative delegation process (Section V.F.1.a.: Consistent with Existing Plans). For a specific site, the acknowledged water and sewer service envelopes may differ due to the general water and sewer service policies (Section II.D.) included in this Plan.

**b. Facilities Located Outside the Community Service Envelopes** -- For existing or proposed PIF uses located outside the acknowledged water and/or sewer envelopes, the County Council shall consider requests for the provision of community service for PIF uses according to the following criteria:

**i. Sites Abutting Existing Water and/or Sewer Mains** -- For cases where existing or approved water or sewer mains abut or will abut a property, service area category amendments may be approved for sites with an existing PIF use and for sites proposed for a new or relocating PIF use, excluding those zoned RDT (see subsection iii).

**ii. Sites Requiring New Water and/or Sewer Mains Extensions** -- For cases where the provision of community service for a PIF use requires new water and/or sewer mains, the following criteria shall apply:

- For existing PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) only where required water and/or sewer main extensions do not threaten to open undeveloped land to development contrary to the intent of the relevant local area master plan.
- For new or relocating PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) where required water and/or sewer main extensions will abut only properties which are otherwise eligible for community service under the general policies of this plan.

**iii. Sites Zoned Rural Density Transfer** -- To help preserve the integrity of the land-use plan for the County's agricultural reserve, neither community water nor sewer service shall be used to support existing or proposed PIF uses within the Rural Density Transfer (RDT) Zone. This prohibition shall apply to all PIF cases regardless of whether public service requires either new main extensions or only service connections to an existing, abutting main. The only exception allowed to this prohibition is to allow for community service to relieve health problems caused by the failure of on-site systems, as documented by the Department of Permitting Services (DPS). In the case of a public health problem, DEP and DPS staff will need to concur that the provision of community service is a more reasonable alternative to a replacement of the failed on-site

system, either by standard or alternative/innovative technologies. WSSC and DEP staff will need to concur that the provision of community service is technically feasible.

**c. Main Extensions for PIF Uses** -- Main extensions outside the acknowledged community service envelopes, where required, shall be designated "Limited Access" consistent with the Limited Access Water and Sewer Mains policy (see Section III.A.2). Where community sewer service for a PIF use will be provided by low-pressure mains, those mains shall be dedicated only to that PIF use and generally not eligible for additional service connections. The County and WSSC may make limited exceptions to this requirement to allow for the relief of failed septic systems, where such service is technically feasible.

PIF uses may receive service from limited access water or sewer mains where the Council has specifically approved access to those mains. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Under its Systems Extension Permit (SEP) process, WSSC now requires that all commercial and institutional service applicants construct and pay for the community systems main extensions needed to serve their projects. In cases where more than one PIF use proposes to locate on a site requiring a pump and low-pressure main extension, WSSC requires that each institutional facility have a separate pump and pressure main system. The County and WSSC shall not support the provision of community sewer service for a PIF use where that service will require a WSSC-owned and operated wastewater pumping station which does not also support community sewer service for other non-PIF uses consistent with the service policies of this Plan.

**d. PIF Uses in Existing Residential Structures** -- The Council may deny service area category amendments for PIF uses located outside the acknowledged water and/or sewer envelopes where main extensions are required for private institutional facilities seeking community service for existing residential structures. This could result in the extension of community water and/or sewer service for structures which would not otherwise be eligible for such service, and which could return to residential use.

**e. PIF Policy Directions** -- The Council originally adopted a Water and Sewer Plan service policy addressing PIF uses with three primary goals in mind:

- To continue to support, where the provision of community service is reasonable, the county's private institutional facilities, which the Council recognized as having an important role in their communities and for their residents;
- To provide more objective and consistent criteria in evaluating PIF cases; and
- To limit the potential impact of water and sewer main extensions outside the community service envelopes to support PIF uses.

The PIF policy has accomplished the preceding goals, at least to some extent. However, it has also created unintended concerns, involving complex relationships between differing public policies and affecting private institutions needing space to locate and grow within an often fiercely competitive Real Estate market. This makes less costly land, usually located outside of the community water and sewer service envelopes and zoned for lower-density development, more attractive to institutional uses. Among the concerns which have come to the attention of both the County Council and County agency staff are the following:

- The policy has resulted in the clustering of PIF uses at the edge and outside of the acknowledged community water and/or sewer service envelopes.
- The policy has facilitated the siting of PIF uses on properties where the institutional use and its ancillary needs, especially parking, can create imperviousness far in excess of that normally resulting from residential uses, leaving little open space and creating water quality problems.

- The policy has facilitated the siting of PIF uses within the county's RDT-zoned agricultural reserve areas.
- The policy has promoted speculative interest in sites because of their potential ability to satisfy the PIF policy requirements, not because a specific private institution has a need for that site.
- The policy does not provide guidance concerning institutional subdivisions, where two or more PIF uses subdivide and locate on an existing property approved for community service.
- The policy can not address issues beyond the scope of the Water and Sewer Plan, such as community compatibility, traffic congestion, and alternate facility uses.

An interagency PIF policy working group has reviewed the PIF policy and other County regulations and ordinances, with particular attention to the preceding issues. The PIF policy as amended in this Water and Sewer Plan contains changes from the original PIF policy which address some of these concerns. Among these are a policy preventing publicly-funded support for community service to PIF uses where WSSC pumping facilities would be required, and a prohibition against providing community service to PIF uses in the Rural Density Transfer (RDT) Zone. In addition, the working group has recommended to the County Council impervious area limits for most land uses in lower-density rural and rural estate zones to help limit the environmental impacts often associated with institutional development within these zones.

The preceding policies focus on community water and sewer service for institutional uses. The working group also recognized that a prohibition on community service in the RDT Zone could result in an increase in PIF project proposals using multi-use on-site systems. The County needs to ensure that these on-site systems can provide long-term, sustainable service for their users in order to avoid the need to provide community service to relieve on-site system failures (see Section III.B.2.).

<b>Water and Sewer Plan Recommendation</b>
The County needs to recognize that the recommendations from the PIF Working Group represent the first efforts in addressing the community and environmental effects of large commercial and institutional land uses, especially those [[which]] that locate with the rural part of the county. At the least, the working group will need to follow up periodically to consider 1) the effectiveness of these recommendations, 2) public and development industry concerns with regard to the County's policies, and 3) the need for additional or alternative actions.

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## **V. PROCEDURES FOR ADOPTING AND AMENDING THE WATER AND SEWER PLAN**

### **D. Filing Individual Service Area Category Change Requests**

**2. Application Requirements for PIF Category Change Requests** -- In cases involving service area category amendments for private institutional facilities (PIFs – see Section II.C.4.), the institution seeking to use the property must act as the category change applicant. If a site is proposed for two or more PIF uses, then at least one of the proposed institutions must act as the applicant. PIF applicants need to include a confirmation of their tax-exempt status as part of their category change request.



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IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

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September Term, 2007

No. 03082

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BETHEL WORLD OUTREACH CHURCH,

Appellant/Cross-Appellee

v.

MONTGOMERY COUNTY, MARYLAND, *et al.*,

Appellees/Cross-Appellants

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On Appeal from the Circuit Court for Montgomery County, Maryland  
(Durke G. Thompson, Judge)

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**BRIEF OF APPELLEES, MONTGOMERY COUNTY, MARYLAND and  
COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND**

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## STATEMENT OF THE CASE

On January 31, 2006, the Appellant (“Bethel”) filed a Petition for Administrative Mandamus under Maryland Rule 7-401. (E. 0005; Case No. 268735-V). Through that Petition, Bethel sought review of the Montgomery County Council’s decision, by Resolution No. 15-1235 dated November 29, 2005, to deny Bethel’s application for an amendment to the County’s Ten-Year Comprehensive Water Supply and Sewerage Systems Plan (“Plan” or “water and sewer Plan”). On April 10, 2006, Bethel filed a second petition for administrative mandamus that was consolidated with the first. (E. 00026; Case No. 270717-V). Because Bethel’s petitions were untimely and because the Council’s decision was not reviewable under Maryland Rule 7-401, the Council moved to dismiss the petitions.

On July 10, 2006, after a hearing, the trial court granted the Council’s motion to dismiss. (E. 0051). The trial court ruled that the Council acted in a legislative capacity in denying Bethel’s application and that Bethel could not petition for review of the Council decision under Rule 7-401. (E. 0730). Pursuant to a “Corrective Order” dated August 11, 2006, the court granted the Council’s motion to dismiss and allowed Bethel thirty days to amend its petition. (E. 0052). Instead of appealing the order granting the motion to dismiss, Bethel amended the original petition to add common law and statutory civil claims. Two additional amendments to the petition (the second of which was filed after the close of discovery on the day of the hearing on the dispositive motions) culminated in the “Petitioner’s Third Amended Petition for Administrative Mandamus and Complaint

for Other Relief” (“Petition”). (Apx. 6). As the title of the Petition suggests, Bethel sought relief under an administrative mandamus theory, though Bethel did not identify the rule under which it sought that relief. The Petition, as thrice amended, was comprised of seven counts: Count I: Certiorari; Count II: Judicial Review; Count III: Mandamus; Count IV: Declaratory Judgment; Count V: Injunctive Relief; Count VI: Religious Land Use and Institutionalized Persons Act - RLUIPA; Count VII: Maryland Declaration of Rights - Article 24. The Petition did not state a claim for any alleged failure of the Council to afford Bethel a quasi-judicial hearing or for any lack of procedural due process with respect to the proceedings before the Council.

After filing the original amendment to its Petition, Bethel designated an expert witness and chose to conduct discovery; the County responded in kind. (E. 0011-0012). Because Bethel’s responses to the County’s discovery requests did not comply with the Maryland Rules, the County filed a motion to compel proper responses on November 30, 2007. (E. 0015; 0735).

On November 29, 2007, the County also filed a motion to dismiss or for summary judgment. (E. 0015). On December 4, 2007, Bethel filed a counter motion for summary judgment that was supported by a report from its expert. (E. 0015). The County moved to strike the expert report. (E. 0016; Apx. 19).

On December 28, 2007, the trial court conducted a hearing on the counter motions for summary judgment, the motion to compel, and the motion to strike the expert’s

report. (Apx. 30). At the hearing, the trial court first took up the County's motion to compel and substantially granted it. (Apx. 22-33). The court then heard argument on the motions for summary judgment. During the course of the hearing, the trial judge determined that the Council acted in a legislative capacity, but then reversed himself and ruled that the Council acted in a quasi-judicial capacity and, as a consequence, the matter was an "administrative appeal" for which there should have been no discovery. (Apx. 52; 70). The judge granted the County's motion to dismiss or for summary judgment and reversed his ruling on the motion to compel, characterizing the latter as "moot." (Apx. 70-73). The judge did not rule on the motion to strike the expert report, though the docket entries state that the motion was denied as "moot." (E. 0035).

On February 4, 2008, the clerk entered the trial court's written order which both memorializes the court's December 28 ruling and expressly references the fuller discussion of the ruling that occurred on the record. (E. 0054). In the written order, the court reiterated that the Council acted in an administrative capacity. (E. 0054). The court found that there was no evidence that the County discriminated against Bethel in violation of RLUIPA or Article 24 of the Maryland Declaration of Rights. (E. 0054). The court found that the Council's decision was rational and supported by substantial evidence. (E. 0054). The court declared that Bethel's application did not comply with the County's water and sewer Plan. (E. 0054). Bethel has appealed that order. (E. 0056). The County has cross-appealed, in part, to preserve its right to challenge, if

necessary, the trial court's determination that the Council acted in an administrative or quasi-judicial capacity and the trial court's failure to grant the motions to compel and to strike. (E. 0063).

### **QUESTIONS PRESENTED**

- I. Is the petition for judicial review cognizable?
- II. Are the claims for mandamus and declaratory and injunctive relief cognizable?
- III. Is the RLUIPA claim cognizable?
- IV. Did the trial court commit reversible error when it granted Montgomery County's motion to dismiss or for summary judgment?
- V. Did the trial court err when it denied Montgomery County's motion to compel discovery and the motion to strike the expert report?

### **STATUTES, ORDINANCES AND CONSTITUTIONAL PROVISIONS**

The full text of all relevant statutes, ordinances and constitutional provisions appears in the appendix to this brief and the Appellant's brief.

### **STATEMENT OF ADDITIONAL FACTS**

#### **The Undisputed Legislative Facts**

Bethel's tendentious statement of facts disregards copious portions of the legislative record. That record is indispensable to a proper understanding of the Council's decision. Also, throughout its brief, Bethel misstates material (and sometimes indisputable) facts. Those misstatements must be corrected.

Maryland law requires the County to adopt a Ten-Year Comprehensive Water Supply and Sewerage Systems Plan that is approved by the Maryland Department of the Environment (“MDE”). *Md. Code Ann. Envir., § 9-501, et seq.* The Plan establishes “service area categories” that designate areas within the County to which public water and sewer service will be extended. (E. 0268).<sup>1</sup> Pursuant to Maryland law, the County may “adopt” a proposed amendment to the Plan. *Md. Code Ann. Envir., § 9-515(g)(1)*. Proposed Plan amendments sometimes arise from requests by property owners to change their service area categories.

On or about April 26, 2001, Bethel’s predecessor, Farm Development Coop., LLC, applied for such a water and sewer category change to accommodate its proposal to construct four “1000 seat sanctuaries”<sup>2</sup> on a 119.37 acre parcel of land on Brink Road at the edge of the County’s Rural Density Transfer (“RDT”) Zone.<sup>3</sup> (E. 280-281). At the time of the application, Farm Development’s property was (and is) outside of the public water and sewer envelope. The property was (and is) in the W-6 (for water) and S-6 (for sewer) categories (meaning that no water and sewer service is planned). (E. 0095; 0118;

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<sup>1</sup> The Plan is available online at:  
<http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/water/home.asp>.

<sup>2</sup> Farm Development’s proposal was dubbed, in some quarters, the “worship plex.”

