



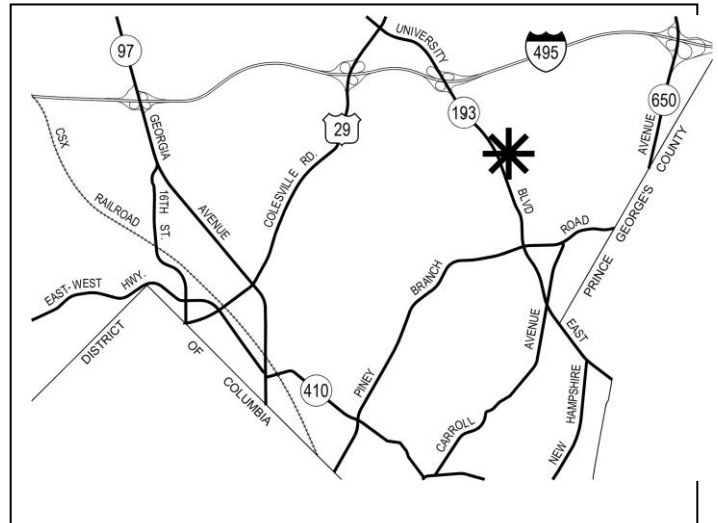
Mt. Jezreel Baptist Church, Special Exception, S-2877

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Staff Report Date: 5/22/15

Description

Address: 420 East University Boulevard
Zone: R-60
Site: 3.18 acre portion of a larger 9.73 acre site
Master Plan: 2000 *East Silver Spring* Master Plan
Request: Housing and related facilities for senior adults and persons with disabilities
Applicant: Mt. Jezreel Baptist Church
Submittal: September 4, 2014
Reviewing Authority: Sect. 59- G-2.35 of the 2004 Zoning Ordinance
Public Hearing: August 17, 2015 at the Hearing Examiner's Office



Summary

- Staff recommends approval of: the Special Exception S-2877 for housing and related facilities for senior adults and persons with disabilities, the Preliminary Forest Conservation Plan and associated tree variance.
- Staff also recommends approval of the Applicant's requested waivers:
 - from the parking facility standards under Sect. 59-E-4.5 of Zoning Ordinance ;
 - for the 25 foot waiver of rear yard setbacks for a parking facility drive aisle in the R-60 Zone under 59-E 2.83 of the Zoning Ordinance; and
 - for the 25 foot waiver of rear yards setbacks for a parking facility adjacent residential property under Sect 59-E-2.81 of the Zoning Ordinance.

All waivers were reviewed under the 2004 Montgomery County Zoning Ordinance.

RECOMMENDATION -For Preliminary Forest Conservation Plan and the requested tree variance

Staff recommends approval of the Preliminary Forest Conservation Plan for Special Exception S-2877, subject to the following conditions:

1. Prior to any clearing, grading or demolition on the site, the Applicant must submit and receive staff approval of a Final Forest Conservation Plan, which is consistent with the approved Preliminary Forest Conservation Plan and associated conditions.
2. The Applicant must record a Category I Conservation Easement approved by the M-NCPPC Office of General Counsel in the Montgomery County Land Records by deed prior to demolition, clearing, or grading and the Liber Folio for the easement must be referenced on the record plat.
3. Prior to demolition or any land disturbing activities occurring onsite, the Applicant must receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.67 acres or as determined