<sup>3</sup> The RDT Zone is a low-density rural zone that permits one dwelling unit for every 25 acres of land. The purpose of the RDT Zone is to “promote agriculture as the primary land use in sections of the County designated for agricultural preservation . . . .” § 59-C-9.23 of the *Montgomery County Code, 2004, as amended*.

268-269). Like all properties in the RDT Zone, Bethel's property was not (and is not) intended to be served by public water and sewer. Both the water and sewer Plan and the master plan recommend against the inclusion of RDT properties in the water and sewer envelope. (Apx. 81; E. 0308). Farm Development sought to revise its service area categories to W-3 and S-3 (under which water and sewer service would be given "immediate priority"). (E. 280; 268-269). The Farm Development application generated concern about the "environmental impacts" of the proposed development. (E. 0328). Council staff advised the Council that, because the "extension of water would abut one additional property zoned RDT" and could "abut additional properties," the application did not comply with the Plan unless the "text" of the Plan was further amended. (E. 0328-0329). The Farm Development application (and two others filed by "TWS Land Barons" and "Seneca Creek Community Church") prompted the Council to review certain provisions in the Plan known, collectively, as the Private Institutional Facilities (or "PIF") policy. (E. 0332-0335; 0258; 0067; 0384; 0386; 0389). The Plan defines PIFs as "buildings constructed for an organization which qualifies for a federal tax exemption under the provisions of Section 501 of the United States Code (Internal Revenue Service)." (E. 0065-0066). PIFs include churches, schools, senior housing, and the like. (E. 0404). Of particular concern to the County was the proliferation of large PIFs, like that proposed by Farm Development, "outside of the acknowledged community water



and or sewer envelope.” particularly in the County’s Agricultural Reserve. (E. 0067; 0332-0338; 0350-0360).

The Agricultural Reserve, which is coterminous with the RDT Zone, is an area comprising portions of north and west Montgomery County that is set aside primarily for agricultural uses and that is to be protected from development and the environmental degradation wrought thereby. (E. 0309; 0315; 0313; 0314; 0321).<sup>4</sup> The size of the Farm Development project and the amount of land that it (and, ultimately, the aforementioned TWS Land Barons and Seneca Community Creek Church projects) would remove from agricultural use prompted the Council to act. In or about 2003, the Council formed “an interagency working group” to study the issue. (E. 0333). As noted by the Council’s staff, one of the “key” concerns of the working group and the Maryland-National Capital Park and Planning Commission (“M-NCCPC”)<sup>5</sup> was the “large impervious area that results from some PIF approvals.”<sup>6</sup> (E. 0334; 0350-0360). M-NCPPC staff explained that the “size(s), intensity, proliferation and associated impacts of PIF cases were not

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<sup>4</sup> In the joint record extract, Bethel reproduced the pages of the master plan out of sequence. The pages of the extract should be reviewed in the order cited by the County.

<sup>5</sup> The M-NCPPC is a state entity that, pursuant to Article 28 of the Maryland Annotated Code, approves, and makes recommendations to the County concerning, zoning and land development proposals. (E. 0265).

<sup>6</sup> Impervious area, or surface, is impenetrable by water, thus increasing water runoff that can be damaging to streams and watercourses and their inhabitants. See, e.g., [www.dnr.state.md.us/criticalarea/guidancepubs/impervioussurfaces.html](http://www.dnr.state.md.us/criticalarea/guidancepubs/impervioussurfaces.html).

previously envisioned, planned, or anticipated by adopted master plans.” (E. 0355). Staff opined that “[m]odifications to the regulatory review process for private institutional facility (PIF) uses permitted in the one-family residential and agricultural zones are needed to control and minimize deleterious environmental and quality of life effects.” (E. 0355). Among the “effects” that staff identified were “traffic congestion parking” and “significantly increased impervious area.” (E. 0355). The Farm Development proposal was singled out for the amount of impervious surface that it was likely to create. (E. 0357). Council staff proposed, *inter alia*, that the Council consider instituting a cap on impervious surface. (E. 0334). In April of 2004, M-NCPPC proposed a zoning text amendment (“ZTA”) to the Council that would limit total impervious surface in the RDT Zone to 15%.<sup>7</sup> (E. 0394-0395). The Council also considered proposals to deny further public water and sewer extensions to properties in the RDT Zone. (E. 0333).

In the midst of the PIF controversy, on or about March 10, 2004, Bethel replaced Farm Development as the applicant for the water and sewer service area category change. (E. 0118). Bethel revised the Farm Development proposal; instead of four 1,000 seat churches. Bethel proposed to construct, at the Brink Road site, a 3,000 seat church to accommodate its 3,000 members. (E. 0385-0386; 0392-0393). In addition, Bethel proposed to construct at the site:

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<sup>7</sup> Meaning that no more than 15% of a parcel may be covered by impervious surface.

a "religious school and daycare building. (250 children);"

a "social hall with a capacity of 600-800 persons . . . .;"

"[a]dministrative offices. Present offices are occupied by 28 full time and part time employees."

(E. 0392-0393). Bethel's counsel admitted that the "extension of public water" to Bethel's property "might abut one additional property zoned RDT . . . .;" if so, Bethel's counsel asked that the "County amend the Water and Sewer Plan text to designate the water main as a restricted access main." (E. 0393).

The Bethel proposal did not mollify the County's concerns about PIFs. (E. 0385-0386). In January of 2005, the Council formed another working group (the "PIF Working Group") that further studied the PIF issue. The PIF Working Group presented a report, dated August 29, 2005, to the Council. (E. 0397). By way of background, the PIF Working Group reiterated the Planning Board's "concerns regarding the 'PIF Policy' . . . and the fact that this policy allows for more intense developments of large lot zoned properties than was envisioned in area master plans." (E. 0397-0398). Council staff noted that the State of Maryland had advised that it may deny future water and sewer Plan amendments that were not consistent with the master plan. (E. 0399-0400). The PIF Working Group identified and described the "major issues" arising from PIFs in the "large lot" zones (which include the RDT Zone). (E. 0405). The PIF Working Group noted that PIFs "tend to be much more intense developments" that create "greater impervious area" and that "[i]ncreased impervious area correlates to lower water quality."

(E. 0405). The PIF Working Group presented data to the Council showing the increase in impervious surfaces in the RDT Zone. (E. 0410-0413). The PIF Working Group noted that the “[c]lustering of PIF uses on the edge of the sewer envelope exacerbates” the environmental issues. (E. 0415). The PIF Working Group further noted that “PIF uses” in the RDT Zone, “could remove acreage from agricultural use.” (E. 0405). The PIF Working Group observed that the “[e]xtension of sewer to serve a property can lead to future pressure to hookup additional properties causing additional environmental impacts.” (E. 0415). The PIF Working Group recommended that the Council deny “sewer hookups and extensions within the RDT Zone to serve PIF uses, except in cases of failed septic systems.” (E. 0422). The PIF Working Group also recommended that the Council institute an impervious area cap of 15% in the RDT Zone. (E. 0423).

As part of its review of the impervious cap ZTA and the Plan, the Council, and two of its committees, heard from the community. On September 29 and November 8, 2005, the Council conducted a public hearing on the impervious cap ZTA (05-15) and the Plan. At the outset of the September hearing, the Council president lamented the “conflicting policy challenges” facing the County in attempting to accommodate PIFs while protecting the Agricultural Reserve. (E. 0441). That conflict was manifested in the testimony. Speaking on behalf of the Agricultural Advisory Committee, Mr. Jim Clifford testified that the “growing number of requests to amend the water and sewer plan for properties located in the Agricultural Reserve . . . represent a threat to the Ag Reserve,

where agriculture is identified as the primary land use.” (E. 0447-0448). Mr. George Lechluder of the Montgomery County Bureau testified that amendments to the County water and sewer plan “for properties located in the Agricultural Reserve will negatively impact Montgomery County agriculture as more farms will be taken out of agricultural production.” (E. 0449). Mr. Lechluder advocated for a limit or prohibition on the extension of water and sewer service in the Agricultural Reserve. (E. 0450). According to Mr. Lechluder, approving further amendments to the Plan would “erode the critical mass of agricultural lands and jeopardize the principles outlined” in the master plan. (E. 0450). Mr. Lechluder testified that the Farm Bureau does not oppose private schools and churches in the Agricultural Reserve; the concern is with “large campus-style settings that many of these uses have become” which “represent a different kind of use that truly impacts the surrounding community and the natural resources and the environment.” (E. 0450). Other members of the community testified similarly. (E. 0465-0468; 0473-0476). In response to an inquiry from Council member George Leventhal, Council staff confirmed that there was no PIF in the RDT Zone of the “size and scope” of Seneca Community Creek Church and “Bethel Outreach Church.” (E. 0463-0464). Council member Leventhal commented that there “is no precedent for institutions” of that size with “such potentially significant impact . . . .” (E. 0464).

On November 8, 2005, the Council conducted another public hearing on ZTA 05-15 and the Plan. Pam Saul of the Montgomery Soil Conservation District testified that

“MSCD and the farm community are very concerned about the impact PIFs have on our landscapes, roads, water supply, natural resources, and our way of life.” (E. 0487). Ms. Saul expressed the view that “extensions of water and sewer capabilities into the Agricultural Reserve would have a profound impact on the conservation of important soil and natural resources.” (E. 0487). Ms. Barbara Falcigno of the Olney Coalition testified that “impervious caps are necessary to preserve critical watersheds.” (E. 0499). Ms. Falcigno noted that the “issue of PIFs in rural zones has been revisited” because of “several large projects” seeking public water and sewer; “expectations for these approvals have no similar precedents since PIFs of this size and magnitude . . . have never been made before.” (E. 0500-0501). Ms. Nancy Soreng of the League of Women Voters testified that “[n]umerous studies have established that quality of streams and water supplies are adversely affected from contaminants washed off the surface of land by storm water with impact beginning at 8 percent imperviousness and degradation at 30 percent imperviousness.” (E. 0505).

Ms. Bonnie Bell of the Greater Goshen Civic Association testified concerning Bethel’s potential traffic impacts on her community of only 4,000 residents. (E. 0508). Ms. Bell noted that Bethel testified to having 3,000 members; she concluded that “if at least four people are in every car that comes to those [i.e. Bethel’s] services, that’s 750 cars traveling on a two-lane residential road which has had numerous accidents in the past ten years . . . .” (E. 0508). Ms. Bell testified that “[p]utting this kind of large-scale

development in an area with no public transportation, no sidewalks, even the roads are rural and are not standard width, we are asking for an increased accident rate.” (E. 0508).

On November 10, 2005, the Council’s Planning, Housing, and Economic Development Committee and the Transportation and Environment Committee conducted a joint meeting to discuss the PIF controversy. Six of the nine council members attended. Ms. Katherine Nelson of M-NCPPC advised the Council that impervious surface in the RDT Zone averages 5%. (E. 0514; 0432). Mr. Richard Brush (misspelled “Brosch”) further informed the Council that development degrades streams and provided data showing the impact of development on watersheds. (E. 0517).

Bethel did not object to the legislative process to which its application was subject. Indeed, Bethel actively participated in that process. Bethel’s bishop argued against the “recommendations” that the Council “deny water and sewer to Bethel and limit [Bethel’s] use of the land that [it] recently purchased to only 15 percent.” (E. 0501). Bethel’s counsel advised that 80% of its approximately 2,000 congregants live in Montgomery County and that one-half of those individuals live in Silver Spring. (E. 0076). The others live in the “Gaithersburg, Germantown, and Rockville areas.” (E. 0077). Regarding impervious surface, Bethel would only offer to limit its impervious surface to 25%. (E. 0527). Bethel also submitted to the Council an exhibit showing the location of the new “pressure sewer” main that would be constructed along Brink Road to provide service to Bethel’s property; the exhibit shows the main as adjoining properties in two zones, RDT

and RE-2. that were NOT (and are NOT), in the language of the Plan, “otherwise eligible for community service . . . .” (E. 0529-0530<sup>8</sup>; 0674; 0274 (§ II.E.4.b.ii); Apx. 81).

After hearing testimony, meeting, and considering the PIF Working Group report, the Council, on November 29, 2005, adopted a revision to the “PIF Policy.” (E. 0129-0133; Apx. 9). The reason for the “PIF Policy” revision is discussed in the legislative record and the Plan. (E. 0067). The revision was the product of the Council’s concern that PIFs of greater size were locating with increasing frequency in the County’s Agricultural Reserve. (E. 0548-0557). Council member Silverman stated that the County “should be protecting” the “Ag Reserve” for “agricultural uses.” (E. 0552). Council members Subin and Knapp echoed Mr. Silverman’s concern that the Agricultural Reserve would be lost if more large PIF incursions were allowed. (E. 0552-0553). Council member Andrews stated that, “if the Agricultural Reserve is lost . . . it won’t be lost in one fell swoop . . . ; [i]t will be lost incrementally.” (E. 0556-0557). Mr. Andrews further stated that “what the Council will be doing by adopting this policy is to ensure that at least that the Agricultural Reserve will not be lost on the Council’s watch.” (E. 0557).

As of November of 2003, the Plan’s “PIF Policy” stated, in part:

**Facilities Located Outside the Community Service Envelopes** - For existing or proposed PIF uses located outside the acknowledged water and/or sewer

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<sup>8</sup> The conceptual sewer exhibit delineates, with diagonal lines, properties that were eligible for service (i.e. “S-1”) on the western side of the area depicted.



envelopes, the County Council shall consider requests for the provision of community service for PIF uses according to the following criteria:

i. **Sites Abutting Existing Water and/or Sewer Mains** - For cases where existing or approved water or sewer mains abut or will abut a property, service area category amendments may be approved for sites with an existing PIF use and for sites proposed for a new or relocating PIF use.

ii. **Sites Requiring New Water and/or Sewer Mains Extensions** - For cases where the provision of community service for a PIF use requires new water and/or sewer mains, the following criteria shall apply:

For existing PIF uses, service area category amendments may be approved for sites only where required water and/or sewer main extensions do not threaten to open undeveloped land to development contrary to the intent of the relevant local area master plan.

For new or relocating PIF uses, service area category amendments may be approved for sites only where required water and/or sewer main extensions will abut only properties which are otherwise eligible for community service under the general policies of this plan.

(E. 0066).

On November 29, 2005, with the adoption of Resolution No. 15-1234, the Council amended the Plan, in part, to state (new language underlined; deleted word in brackets):

**Facilities Located Outside the Community Service Envelopes** - For existing or proposed PIF uses located outside the acknowledged water and/or sewer envelopes, the County Council shall consider requests for the provision of community service for PIF uses according to the following criteria:

i. **Sites Abutting Existing Water and/or Sewer Mains** - For cases where existing or approved water or sewer mains abut or will abut a property, service area category amendments may be approved for sites with an existing PIF use and for sites proposed for a new or relocating PIF use, excluding those zoned RDT (see subsection iii).

ii. **Sites Requiring New Water and/or Sewer Mains Extensions** - For cases where the provision of community service for a PIF use requires new water and or sewer mains, the following criteria shall apply:

For existing PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) only where required water and/or sewer main extensions do not threaten to open undeveloped land to development contrary to the intent of the relevant local area master plan.

For new or relocating PIF uses, service area category amendments may be approved for sites (excluding those zoned RDT, see subsection iii) [[only]] where required water and/or sewer main extensions will abut only properties which are otherwise eligible for community service under the general policies of this plan.

iii. **Sites Zoned Rural Density Transfer** - To help preserve the integrity of the land-use plan for the County's agricultural reserve, neither community nor sewer service shall be used to support existing or proposed PIF uses within the Rural Density Transfer (RDT) Zone. This prohibition shall apply to all PIF cases regardless of whether public service requires either new main extensions or only service connections to an existing, abutting main. The only exception allows to this prohibition is to allow for community service to relieve health problems caused by the failure of on-site systems, as documented by the Department of Permitting Services (DPS). In the case of a public health problem, DEP and DPS staff will need to concur that the provision of community service is a more reasonable alternative to a replacement of the failed on-site system, either by standard or alternative/innovative technologies. WSSC and DEP staff will need to concur that the provision of community is technically feasible.

(E. 0131-0132).<sup>9</sup>

On November 29, 2005, the Council, with the adoption of Resolution No. 15-1235, also denied Bethel's application for an amendment to the Plan. (Apx. 9, ¶ 8; E. 0118). Though the Bethel application received a favorable (but conditional) 2-1

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<sup>9</sup> On July 11, 2006, the Maryland Department of the Environment approved the revision to the Plan. (Apx. 12). Bethel has not challenged that decision.

committee recommendation, the Council ultimately voted to deny it. One of those opposing the application, Council member Andrews, stated that he could not “support grandfathering approving water and sewer for the property.” (E. 0578). Council member Andrews explained that the “Council has heard from environmental and citizens’ groups as well as individuals concerned about the inconsistency of this use in the rural zones and in the RDT Zone.” (E. 0578). Mr. Andrews was concerned “[i]n particular” about “the negative land use impacts of this and other developments.” (E. 0578). Council member Andrews concluded that “the interest that has to prevail here is in protecting the Agricultural Reserve for its intended use . . . .” (E. 0578). Council member Leventhal concurred, noting that “the scope of development proposed by the church is not rural . . . .” (E. 0579). Council member Knapp objected to “nibbling away at the edges of the Agricultural Reserve” and expressed a need to “reaffirm our commitment to [the] Ag Reserve and agricultural policy.” (E. 0579-0580). The Council voted 6-2 on a preliminary motion to deny the application. (E. 0583, lines 7-9, 0585, lines 36-44).<sup>10</sup> The Council then voted to approve Resolution No. 15-1235 which formally denied the

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<sup>10</sup> Council member Floreen stated that “for the items on number 6 we have the Committee recommendation that’s been amended by specific votes. Why don’t we have a vote on the whole package.” (E. 0585, lines 36-38). The reference to the “amended” committee recommendation is a reference to the 6-2 vote. The reference to “number 6” means agenda item number 6, i.e., the various water and sewer applications, including Bethel’s. The “whole package” is Resolution No. 15-1235, inclusive of the various applications. The agenda is accessible at:  
[http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2005/051129/20051129\\_ag.pdf](http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2005/051129/20051129_ag.pdf).

Bethel application and those filed by TWS Land Barons and Seneca Creek Community Church. (E. 0585, lines 36-44, E. 0586, lines 2-5; E. 0117-0118; Apx. 9). The Council's official minutes reflect that Resolution No. 15-1235 was adopted, "as amended," after Resolution No. 15-1234. (E. 0613-0614).

## **Argument**

### **The Water and Sewer Process**

Maryland law requires the County to adopt a water and sewer plan. *Md. Code Ann. Envir.*, § 9-501, et seq. A plan must cover a 10-year period. *Md. Code Ann. Envir.*, § 9-503(a)(2). A plan must provide for "the orderly expansion and extension" of water supply and sewerage systems "in a manner consistent with all county and local comprehensive plans . . . ." *Md. Code Ann. Envir.*, § 9-505(a)(1). A plan must take "into account all relevant planning, zoning, population, engineering and economic information . . . ." *Md. Code Ann. Envir.*, § 9-505(a)(7). The County must submit its proposed plan (and amendments thereto) to the Maryland Department of the Environment ("MDE"). *Md. Code Ann. Envir.*, § 9-507. The MDE may approve, disapprove, or modify the plan. *Md. Code Ann. Envir.*, § 9-507(a). However, before MDE acts on a plan, a county "may use its proposed county plan or proposed revision or amendment of its county plan at the county's own risk, if the county has adopted the proposed county plan, revision, or amendment." *Md. Code Ann. Envir.*, § 9-507(e)(1). "After the county governing body adopts the proposed plan, a person shall follow the provisions of that plan except to the

extent that the Department modifies or disapproves the plan.” *Md. Code Ann. Envir.*, § 9-507(e)(2). In Montgomery County, the “adoption of the county plan by the county council . . . is not final until 10 days after the action adopting it.” *Md. Code Ann. Envir.*, § 9-515(g)(2). The ten-day period allows the County Executive to make recommendations to the Council concerning the plan. *Md. Code Ann. Envir.*, § 9-515(g)(3).

The County adopted its extant Plan in November of 2003. (E. 0254). The Plan details the legal and policy objectives that it furthers. The purpose of the Plan is “to provide an overview of the planning policies, needs, . . . public health, environmental protection and land-use issues” in the County. (E. 0257). The “overall goal” of the Plan is to ensure that “water supply and sewerage system needs are satisfied” consistent with certain objectives, including supporting master plan recommendations and “Smart Growth,” and improving the “quality of the water resources of the county.” (E. 0262). Chapter 2 of the Plan describes the environmental characteristics of the County so as to inform the adoption and implementation of the Plan. Chapter 2 provides information concerning water quality and delineates the County’s water quality goals. (Apx. 82-85). The Plan also discusses the PIF issue and notes the continuing concern (as of 2003) about the extension of public water and sewer to PIFs and the increased “imperviousness” created by the PIFs. (E. 0258; 0275).

The County Council expressly and necessarily reserves to itself, in the Plan, substantial discretion. The Plan states that the Council “relies primarily on these service policies in evaluating and acting on Water and Sewer Plan amendments.” (E. 0268). But the scope of the Council’s “responsibilities goes far beyond this Plan and includes issues such as the county-wide economic growth, public health and safety, transportation infrastructure, and public education.” (E. 0268). The Council “has the authority and responsibility to consider such issues where they may affect its actions with respect to this Plan.” (E. 0268). With respect to RDT-zoned properties, the 2003 Plan states that such properties “are generally not to be served by community systems;” though, “case-by-case exceptions can be considered where community service is logical, economical, environmentally acceptable, and does not risk extending service to non-eligible properties.” (Apx. 81).

Amendments to the Plan are sometimes initiated by private property owners, like Bethel.<sup>11</sup> The Council renders decisions on such applications within the context of the Plan. The Court of Appeals has determined that “all amendments to a Master Water and Sewer Plan are, by definition, comprehensive planning actions.” *Appleton v. Cecil County*, 404 Md. 92, 104, 945 A.2d 648, 655 (2008). A water and sewer plan has “a

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<sup>11</sup> The court will note that the subtitle of Farm Development’s application for a water and sewer category change is “Proposed Amendment to the Montgomery County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan.” (E. 0280). And Resolution No. 15-1235 (through which individual applications were granted or denied) is titled, in part, “Amendments to the Comprehensive Water Supply and Sewerage Systems Plan . . . .” (E. 0115).

broad or comprehensive land use planning basis.” *Id.* (quoting *Gregory v. Board of County Commissioners of Frederick County*, 89 Md. App. 635, 640, 599 A.2d 469, 472 (1991)). A “legislative body’s focus” in such a planning action:

is not on a single piece of property, but rather on a considerable number of properties as they relate to each other and to the surrounding area . . . [t]hese are not adjudicative determinations affecting one property owned by one person, but instead are classically legislative determinations designed to affect local and regional needs and all property owners within the planning area.

*Gregory*, 89 Md. App. at 640-641, 599 A.2d at 472 (internal citations omitted).

The *Gregory* court noted that the “adoption of a particular amendment to the plan cannot be isolated from the context of the plan as a whole.” 89 Md. App. at 643-644, 599 A.2d at 473; *see also Friends of Mount Aventine v. Carroll*, 103 Md. App. 204, 652 A.2d 1197 (1995); *Kent Island Joint Venture v. Smith*, 452 F. Supp. 455, 458 (D. Md. 1978) (describing an amendment to a water and sewerage plan that affected two properties as “clearly legislative”). The *Gregory* court was “unable to conceive of a situation in which the adoption of an amendment to a county’s water and sewerage plan would lack” a comprehensive planning basis. *Gregory*, 89 Md. App. at 643, 599 A.2d at 473.

#### **Standard of Review**

Bethel claims that, in denying its application, the Council acted in a quasi-judicial capacity. (Br. 10). Bethel thus treats this action as an “administrative appeal” to which the familiar “substantial evidence” test applies. Relying on case law addressing the responsibilities of administrative agencies, Bethel faults the Council for not articulating

the bases for its decision. (Br. 10). After first rejecting Bethel's claim that the Council acted in a quasi-judicial capacity, the trial court was eventually persuaded to that view under the guidance of *Maryland Overpak Corporation v. Mayor and City Council of Baltimore*, 395 Md. 16, 909 A.2d 235 (2006).

The trial court had it right the first time. As has been discussed, the Maryland courts have ruled that an amendment to the water and sewer plan is a comprehensive planning action. The courts have specifically rejected the argument that a water and sewer plan amendment is akin to a "piecemeal" zoning action that may be reviewed through a petition for judicial review. *Appleton v. Cecil County*, 404 Md. 92, 104, 945 A.2d 648, 655 (2008); *Gregory v. Board of County Commissioners of Frederick County*, 89 Md. App. 635, 640, 599 A.2d 469, 472 (1991). In the context of a challenge to a water and sewer plan amendment, the Court of Appeals, in *Appleton*, characterized *Maryland Overpak* as "clearly distinguishable." *Appleton*, 404 Md. at 105, 945 A.2d at 655.

And Bethel's brief is hopelessly at odds with its own theory of the case. For example, the bulk of the brief is directed at the alleged errors committed by the trial court. But, in an appeal of the denial of a petition for judicial review, the trial court's decision is irrelevant. *See, e.g., Department of Mental Health and Hygiene v. Campbell*, 364 Md. 108, 123, 771 A.2d 1051, 1060 (2001); *Cremins v. County Commissioners of Washington County*, 164 Md. App. 426, 883 A.2d 966 (2005). An appellate court



reviews the decision of the administrative agency, not that of the trial (or reviewing) court. And the Maryland rules, except in special circumstances, do not allow for discovery in judicial review actions and otherwise confine parties to the administrative record. *See, e.g., Md. R. Civ. P. 7-402.* Bethel conducted discovery, without the appropriate court approval, and ventured far beyond the legislative record with its expert report. Maryland law further confines parties challenging a quasi-judicial decision to the arguments that were presented to the administrative agency. *See Cremins v. County Commissioners of Washington County*, 164 Md. App. 426, 883 A.2d 966 (2005). Bethel has ignored that limitation as well; the claims that Bethel asserted in the trial court were not asserted before the Council. Bethel also sought declaratory relief from the trial court while simultaneously pursuing an unexhausted administrative remedy. The rule is that administrative remedies must be exhausted before declaratory relief may be had. *Anderson House v. Mayor and City Council of Rockville*, 402 Md. 689, 704, 939 A.2d 116, 125 (2008). The courts do allow parties to combine a petition for judicial review with civil causes of action when there is uncertainty as to the nature of the action challenged. *See Anderson House*, 402 Md. at 703, 939 A.2d at 124. But, ultimately, an action must be placed in one or the other category; a party cannot apply the standards for a petition to other civil actions. *See, e.g., MBC Realty v. Mayor and City Council of Baltimore*, 403 Md. 216, 941 A.2d 1052 (2008).

Sowing further confusion, throughout its brief, Bethel argues that the trial court erred by not finding that the Council acted in an arbitrary and capricious manner. Thus, instead of applying the substantial evidence test, Bethel applies the more demanding (from a challenger's perspective) arbitrary and capricious test that would typically be applied (through mandamus for example) to legislative actions.

By applying the arbitrary and capricious standard to the Council's action, Bethel has inadvertently arrived within reasonable proximity of the correct destination; the County substantially agrees that, procedural clutter aside, the core determination that this court must make is whether trial court erred in finding that the Council did not act arbitrarily or illegally. All of Bethel's causes of action are grounded upon the premise that the Council's denial of the water and sewer application was arbitrary, illegal, or discriminatory. Thus, if the Council's decision had a rational, non-discriminatory basis and was not illegal, it must be upheld. In making that determination, however, this court is constrained by certain limits on judicial power.

"In reviewing the constitutionality of legislative acts, the critical question is whether the challenged legislation bears 'a real and substantial relation to the public health, morals, safety, and welfare of the citizens . . . .'" *Mears v. Town of Oxford*, 52 Md. App. 407, 417, 449 A.2d 1165, 1172 (1982) (quoting *Bowie Inn, Inc. v. Bowie*, 274 Md. 230, 236, 335 A.2d 679 (1975)). An "ordinance is presumed constitutional; the party attacking it must show the absence of any substantial relation to the public benefit

or to a legitimate governmental objective.” 52 Md. App. at 417-418, 449 A.2d at 1172.

An ordinance “will be found constitutional if any facts that would sustain its constitutionality may be reasonably conceived.” 52 Md. App. at 418, 449 A.2d at 1173.

An “interpretation which raises doubts as to a legislative enactment’s constitutionality should be avoided if the language of the act permits.” *Edwards Systems Technology v. Corbin*, 379 Md. 278, 293, 841 A.2d 845, 854 (2004) (internal citations omitted).

Further, as expressed by the Supreme Court,

[i]t is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived. The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way.

*Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 42 (1933).

“It is well settled that the judicial branch of government cannot institute an inquiry into the motives of the legislature in the enactment of laws, lest the legislature be subordinated to the courts.” *County Council for Montgomery County, Maryland v. District Land Corporation*, 274 Md. 691, 704, 337 A.2d 712, 720 (1975). *See also*, 5 *E. McQuillin. Municipal Corporations*, §16.90 (3rd. Ed., 1996 Revised Volume). Thus the “motives, wisdom or propriety of a municipal governing body in passing an ordinance are not subject to judicial inquiry . . . .” *District Land Corporation*, 274 Md. at 705, 337 A.2d at 720. In keeping with these principles, “alleged wrongful motives or improper

purposes are no basis for striking down an otherwise constitutional statute.” *Mears v. Town of Oxford*, 52 Md. App. at 414, 449 A.2d at 1170.

In furtherance of the foregoing principles, this court’s review of a legislative act is limited to matters that are contained in the legislative record. *County Council for Montgomery County v. District Land Corporation*, 274 Md. At 706-707, 337 A.2d at 720-721; *Public Service Commission v. Patuxent Valley Conservation League*, 300 Md. 200, 216-217, 477 A.2d 759, 767-768 (1984); *see also, Manders v. Brown*, 101 Md. App. 191, 209, 643 A.2d 931, 940 (1994) (a court cannot inquire into the facts “undergirding” a legislative decision). As has been stated by the Court of Appeals, “factual determinations made by a legislative body are not ordinarily subject to review in the courts.” *Maryland Aggregates v. State of Maryland*, 337 Md. 658, 670, 655 A.2d 886, 892 (1995).

### **I. The Petition for Judicial Review is Not Cognizable**

In considering Bethel’s proposed amendment to the Plan, the Council acted in a legislative capacity. The Council conducted no quasi-judicial process, nor did Bethel claim, in its Petition or before the Council, that the Council was required to. Bethel is precluded from asserting that claim, for the first time, in a summary judgment motion or on appeal. *Brodie v. Motor Vehicle Administration*, 367 Md. 1, 3-4, 785 A.2d 747, 749 (2001).

And, more importantly, as has been discussed, the Court of Appeals has acknowledged, if not ruled, that a challenge to a water and sewer Plan amendment should be by mandamus or a declaratory action, not a petition for judicial review. *Appleton v. Cecil County*, 404 Md. at 105, 945 A.2d at 656. The *Appleton* court rejected the argument that a water and sewer plan amendment is analogous to a quasi-judicial “piecemeal” re-zoning; the very argument (indeed, the very terminology) that Bethel offers in the instant case. (Br. 12). This court, in *Gregory*, and the Court of Appeals, in *Appleton*, have described a water and sewer plan amendment, even for individual properties, as part of a planning process, regional in scope, that is the water and sewer equivalent of the type of comprehensive re-zoning that the courts have determined is legislative. Such comprehensive plans cannot be challenged through an “administrative appeal.”

Moreover, assuming Bethel seeks administrative mandamus under Rule 7-401, its Petition is untimely. Rule 7-402(a), by reference, requires that a petition for judicial review be filed within 30 days of the order or action from which relief is sought. In the instant case, the operative act was the decision of the Council to deny the Plan amendment application on November 29, 2005. *Md. R. Civ. P. 7-203(a)*. Bethel did not file its petition within 30 days of that date. Bethel obviously could not have done so because the administrative mandamus rules did not come into being until January 1, 2006. Bethel implied below that the administrative mandamus rules apply retroactively,

but cited no law that would support that conclusion. Bethel's reading of the administrative mandamus rules would allow for the application of the rules to decisions that were made months, or even years, before the effective date of those rules.

## **II. The Actions for Mandamus and Injunctive and Declaratory Relief Are Not Cognizable**

Mandamus and injunctive and declaratory relief do not lie because, as has been noted, an amendment to a water and sewer plan must ultimately be granted by the State of Maryland's Department of the Environment. And the State has approved the Council's revisions to the Plan's "PIF Policy." (Apx. 12). The State is, thus, a necessary party to this action, but it has not been named.<sup>12</sup> As has also been noted, a declaratory judgment action is incompatible with a petition for judicial review; if the petition is cognizable, the declaratory action is not.

## **III. The RLUIPA Claim is Not Cognizable**

RLUIPA prohibits the government from implementing "a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person" unless "the government demonstrates that the imposition of the burden . . . is in furtherance of a compelling governmental interest . . . and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a). RLUIPA defines a "land use

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<sup>12</sup> The County is aware that, in *Carusillo v. Prince George's County*, the Court of Appeals opined that a party challenging the denial of public water and sewer was not required to exhaust state administrative remedies because the party had not sought relief from the State. The court did not address whether the State is a necessary party to such an action. 289 Md. 436, 424 A.2d 1106 (1981).

regulation” as a “zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land . . . .” 42 U.S.C. § 2000cc-5(5).

RLUIPA also prohibits the government from imposing a land use regulation that “treats a religious assembly or institution on less than equal terms” than a “nonreligious assembly or institution.” or that “discriminates against any religious assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(1) and (2). RLUIPA further prohibits a land use regulation that “excludes religious assemblies from a jurisdiction” or “unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(A) and (B).

Enlightening commentary regarding the intended application of RLUIPA is to be found in its legislative history. Addressing the scope of RLUIPA, two of its co-sponsors explained that RLUIPA was not meant to “provide religious institutions with immunity from land use regulation” nor “relieve religious institutions from applying for variances, special permits, or exceptions . . . .” 146 Cong. Rec., pp. S7774-S7776 (July 27, 2000) (*joint statement of Sens. Hatch and Kennedy*).

RLUIPA is a jurisprudential work-in-progress.<sup>13</sup> Much of the discussion in the RLUIPA case law centers on the operative prohibition on zoning regulations that impose a “substantial burden on religious exercise.” Because “religious exercise” is defined in

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<sup>13</sup> Indeed, at least one court has ruled that RLUIPA is unconstitutional. *See Elsinore Christian Ctr. v. City of Lake Elsinore*, 270 F. Supp.2d 1163 (C.D. Cal. 2003); *But see Cutter v. Wilkinson*, 544 U.S. 709 (2005) (with respect to the institutionalized persons provisions). The County assumes, *arguendo*, that RLUIPA is constitutional.

RLUIPA, the courts have often focused on what constitutes a “substantial burden.” Consensus has not been easily reached. The courts have generally acknowledged that “run of the mill” zoning laws do not create substantial burdens. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227, fn. 11 (11<sup>th</sup> Cir. 2004); *See Civil Liberties for Urban Believers v. Chicago*, 342 F.3d 752 (7<sup>th</sup> Cir. 2003); *Episcopal Student Foundation v. Ann Arbor*, 341 F. Supp. 2d 691 (E.D. Mich. 2004). But the courts have not agreed on a definition of “substantial burden.” According to the Seventh Circuit, a regulation creates a substantial burden if it “necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable.” *Civil Liberties for Urban Believers v. Chicago*, 342 F.3d at 761. With respect to RLUIPA’s institutionalized persons protections, the Fourth Circuit “has found that a substantial burden occurs ‘when a state or local government through act or omission put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Lovelace v. Lee*, 472 F.3d 174, 187 (4<sup>th</sup> Cir. 2006). This court has adopted that definition. *Trinity Assembly of God v. People’s Counsel for Baltimore County*, 178 Md. App. 232, 252, 941 A.2d 560, 572, *cert. granted*, 405 Md. 63 (2008).

In keeping with the expressed intent of RLUIPA’s sponsors, the courts have ruled that zoning laws that restrict where churches may locate do not violate RLUIPA. *Trinity Assembly of God*, 178 Md. App. at 254, 941 A.2d at 573 (and cases cited therein). RLUIPA is not a “free pass for religious land uses . . . .” *Civil Liberties for Urban*



*Believers v. Chicago*, 342 F.3d at 762. Zoning approval for a church may be denied or conditioned so as to limit the adverse impacts of the church. *Vision Church v. Village of Long Grove*, 468 F.3d 975 (7<sup>th</sup> Cir. 2006), *cert. denied* 128 S.Ct. 77, 169 L. Ed. 2d 243 (2007).

A person asserting a claim under RLUIPA must produce “prima facie evidence to support a claim.” 42 U.S.C. § 2000cc-2(b). The RLUIPA plaintiff bears the “burden of persuasion on whether the law . . . or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.” 42 U.S.C. § 2000cc-2(b).

Bethels’ RLUIPA claim is not cognizable because RLUIPA applies only to a “zoning or landmarking law.” 42 U.S.C. § 2000cc-5(5). The water and sewer Plan is neither. And, in the trial court, Bethel claimed discrimination *vis-a-vis* other religious entities, but RLUIPA’s “equal terms” provision applies to discrimination in favor of *nonreligious* entities. 42 U.S.C. § 2000cc(b)(1). Further, in its answers to interrogatories, Bethel described the factual basis of its RLUIPA claim as follows:

The facts include, but are not necessarily limited to, the following: the Ten Year Plan and the PIF Policy are land use regulations. RLUIPA applies to county governments and precludes application of land use regulations that unfairly treat or discriminate against religious institutions like the Petitioner or unlawfully restrict Petitioner’s use of it [sic] property. (E. 0063).

The answer reaches an incorrect legal conclusion (that RLUIPA applies to the Plan) and provides not a single fact that would form the basis for a RLUIPA claim. Bethel did not offer (and could not have offered under the discovery rules) evidence before the trial

court that the Council violated RLUIPA. Bethel thus did not meet its evidentiary burden in the trial court. Though the trial court should have dismissed the RLUIPA claim, the trial court correctly determined that there was no unlawful discrimination under RLUIPA.

In its brief, Bethel does not seem to take issue with the trial court's apparent determination regarding Bethel's RLUIPA discrimination claim. Instead, Bethel argues that the trial court erred by failing to address Bethel's purported substantial burden claim. (Br. 30). Bethel may have pled a substantial burden claim, but, as its interrogatory answers reveal, Bethel produced no evidence in support of that claim. Before the trial court, Bethel assumed that it was substantially burdened in violation of RLUIPA. Bethel's bald, unsubstantiated allegation that the denial of its application for a Plan amendment prevented it from building a 3000 seat church at a single site does not evidence a substantial burden under RLUIPA. Bethel produced no evidence that, for example, it was precluded from constructing a church at its Brink Road property or at some other site within the County. Bethel made no showing that its practice of religion was rendered impracticable (indeed it is undisputed that Bethel operates a thriving church within the County), nor did Bethel make any showing that it was pressured to "modify [its] behavior" or "to violate [its] beliefs." *Trinity Assembly of God v. People's Counsel for Baltimore County*, 178 Md. App. at 252, 941 A.2d at 572; see also *Greater Bible Way Temple v. City of Jackson*, 478 Mich. 373, 733 N.W.2d 734 (2007), cert. denied, 128 S.Ct. 1894, 170 L.Ed 2d 782 (2008). Bethel did not meet its threshold burden under

RLUIPA; there was, thus, no substantial burden claim for the trial court to address.<sup>14</sup>

And the County amply proved in the trial court that its denial of Bethel's application was a minimally restrictive means of furthering a compelling governmental interest in, *inter alia*, protecting the Agricultural Reserve. *See, e.g., Lighthouse Institute for Evangelism v. City of Long Branch*, 406 F. Supp. 2d 507, 515 (2005), *rev'd on other grounds*, 510 F.3d 253 (3<sup>rd</sup> Cir. 2007).

#### **IV. The Trial Court Committed No Reversible Error in Granting the County's Motion to Dismiss or for Summary Judgment**

##### *Bethel's Application Did Not Comply with the Plan*

Bethel charges the trial court with error because it did not find that the Council acted arbitrarily and illegally in denying Bethel's application for a Plan amendment. Bethel's argument ignores the legislative record that is recounted herein. It is incontrovertible that the Council's decision was rational, non-discriminatory, and based upon substantial evidence (as the trial court correctly held). The bases for the decisions of both the trial court and the Council are unassailable and premised upon undisputed matters of record.

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<sup>14</sup> And the County does not concede that the Court did not decide the substantial burden claim. Bethel assumes that because the court stated, in the written order, that "there is no evidence that the County discriminated against Bethel . . ." that the court was referring only to a specific section of RLUIPA rather than to any and all of Bethel's RLUIPA claims. The judge stated on the record that the RLUIPA claim is not "viable" and he incorporated that ruling, by reference, into his order. (Apx. 70; E. 0054).

The legislative record reveals that, as a partial consequence of the over-the-top development proposals of Bethel's predecessor (and others), the County became justifiably concerned about the continuing viability of the Agricultural Reserve and began to re-examine its agricultural preservation policies, including those contained in the Plan. The record amply demonstrates that the Council's denial of Bethel's application had nothing to do with Bethel being a church. The Council rejected Bethel's application (and those of Seneca Creek Community Church and TWS Land Barons) in order to protect the Agricultural Reserve. The objections to Bethel's application (and the others that were denied) related to the amount of land that Bethel would remove from agricultural use and the size, land use impacts, and adverse environmental consequences of Bethel's proposed development. There is no dispute that Bethel was proposing to build a massive 3,000 seat church, with related facilities for hundreds of people, on undeveloped land in the Agricultural Reserve. There is no dispute that Bethel's membership is upwards of 2,000 people (probably more) and that a majority of these thousands of people would drive to the Brink Road facility for services and activities. There is no dispute that Bethel acquired a 119-acre parcel in the Agricultural Reserve for the foregoing purposes. There is no dispute that Bethel's proposed development was unprecedented in size and scope and that the Council was so advised. There is no dispute that Bethel's application violated both the 2003 and 2005 versions of the "PIF Policy." Religion and religious beliefs were irrelevant to the Council's decision and Bethel can point to no evidence of

record to support its claims in that regard. The Council's decision furthered a rational policy to protect the Agricultural Reserve from incursions by all institutional uses, religious and nonreligious alike. The Council's decision was necessitated by the "PIF Policy" and furthered "Smart Growth" principles and the Plan's "PIF Policy Directions" which counsel against the creation of more impervious surface. And the Council did not prohibit Bethel from continuing to operate at its present Silver Spring location or at some other compatible location in the County; the Council has merely prevented Bethel from receiving public water and sewer service at a particular site in the RDT Zone. (E. 0679).

Moreover, there is no dispute that the Plan's "PIF Policy," as amended on November 29, 2005, did not allow for an extension of public water and sewer to Bethel's property (or any other property in the RDT Zone). The Council applied the entire Plan, inclusive of the 2005 "PIF Policy," in denying Bethel's application. Bethel claims that the Council applied the 2003 version of the "PIF Policy" to Bethel's application and that the court so ruled. Bethel is incorrect on both counts. The Council adopted the resolution amending the "PIF Policy" before it denied the Bethel application; the Council would not have applied a version of a policy that had been superseded by an amendment. Council member Andrews, for example, clearly understood that the 2005 "PIF Policy" was being applied when he stated that he did not support "grandfathering" (i.e. making an exception to the new "PIF Policy" for) the Bethel application. (E. 0578). Bethel insists that the Council applied the 2003 "PIF Policy" so that it can fault the Council for not

addressing the policy. There was no need for the Council to do so since it was not applying that provision of the Plan. And while the trial court ruled that Bethel did not meet the 2003 “PIF Policy,” it did not expressly or exclusively determine that the Council applied that version of the policy. The court also stated on the record that Bethel was “clearly . . . denied” under the 2005 “PIF Policy.” (Apx. 75, line 24).

Even if Bethel were correct that the Council applied the 2003 “PIF Policy”, there is no dispute that Bethel did NOT meet that policy.<sup>15</sup> In its brief, Bethel repeatedly and falsely states otherwise. (Br. 8, 17, 21). Bethel’s brief is disproved by Bethel’s own submissions to the County. As has been discussed, the relevant provisions of the 2003 “PIF Policy” stated that for “new . . . PIF uses, service category amendments may be approved for sites only where required water and/or sewer main extensions will abut only properties which are otherwise eligible for community service” under the Plan. (E. 0066). In correspondence to the County, counsel for Bethel conceded that the water and sewer mains needed to serve the Bethel property would abut at least “one additional property zoned RDT, dependant upon final alignment.” (E. 0393). “RDT zoned” properties are not “otherwise eligible for community service.” (Apx. 81). Bethel submitted to the Council an exhibit depicting the proposed location of its “pressure sewer” main: that exhibit that shows the main crossing or adjoining multiple properties

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<sup>15</sup> The County hastens to add that Bethel’s myopic focus on the “PIF Policy” is misleading. The Council reviews an application under the Plan, not just the “PIF Policy.”

that are not within the water and sewer envelope in the RDT and RE-2 zones. (E. 0529-0530). The properties abutting the main were ineligible for “community service” under the Plan. (Apx. 81).<sup>16</sup> Thus, Bethel’s own evidence definitively and indisputably proves that Bethel did NOT meet the 2003 “PIF Policy” (not to mention the rest of the Plan). Indeed, Bethel’s own Brief belies its claim. After confidently asserting that Bethel’s application “satisfied all of the criteria of the PIF Policy,” Bethel admits that the “low pressure sewer main” needed to serve its property “may perhaps abut one property (for a distance of less than 100 feet), which is located in the RDT Zone.” (Br. p. 17). Bethel’s use of an equivocal verb tense does not alter its concession that, in violation of the “PIF Policy,” its property would be served by a main that abuts an ineligible property in the RDT Zone.

Bethel also falsely states that the “only evidence before the Council . . .” concerning compliance with the “PIF Policy” was the “Executive Staff Report” dated November 23, 2005. (Br. p. 18). As has just been discussed, Bethel itself submitted substantial evidence that the “PIF Policy” was not met. And the “Executive Staff Report” does not support Bethel’s conclusion. Bethel quotes from it selectively and out of context. The Report is not just addressing Bethel’s application; it is addressing applications from “three religious institutions,” two of which, those for Bethel and

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<sup>16</sup> The operative language states that “areas zoned for lower-density residential development (RE-1, RE-2, etc.) are also intended to be served by individual systems” and that “areas zoned for rural development,” including the RDT Zone, “are generally not intended to be served by community systems.” (Apx. 81).

Seneca Creek, relate to adjoining (RDT) properties. (E. 0148; 0120). The underlying premise of the Report is that if the Seneca Creek property were included in the water and sewer envelope, Bethel's main would no longer abut an RDT property. More importantly, the Report writer does not determine that Bethel met the "PIF Policy;" the Report recommends approval of Bethel's (and Seneca Creek's) applications on the condition that "the needed sewer main extensions can satisfy the PIF Policy." (E. 0148). Partially as a consequence of the denial of Seneca's application, Bethel never met that condition. And, in addition to the evidence submitted by Bethel, Council staff advised the Council that the "extension of water would abut one additional property zoned RDT" and could "abut additional properties." (E. 0328-0329).

Bethel argues that it could have met the 2003 version of the "PIF Policy" if the Council designated Bethel's water and sewer mains as "limited access" (meaning that adjoining property owners would not be permitted to tap into the mains).<sup>17</sup> (Br. 17). As Council staff noted, the Council has not, historically, designated "limited access" mains in response to a specific request for a category change. (E. 0329). In the Plan, "limited access" mains are designated for an area, not a specific property. (E. 0068-0069).<sup>18</sup> Bethel interprets the "limited access" mains language as creating a mechanism for

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<sup>17</sup> Bethel's expressed need for a "limited access" mains designation further proves that it did not meet the "PIF Policy."

<sup>18</sup> Once the facilities exist, there is considerable pressure to allow access to them. (E. 0415).



extending public water and sewer service to properties (and areas) that are prohibited from receiving community service. Under Bethel's reading of the Plan, the Council is required to use the "limited access" mains designation to extend community service to properties that are not eligible for such service under the Plan. Bethel thus reads the "limited access" mains exception as swallowing the "PIF Policy" rule (and the RDT Zone rule). That reading of the Plan is not sensible and would both contradict the plain language of the "PIF Policy" (and the Plan) and render it meaningless. Main extensions (like Bethel's) that are prohibited cannot be designated "limited access." That designation is clearly intended for mains that are otherwise allowed under the Plan. And Bethel has made no showing that it was legally entitled to a "limited access" mains designation.

Bethel further argues that the Council cannot, under the Plan, consider master plan recommendations, traffic impacts or imperviousness when reviewing an application for a category change. (Br. 24). That argument is directly and unequivocally refuted by the plain language of the Plan that the County has cited. And if such considerations are irrelevant, why did Bethel's counsel propose, for example, to limit impervious surface at the Brink Road property to 25%? Bethel's own actions belie its arguments.

The Council had substantial justification to deny the Bethel application under the preexisting (i.e. 2003) Plan. The Plan incorporates the master plan which recommends against the extension of public water and sewer in the RDT Zone. Bethel's application

(with its massive proposed development) was at odds with the Plan's land use objectives and "PIF Policy Directions" and was shown to be damaging to the Agricultural Reserve. Bethel's application was a part of a small wave of applications that could have eviscerated the Agricultural Reserve. The Council acted to thwart that threat by amending the Plan and denying the applications for public water and sewer in the RDT Zone. If the Council had approved Bethel, it would have been hard-pressed to justify a disapproval of the other pending applications or those that may have followed. The Council acted consistently with the master plan (which recommends against public water and sewer extensions in the RDT Zone) and in furtherance of the land use and environmental considerations that are integral to the Plan. The Council properly exercised the discretion that it is afforded under the Plan.

Bethel relies heavily upon *Prince George's County v. Carusillo* to support its contention that the Council had no discretion to deny Bethel's application. 52 Md. App. 44, 447 A.2d 90 (1982). In *Carusillo*, landowners challenged a county's refusal to upgrade their water and sewer classification. The court affirmed the trial court's conclusion that the county's refusal was arbitrary and capricious. The court acknowledged that, in implementing a water and sewer plan, a county may exercise "much discretion," but noted that when a plan establishes certain specific criteria and an application meets those criteria, the application must be granted. 52 Md. App. at 50-51, 447 A.2d at 94. The court did not discuss, at any length, the water and sewer plan at

issue: the court only identified a handful of specific criteria that the landowners were required to meet and, in the estimation of the court, did meet. The court could find no rational basis for the county's action.

This case is unlike *Carusillo* which clearly is confined to its facts. In this case, the Council relied upon copious legislative fact-finding, research, testimony, and the Plan in denying the application. And, unlike in *Carusillo*, the Council denied the other similar applications that were before it on November 29, 2005. The Council's Plan apparently contains more applicable criteria and reserves to the Council more discretion than did the plan at issue in *Carusillo*. More importantly, as has been discussed, there is no dispute that Bethel did not meet the Plan criteria when it applied for the category change, nor did it satisfy the criteria after the Plan was amended in 2003 and 2005. The Council's action does not contain any hint of the arbitrariness that the court perceived in *Carusillo*. A more relevant decision is *Neifert v. Department of the Environment*, 395 Md. 486, 910 A.2d 1100 (2006). In *Neifert*, the court upheld a state decision to deny water and sewer to lots in mapped wetlands, while granting water and sewer to lots in non-mapped wetlands. The court found that the state's decision was rationally related to its legitimate interest in "fairness, fiscal integrity, and protection of ecological areas." 395 Md. at 515, 910 A.2d at 1117. That finding was sufficient to uphold the state's decision even though the state's goals "could be achieved through other means." *Id.*

*The Other PIF Applicants are Not Similarly Situated to Bethel*

For reasons that are not explained by this record, many PIFs are churches. Presumably in support of its claim that the Council discriminates against churches, Bethel complains that the Council, prior to November of 2005, had allowed other churches in the RDT Zone to receive public water and sewer service. Bethel's claim makes no sense. If the Council were in the business of discriminating against religious entities, it would have discriminated against all churches. Prior to November of 2003, the Council did extend water and sewer to a few (smaller) churches that satisfied the Plan. In November of 2003, the Council revised the Plan to add policy directions concerning PIFs. (E. 0067). And, on November 29, 2005, after the Council had revised the "PIF policy" to further prohibit main extensions to RDT-zoned properties, the Council denied water and sewer category changes to the PIFs, including Bethel, that were seeking public water and sewer for properties in the RDT Zone. (E. 0115-0118). The Council acted in conformity with the Plan and consistently applied its rational, non-discriminatory policies to the PIFs.

Because, *inter alia*, the Council decided, in November of 2003 and on November 29, 2005, to revise the Plan, including the "PIF Policy," and to further prohibit extensions of water and sewer to institutional uses in the RDT Zone, the approvals of water and sewer category changes prior to 2003 (by prior Councils) are irrelevant. Nevertheless, insofar as the court entertains Bethel's claim that the approval of public water and sewer service for some churches before November 2003, evidences discriminatory animus by

the Council. the legislative facts prove otherwise. The PIFs identified by Bethel in its brief complied with the Plan and did not create the same traffic and environmental impacts that Bethel's proposal would. The pre-2003 PIFs are also distinguishable from Bethel because they are smaller, less intense uses that remove far less land from agricultural use, are not located in the vicinity of the Bethel property (excepting one), and do not open other properties to public water and sewer service. And one of the pre-2003 PIFs was denied a sewer category change. The pre-2003 PIFs are not similarly situated to Bethel. To wit:

**Cedarbrook Community Church** - The Cedarbrook Community Church applied for a water and sewer category change in 1999. (E. 0670-0671). The Cedarbrook property is comprised of only 13.59 acres (thus removing from agricultural use a fraction of the land that Bethel's development would). (E. 0670). And the Cedarbrook property abuts an existing main that serves the town of Clarksburg ("the town center development"). (E. 0671; 0174). The provision of community service to Cedarbrook was expressly "dependant on main extensions to be constructed for the Clarksburg Town Center project." (E. 0172). By tapping into existing (or soon to be existing) mains, Cedarbrook's application complied with the Plan.

In its brief, Bethel claims that mains "required to serve" the Cedarbrook property "abutted non-eligible properties" and that its "expert report clearly determined that water and sewer lines for Cedarbrook would abut properties ineligible for service." (Br. 26).

The first claim is refuted by the record references that the County cites in the previous paragraph. The second claim is refuted by Bethel's "expert." In his report, Bethel's unqualified "expert" responded to the question of whether the Cedarbrook mains would "abut non-eligible properties" with a less than definitive "Yes and No." (E. 0218). In his deposition, Bethel's "expert" admitted that Cedarbrook was "immediately adjacent to properties that were going to have public water and sewer" and that "[i]t didn't look like it was going to threaten undeveloped land." (E. 0701). The same cannot be said of Bethel's application.

**Roman Catholic Archdiocese** - In 1999, the Roman Catholic Archdiocese requested a water and sewer category change that would allow it to operate a "religious institution with school" and a "cemetery" on its property. (E. 638-639). The property is being used as a cemetery. (E. 0643; 0578). The Archdiocese expressly agreed to limit its impervious surface at the property to 10% (far less than Bethel was willing to commit to). (E. 0639). And the Archdiocese's application complied with then applicable "PIF Policy" in that the water and sewer mains required to serve its property abutted only properties that were eligible for service. (E. 0669). In contrast, Bethel's application did not adhere to the "PIF Policy" (or the "PIF Policy Directions"). (E. 0674; 0529-0530).

**Olney Boys and Girls Club** <sup>19</sup> - In 1999, the Olney Boys & Girls Club (“OBGC”) applied for a water and sewer category change that would allow it to develop a sports park. (Apx. 86). The Club has created impervious surface of only 6.2% at the site. (E. 0432). Relying (again) on the flawed report of its “expert,” Bethel asserts that the “water main extension required” (but not the sewer main extension) to serve the OBGC property “abutted non-eligible properties.” (Br. 27). The expert provides no factual predicate for his conclusion.<sup>20</sup> And Bethel cites to no evidence of record supporting that claim. More importantly, Bethel does not dispute that the OBGC sewer main would only abut eligible properties; as the Council resolution approving the OBGC application states, the OBGC sewer extension was to connect to an existing main. (E. 0178). OBGC is hardly similarly situated to Bethel. OBGC created minimal impervious service and did not, through the extension of mains to its property, open undeveloped land in the RDT Zone to development.

**Christ Fellowship Church** - In 2000, Site Solutions, Inc. (on behalf of Christ Fellowship Church) applied for a category change to accommodate, potentially, a 1,000 seat church. (E. 0183). The parcel is only 5.2 acres. (E. 0183). The Council denied the request for a sewer extension (by maintaining the “S-6” sewer category) and approved a

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<sup>19</sup> The OBGC application should be disregarded because the OBGC is not a religious use and, thus, was not within the scope of Bethel’s Petition until Bethel filed its untimely third amendment on the day of the summary judgment hearing.

<sup>20</sup> The “expert” was not even sure whether the OBGC application had been approved. (E. 0203).

water extension only. (E. 0183). The water main extension would abut only properties eligible for public water and park lands. (Apx. 89). In light of the size of the parcel and the fact that the Council denied a sewer extension to the property, Christ Fellowship is not comparable to Bethel.

**Or Chadash** - In 2002, Or Chadash Partners applied for a “category status” change to allow it to operate a 300 seat synagogue from a house that had already received a “residential hookup.” (Apx. 91; E. 0188). The property is comprised of only 17.21 acres. (E. 0188). Or Chadash, thus, removed no land from agricultural use because the land was already put to a residential use. Even if that is not so, the amount of land removed from agricultural use (17.21 acres) is a fraction of the amount Bethel would remove (119 acres). Also, the Council could reasonably conclude that Or Chadash’s 300 seat facility would not create the traffic and environmental degradation of a 3,000 seat facility with parking and additional facilities for hundreds of people. Lastly, Or Chadash’s application complied with the Plan because the property abutted existing mains. (E. 0189; Apx. 92).

**V. The Trial Court Erred when it Denied the Motion to Compel Discovery and the Motion to Strike the Expert Report**

Because this is not an “administrative appeal” and, thus, discovery is permitted, the trial court erred in mooting the County’s motions to compel and to strike the expert report. However, because the court arrived at the correct decision with respect to the merits, the court’s determination regarding the motions is, itself, moot, unless this court



were to decide to remand the matter. In light of fact that the parties filed counter motions for summary judgment, the legislative record is set, and the trial court decision's was correct. there is no basis for a remand. Nevertheless, if this court were so inclined, it should order the trial court to reinstate its ruling on the motion to compel and grant the motion to strike.

### CONCLUSION

This case was properly disposed of summarily. Bethel clearly cannot overcome the legislative record that fully supports both the trial court's ruling and the Council's legislative judgment. The trial court's finding that Bethel did not meet the 2003 "PIF Policy" is determinative of this case. The facts supporting that determination were not in dispute. The trial court's conclusion is thus indisputable. And Bethel offered no evidence that the County discriminated against it. The circuit court should be affirmed.

If, *arguendo*, this court were to find that the Council should have reviewed Bethel's application in a quasi-judicial proceeding, then the appropriate remedy is not that sought by Bethel, i.e. a reversal of the Council's decision. The appropriate remedy is a remand to the Council to allow the Council to address whatever "deficiency" there is in the record or its decision. *Board of County Commissioners v. Ziegler*, 244 Md. 224, 229, 223 A.2d 255, 258 (1966).

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

SEROCA's POSITION CONCERNING DEVELOPMENT OF 3110  
EMORY CHURCH ROAD; OLNEY, MD.  
Pre-Preliminary Plan 720090050

On April 1, 2009 the Southeast Rural Olney Civic Association (SEROCA) voted to oppose the development of 3110 Emory Church Road; Olney, Md. by the First Baptist Church of Wheaton. What makes this development different from others in the Southeast Quadrant of Olney is that this property is located approximately dead center in a residential community at the 1000 ft. mark from Georgia Avenue on 2000 ft. dead end Emory Church Road. Placing an almost 50,000 sq. ft. structure in the center of a rural community will only encourage further Private Institutional Facility proliferation and in effect destroy the rural character we have fought so hard to preserve. Emory Church Road is a tertiary one way in and one way out road consisting of one and a half lanes.

Traffic generated from an over 800 seat institution would overwhelm this community of 33 homes, especially on Sunday mornings. We fear that the proposed development will present complicated issues regarding Emory Church Road, which might involve additional paving and removal of many mature trees.

We share the concerns of the Montgomery County Department of Parks and Planning staff, which has questions whether the necessary finding can be made that the development plan as shown conforms to the Olney 2005 Master Plan and meets the intent of the rural neighborhood cluster zone. The Master Plan states on page 37 that the property "cannot be served by public sewer through gravity," and thus is not "recommended to be in the public sewer service envelope."

Park and Planning staff has also recognized that proximity to the stream valley buffer raises concerns. We note that the amount of impervious surface required for this project can only add to the degradation of the already stressed Northwest Branch of the Anacostia River, beginning at the headwaters known as Batchellor's Run. As reported in the April 29, 2009 Gazette newspaper, the Army Corps of Engineers, as well as Park and Planning, have determined that there is a need to protect Batchellor's Run. The proposed development at the headwaters of Batchellor's Run is just upstream from the site that government agencies are spending thousands of dollars to restore.

In short, environmental and traffic issues, coupled with the profound effect such a large structure will have on our community's rural character, lead us to respectfully request that MNCPPC join SEROCA and oppose this development.

Chuck Graefe,  
SEROCA Committee Chair  
May 12, 2009

March 6, 2009

Development Review Division  
Maryland National Park and Planning Commission  
8787 Georgia Ave  
Silver Spring, MD 20910

RE: Proposed Development  
Norbrook Village  
Lot 1 – Doherty Tract (3110 Emory Church Rd)  
Parcel 77 – First Baptist Church of Wheaton

I have just been informed of and was very surprised to find out about the proposed commercial development project at the Doherty property. As an adjoining residential property owner, I'm deeply concerned and so I am submitting the following comments, as the nature of the neighborhood and its property values will be adversely affected by this development.

This is a small rural residential neighborhood and I feel it should stay that way, in line with the current zoning for the area. Inserting a large church in the middle of this particular neighborhood is not in line with the Olney Master Plan and totally out of character for this development. In addition, the proposed church would be perched on top of the hill of said property and with the most church buildings reaching heights of 3 to 4 stories high (including the steeple) this building would break the tree line plane and stick out overtop of the trees destroying, in my opinion, the nature and composition of this neighborhood and altering the wooded view of a skyline. There is already a large church on the corner of Georgia Ave and Emory Church Rd along with a commercial golfing range, where zoning for this type of development allows those uses. A commercial development placed in the middle of a residential neighborhood is completely out of character and against current zoning and any conceivable smart growth plans.

The size of the proposed church is a major concern. With the proposed 277 parking slots (3 persons per slot), its apparent that the church membership is close to 900 and I'm sure they're planning on growth. That means potentially 550 cars entering the neighborhood on Sundays alone (assuming two services are held) in addition to additional traffic occurring on a daily basis. I'm very involved in my own church and know that events happen daily and this increases the traffic flow. The existing roadway was not designed nor built to handle the volume of traffic such a development would generate. This is a narrow one lane country road approximately 15 feet wide and it cannot handle the existing traffic in the area, much less the additional trips through the neighborhood that this development would generate. There are also potential implications for access for emergency vehicles. I believe

this is risking the lives of the older residents in this area as Fire Rescue units would need to access and exit the neighborhood quickly. What happens when an emergency occurs and the emergency vehicles can't gain access or the access is delayed costing someone their life?

There is also a concern over the water and sewage drainage. The amount of water that will drain off the proposed 50,000 square foot building and parking lot would seem to exceed what the neighborhood could handle. The current neighborhood runs off of well water so we are also talking about the disturbance of the existing well water to the surrounding houses. Several of these wells exist directly below the proposed run off line of the existing plans. For decades development in this area has been restricted due to lack of public water and sewer lines. Please advise how this proposed development will affect the existing wells and septic systems and how water and sewer service will be delivered, not only to this development but to the surrounding residential areas. Who will bear the expense if water drainage from this proposed development breaches the neighboring septic systems?

I'm totally against this project occurring as this property as it is zoned as RNC and should not be changed or waived just to accommodate this particular project. ***Our property was purchased in this small neighborhood so we could build our dream home because it was a small quiet neighborhood and isolated away from any commercial structures.*** Allowing this project to continue would be wrong, generating more traffic and noise in an area that is neither zoned nor equipped to handle it. There are so many other locations in the county on main roads where this church could be built that would be in keeping with current zoning requirements as well as not disturbing established residential neighborhoods. Most churches in the county are located on main thoroughfares for easier access, while this project is regressing on that trend. MNPPC needs to do what's right for the taxpaying residents that live in this neighborhood and reject this project.

Thank you for the opportunity to express my comments and concerns regarding the proposed development of the Doughty tract in the Emory Church subdivision.

Sincerely,

A handwritten signature in blue ink that reads "Christine Carrescia". The signature is written in a cursive, flowing style.

Christine Carrescia

approved by unanimous vote of delegates  
March 8, 2010

Montgomery County Civic Federation Resolution Opposing Proposed First Baptist  
Church of Wheaton Development on Emory Church Road, Olney

Whereas First Baptist Church of Wheaton is proposing to build an 800-seat facility with a 225 space parking lot on a property in an area designated as a semi-rural "green corridor and a gateway to Olney" in the 2005 Olney Master Plan; and

Whereas the cumulative effect of private institutional facilities and special exception uses will permanently damage the low-density residential character that is recommended for this area in the master plan; and

Whereas on April 8, 2008 the County Council approved a category change allowing water and sewer service to this property "conditioned on the Planning Board's approval of a preliminary plan that conforms to the intent of the Olney Master Plan" (Resolution 16-500), and the master plan states the property is "not recommended to be in the public sewer service envelope"; and

Whereas, in Resolution 16-500, the Council asks that the Planning Board, in its review of the applicant's preliminary plan, ensure that deleterious environmental impacts are minimized, and installation of public water/sewer lines from Georgia Avenue to the property would cross a headwaters stream of the Northwest Branch and require the removal of centuries old trees in a "High Priority Forest Stand" along side Emory Church Road (shown on Natural Resources Inventory/Forest Stand Delineation for subject property); and

Whereas the proposed facility would significantly increase traffic on the existing, narrow secondary road and negatively impact the quality of life for its residential neighbors, and any widening of the road would impact the stream and forest stand cited above; and

Whereas, the 18% impervious surface land coverage of the planned project would negatively impact stormwater recharge of the local water table, posing a threat to the water supply for nearby residents, all of whom rely on well water for drinking and cooking;

Therefore, the Montgomery County Civic Federation respectfully opposes approval of the First Baptist Church of Wheaton project planned for a site on Emory Church Road in Olney because of the damage this large private institutional facility would do to the low-density residential character of the neighborhood, the probable negative impact on the quantity and safety of the well water relied on by the surrounding residents, and the deleterious effect it would have on the natural environment, and because the proposed project does not conform either to the intent of, or the site specific recommendations included in, the Olney Master Plan.

## Appendix D

Dear Mr. Newman:

Thank you for forwarding the letter addressed to Frank Johnson of MHG sent on March 3 from Mary Jo Kishter of the Planning Board staff. We at First Baptist Church of Wheaton remain desirous of responding to all questions quickly and thoroughly with a view to getting a date for us on the Planning Board's agenda as soon as possible.

Following the conference call between MHG and the Church, I believe you are fully able to respond in helpful ways to all the requests from Ms. Kishter for additional information. Certainly, the technical aspects concerning easements, forest banking, etc., I will leave for you professionals to address.

However, I am prepared to offer further comment regarding the potential use of structured parking or shuttle services for churches; extensive research has shown that neither is a viable option for us. Given the expressed importance of this question in DRC meetings, and the fact that it involves church-to-church information, I undertook this task personally in May and June of 2010, and pass on again the information gathered.

#### 1. Structured parking

I contacted the Maryland Baptist Convention (over 500 churches), the District of Columbia Baptist Convention (100-plus churches), and numerous individual local churches of various denominations in search of information regarding churches and structured parking. No one could identify a single church in the state of Maryland that has built, owns, or operates structured parking. In the entire region, only one church—McLean Bible Church, an independent megachurch with thousands of members in northern Virginia—was identified. Pete LaMon, director of operations at McLean Bible, confirmed that they also were unable to locate any other churches with a parking garage.

The primary factor for churches not employing structured parking is, of course, cost. According to a study from Northwestern University ([www.northwestern.edu/newscenter/stories/2006/01/parking.html](http://www.northwestern.edu/newscenter/stories/2006/01/parking.html)), it costs an average of \$4,000 per space to build surface parking lots, \$20,000 per space for above-grade garages and \$30,000 to \$40,000 for below-grade garages. Financially, churches simply are not in a position to pursue such an approach, and our church is in that same situation.

Additional factors would include that we are talking about less than 200 total spaces, which we do not believe justifies multi-story parking. We are also concerned that construction of a parking garage would be contrary to the expressed wishes of the community and the County Council that we be sensitive to our geographic setting and maintain as it were a "low profile" wherever possible. The surface parking lot is at the raised far end of our property and bordered by forested areas, which should render it all but invisible to passers-by driving on Emory Church Road.

In sum, structured parking is not a viable option in our situation.



## 2. Off-site parking

Generally speaking, “off-site” parking is a contradiction for churches, which are like small businesses; that is, if the clientele cannot park relatively close by, they will simply go somewhere else. This is not a “decision” unique to attenders of FBC Wheaton; it is true across denominations all over America. One of the reasons we have worked hard on strategizing the parking lot on the property is the fact that there is no street parking on Emory Church Road, and in our initial meeting with the neighbors they expressed great concern that we not block the road with any overflow parking. Therefore, we have planned for a lot that meets the minimum size required by the county while being adequate for our attendance.

At the same time we contacted the aforementioned religious groups (Baptist Convention offices and individual churches and synagogues) about structured parking, we also asked about off-site parking and regular church usage of shuttle services (though special use for occasions like Christmas or Easter is slightly more common). Once again, we were able to identify only one church in the region that uses a weekly, significant shuttle bus approach: Church of the Redeemer, a megachurch of thousands in Gaithersburg, MD.

I spoke with Jim Mills, Bus & Parking Coordinator at Redeemer. He expressed that, since funding for a parking structure is not feasible, they are fortunate that a public school with surplus parking is extremely close by, as well as some at a construction company that is closed on Sundays. To make the project “work” for Redeemer, they had to purchase two “Greyhound-style” commercial buses at a cost of several hundred thousand dollars each. They also provide “one-run” shuttle service from a nearby mall and Metro station for each service. Because of the thousands who are attending services, they are able to maintain viability with the shuttle.

Interestingly enough, McLean Bible Church (mentioned above in the parking structure discussion), even with thousands of attendees, was NOT able to sustain a shuttle operation. Pete LaMon in operations explained that one factor which helped for awhile was a business parking lot owned by a member was made available to the church for free. Even so, eventually the shuttle was discontinued—in part due to fuel costs, but primarily, he said, because “Americans want to drive themselves most of the time, especially to family-oriented activities like church.”

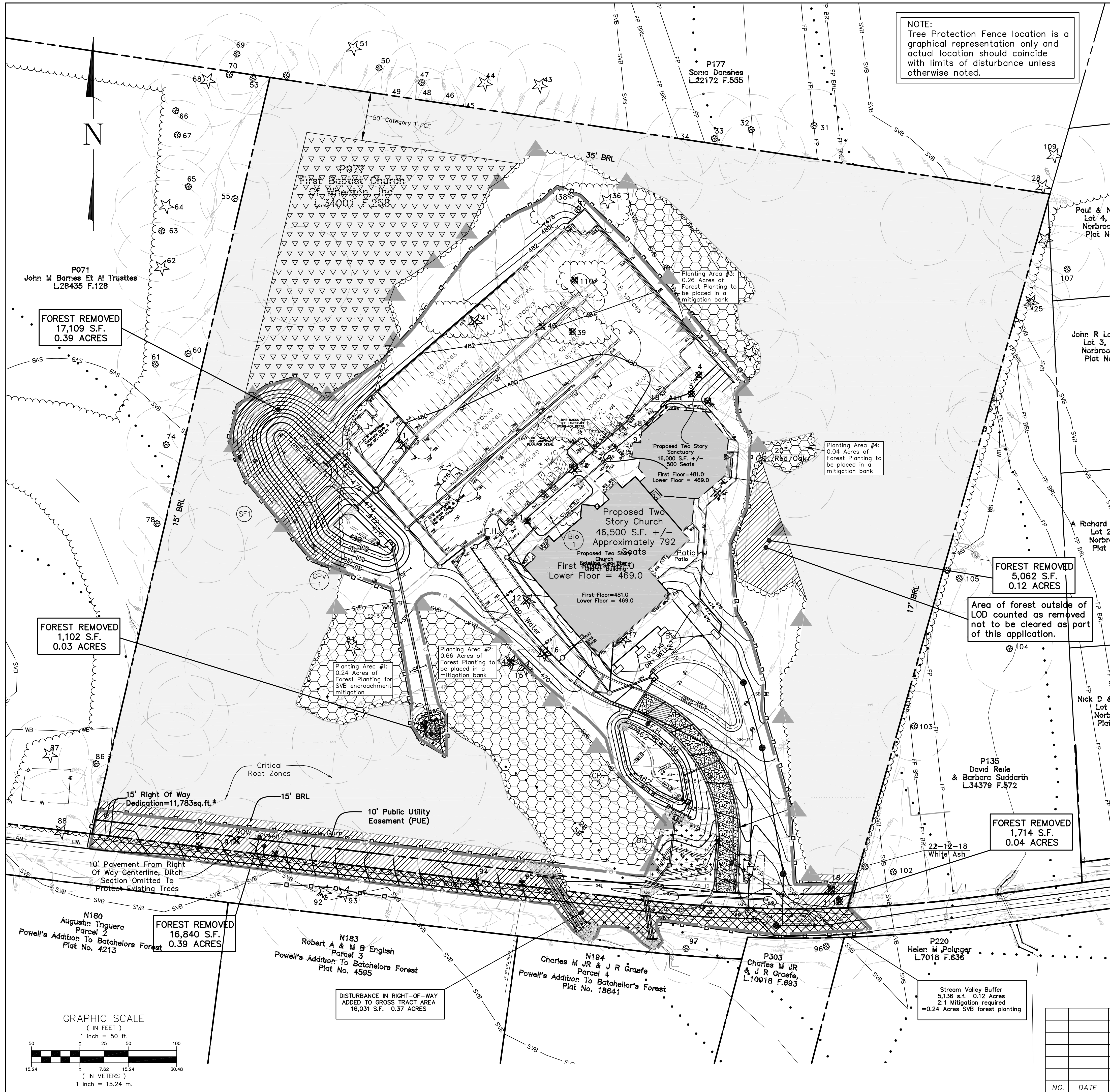
As everyone working on the FBC Wheaton project is aware, there is limited development on Emory Church Road, so there are no unused commercial/industrial lots available for use. Nor is there a public school in this immediate neighborhood. The golf area on the corner is open on Sundays, so it is not available. The shopping area across Georgia Avenue (with Roots and Starbucks, among others) is open for business on Sunday, so parking is not available. One of the DRC members suggested we use the parking lot of Oakdale Emory Methodist Church; however, they are in session at the same time, so that is not possible. Ms. Kishter mentioned that Oakdale-Emory has an off-site arrangement with Olney Manor Recreation Park; that lot is, of course, next door to Oakdale-Emory and is in use by them at the same time (Sunday mornings) that we would have need of it.

We have identified a potential shuttle option for overflow needs and special occasion usage by talking with Rabbi Layman of Shaare Tefila Congregation (across Georgia Avenue). However, neither their facility nor their parking is yet complete, so it is presumptuous and inappropriate to claim extensive plans. We can say that extremely friendly and supportive conversations have taken place between the respective clergy members regarding reciprocal sharing of overflow parking or facilities in special situations.

I hope this provides the additional information in regards to point 2, subpoints a and b of Ms. Kishter's letter. Please let me know if there is anything further you need for us to respond to all of her questions quickly so that we can continue to move the process forward to the Planning Board itself.

Appreciatively,

Rev. D. Edward Williams, Ph.D.  
Senior Pastor  
FBC Wheaton/Streams of Hope



NOTE:  
Tree Protection Fence location is a graphical representation only and actual location should coincide with limits of disturbance unless otherwise noted.

### LEGEND

- TREE
- SPECIMEN TREE
- TREES TO BE REMOVED
- EXISTING TREE LINE
- FOREST TO BE PLANTED
- FOREST COUNTED AS REMOVED (0.97 ac)
- FOREST SAVED (7.08 ac)
- STREAM VALLEY BUFFER ENCROACHMENT AREA
- CATEGORY 2 FOREST CONSERVATION EASEMENT = 0.93 ACRES
- OFF-SITE DISTURBED AREA INCLUDED IN GROSS TRACT AREA
- CRITICAL ROOT ZONE
- TREE PROTECTION FENCE, ROOT PRUNING\*, & TEMPORARY TREE PROTECTION SIGNAGE (AS SHOWN IN TREE FENCE DETAIL)
- \* Root prune unless otherwise noted
- PERMANENT FOREST CONSERVATION EASEMENT SIGNAGE
- LIMITS OF DISTURBANCE
- SVB - STREAM VALLEY BUFFER
- STREAM
- WL - WETLAND
- WB - WETLAND BUFFER
- FP - FLOODPLAIN

### FOREST CONSERVATION TABLE

DESCRIPTION	SIZE
Total Tract Area	14.40 Acres
Tract remaining in Agricultural Use	0.00 Acres
Road & utility ROW (unimproved)	0.00 Acres
Existing Forest	8.05 Acres
Total Forest Retention	7.08 Acres
Total Forest Cleared	0.97 Acres
Land Use Category	IDA
Afforestation Threshold	15%
Reforestation Threshold	20%
Forest in Wetlands Retained	0.08 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Forest in 100-year Floodplain Retained	1.23 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Forest in Stream Valley Buffer Retained	4.48 Acres
Cleared	0.42 Acres
Planted	1.20 Acres
Forest in other Priority Areas Retained	0.00 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Stream Valley Buffer Length	1090 Feet (2 streams)
Avg. Width	27.8 Feet

**SOIL KEY**  
 2B - Glenelg silt loam, 3 to 8 percent slopes - prime agricultural soil  
 5B - Glenville silt loam, 0 to 3 percent

**DEVELOPER'S CERTIFICATE**  
 The undersigned agrees to accept full responsibility for the features of the Approved Final Forest Conservation Plan No. 820100080/120100250 including financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: **First Baptist Church of Wheaton**  
 Contact Person or Owner: **Dr. D. Edward Williams**  
 Address: **10914 Georgia Ave, Wheaton MD, 20902**  
 Phone and Email: **301-949-6585; ewilliams.fbcw@comcast.net**  
 Signature: \_\_\_\_\_

**Owner:**  
 First Baptist Church of Wheaton  
 10914 Georgia Ave  
 Wheaton MD, 20902  
 Phone: 301.949.6585  
 Fax: 301.949.8470  
 Contact: Ed Williams

TAX MAP HS53

## FINAL FOREST CONSERVATION PLAN

PARCEL 77

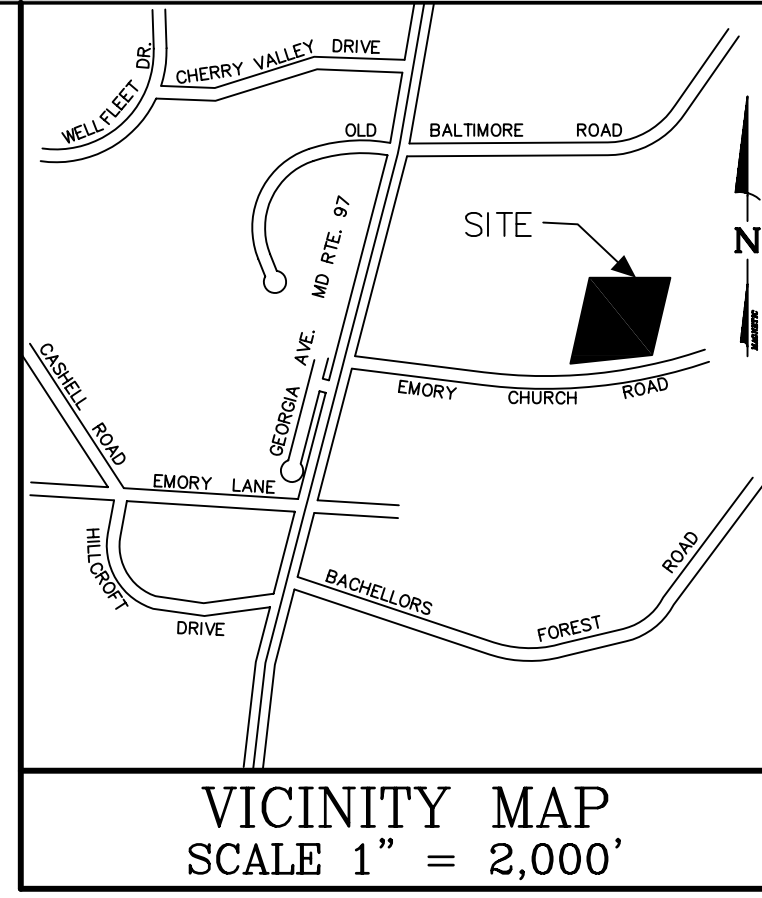
# FIRST BAPTIST CHURCH OF WHEATON

3110 EMORY CHURCH ROAD  
 8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**MHG** Macris, Hendricks & Glascock, P.A.  
 Engineers ■ Planners  
 Landscape Architects ■ Surveyors

9220 Wightman Road, Suite 120  
 Montgomery Village, Maryland  
 20886-1279  
 Phone 301.670.0840  
 Fax 301.948.0693  
 www.mhgpa.com

Proj. Mgr. PUN	Designer FCJ
Date 7-7-11	Scale 1"=50'
Project No. 07.106.21	Sheet 1 of 3



### FOREST CONSERVATION WORKSHEET

First Baptist Church of Wheaton  
 1-Sep-08

NET TRACT AREA:	
A. Total tract area ...	14.77
B. Land dedication acres (parks, county facility, etc.) ...	0.00
C. Land dedication for roads or utilities (not being constructed by this plan) ...	0.00
D. Area to remain in commercial agricultural production/use ...	0.00
E. Other deductions (specify) ...	0.00
F. Net Tract Area ...	14.77

LAND USE CATEGORY: (from Trees Technical Manual)  
 Input the number "1" under the appropriate land use, limit to only one entry.

	ARA	MDR	IDA	HDR	MPD	CIA	
G. Afforestation Threshold ...	0	0	1	0	0	0	2.22
H. Conservation Threshold ...							2.95

EXISTING FOREST COVER:

I. Existing forest cover ...	8.05
J. Area of forest above afforestation threshold ...	5.63
K. Area of forest above conservation threshold ...	5.10

BREAK EVEN POINT:

L. Forest retention above threshold with no mitigation ...	3.97
M. Clearing permitted without mitigation ...	4.08

PROPOSED FOREST CLEARING:

N. Total area of forest to be cleared ...	0.97
O. Total area of forest to be retained ...	7.08

PLANTING REQUIREMENTS:

P. Reforestation for clearing above conservation threshold ...	0.24
Q. Reforestation for clearing below conservation threshold ...	0.00
R. Credit for retention above conservation threshold ...	4.13
S. Total reforestation required ...	0.00
T. Total afforestation required ...	0.00
U. Credit for landscaping (may not exceed 20% of "S") ...	0.00
V. Total reforestation and afforestation required ...	0.00

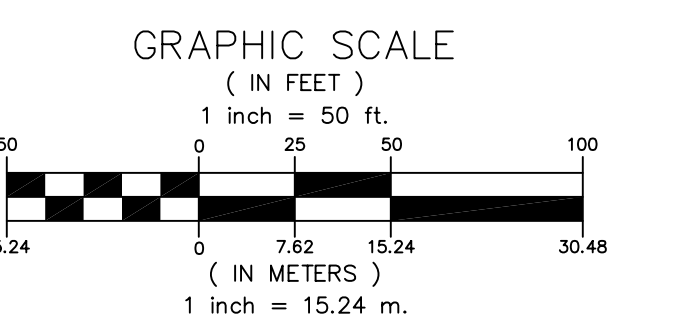
\* Includes 0.37 acres of disturbance in off-site right-of-way.

**Notes:**  
 A total of 0.93 acres to be put into a category 2 easement as shown on plan. All other Retained Existing Forest As Well As The Proposed Planting Areas To Be Placed Within A Category 1 Conservation Easement. A total of 1.20 acres of forest is to be planted including 0.96 acres to be placed in a forest mitigation bank and 0.24 acres for SVB encroachment mitigation (0.12 acres of stream valley buffer encroachment at 2:1 mitigation (0.24 ac) is to be mitigated through 0.24 acre SVB forest planting; see planting area #1).

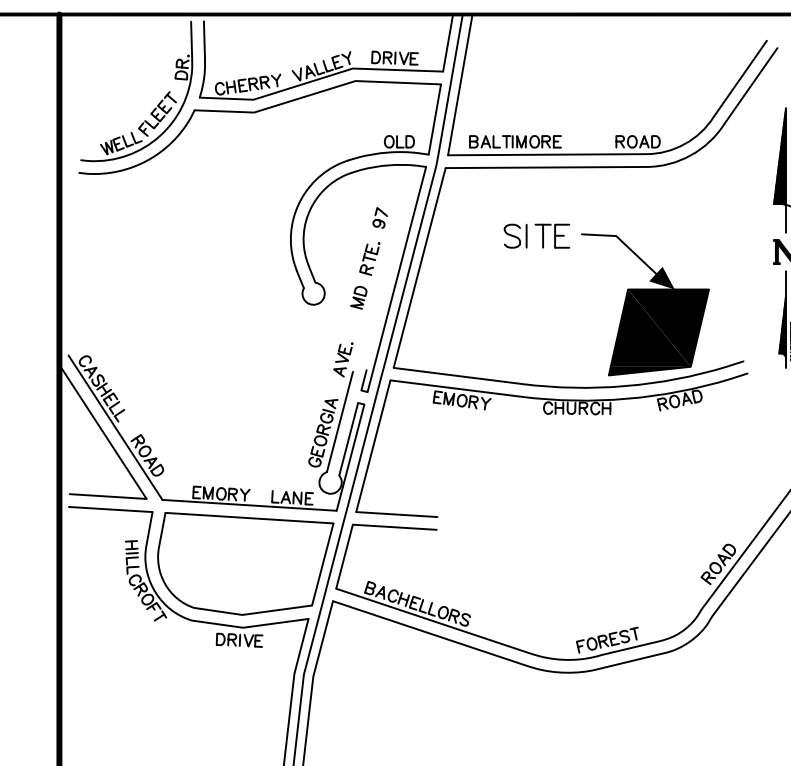
SVB area at northeast corner of property to be restored which includes concrete structure in stream and yard waste.

**FINAL FOREST CONSERVATION PLAN CERTIFICATION**  
 I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF EXISTING STATE AND COUNTY FOREST CONSERVATION LEGISLATION.

DATE: \_\_\_\_\_  
 Frank C. Johnson  
 RECOGNIZED AS QUALIFIED PROFESSIONAL BY MD. DEPT. OF NATURAL RESOURCES



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VICINITY MAP  
SCALE 1" = 2,000'

LEGEND

On-Site

	Proposed Site Area	615,576 S.F.
	Proposed Paving - Phase 1	54,880 S.F.
	Proposed Pervious Concrete - Phase 1	14,179 S.F.
	Proposed Building - Phase 1	16,405 S.F.
	Proposed Walkways - Phase 1	3,805 S.F.
	Proposed Building - Phase 2	9,052 S.F.
	Proposed Walkways - Phase 2	445 S.F.
	<b>Total Impervious</b>	<b>98,766 S.F.</b>
	<b>Total Impervious Minus Pervious Concrete</b>	<b>84,587 S.F.</b>
	<b>Percent Impervious</b>	<b>16.0%</b>
	<b>Percent Impervious Minus Pervious Concrete</b>	<b>13.7%</b>

Off-Site

	Edge Of Existing Pavement	
	Property Line	
	Proposed Additional Right-Of-Way Impervious Area	11,446 S.F.
	Existing Right-Of-Way Impervious Area To Remain	22,308 S.F.
	Existing Right-Of-Way Impervious Area To Be Removed	109 S.F.
	Area Between Edge Of Pavement And Right-Of-Way	29,026 S.F.

Totals

Site Area Plus Area Between Edge Of Pavement and Right-Of-Way	644,602 S.F.
Proposed Site Impervious Area Plus Proposed Additional Right-Of-Way Impervious Area Minus Impervious Area Removed	110,103 S.F.
<b>Total Percent Impervious For Site Plus Right-Of-Way North Of Existing Roadway</b>	<b>17.1%</b>

TAX MAP H553

WSSC 222NW03

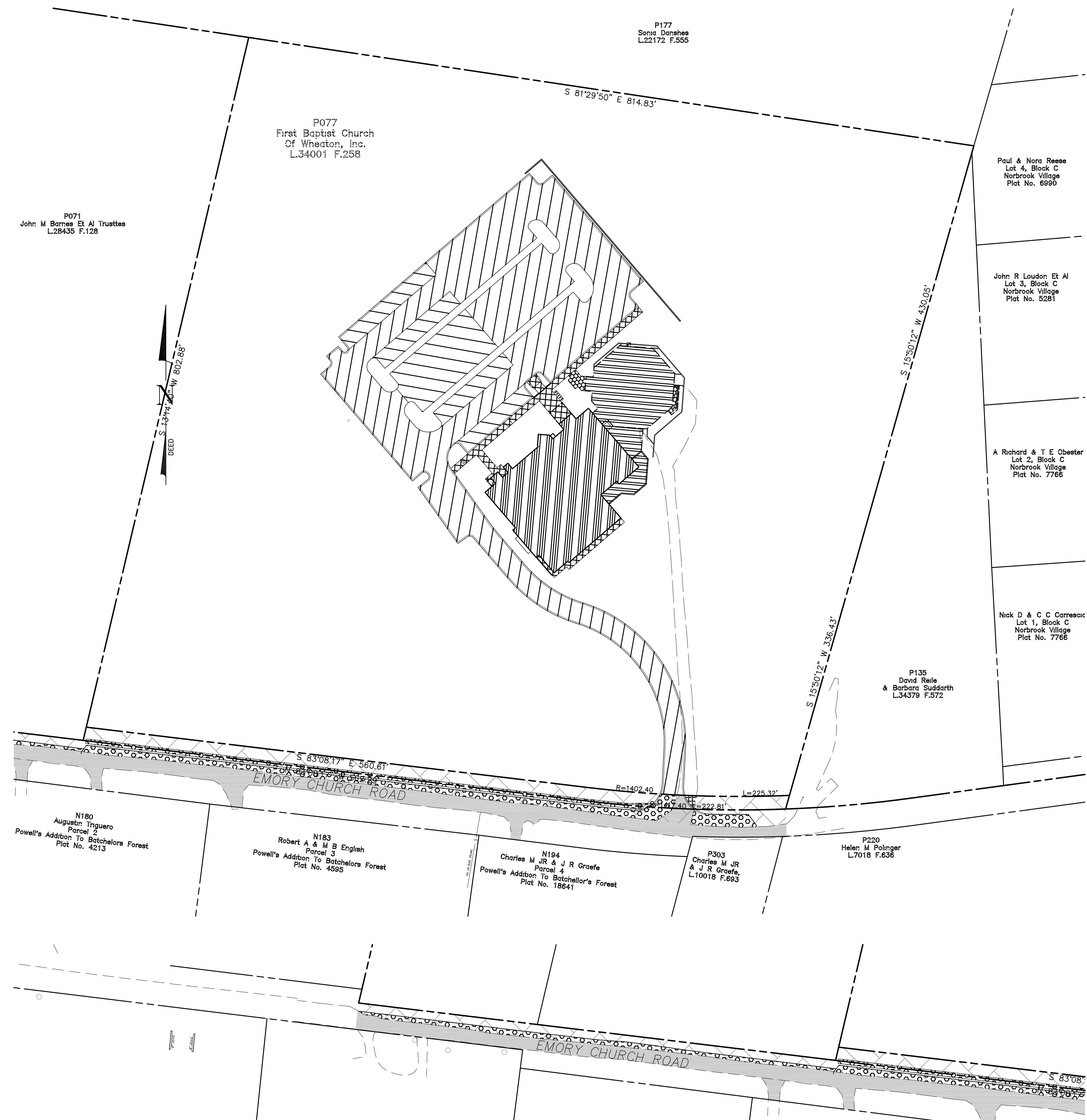
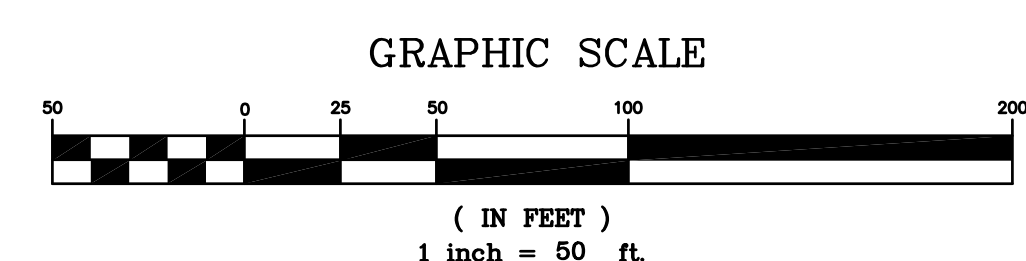
IMPERVIOUS AREA EXHIBIT - AREA NORTH OF EXISTING PAVING  
PARCEL 77  
**FIRST BAPTIST CHURCH OF WHEATON**  
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8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

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Proj. Mgr. P.J.N	Designer P.J.N
Date 7/13/2011	Scale 1"=50'
Project No. 07.106.21	Sheet 1 of 1

Owner:  
First Baptist Church of Wheaton  
10914 Georgia Ave  
Wheaton MD, 20902  
Phone: 301.949.6585  
Fax: 301.949.8470  
Contact: Ed Williams

NO.	DATE	DESCRIPTION	BY



P071  
John M Barnes Et Al Trustees  
L28436 F.128

P077  
First Baptist Church  
Of Wheaton, Inc.  
L34001 F.258

P177  
Sonia Danahes  
L22172 F.555

Paul & Nora Reese  
Lot 4, Block C  
Norbrook Village  
Plat No. 6990

John R Loudon Et Al  
Lot 3, Block C  
Norbrook Village  
Plat No. 5281

A Richard & T E Oberster  
Lot 2, Block C  
Norbrook Village  
Plat No. 7766

Nick D & C C Carrasco  
Lot 1, Block C  
Norbrook Village  
Plat No. 7766

P135  
David Rele  
& Barbara Suddarth  
L34379 F.572

P220  
Helen M Polinger  
L7018 F.636

P303  
Charles M JR  
& J R Graefe,  
L10018 F.693

N194  
Charles M JR & J R Graefe  
Parcel 4  
Powell's Addition To Batchelors Forest  
Plat No. 18641

N183  
Robert A & M B English  
Parcel 3  
Powell's Addition To Batchelors Forest  
Plat No. 4595

N180  
Augustin Yiguero  
Parcel 2  
Powell's Addition To Batchelors Forest  
Plat No. 4213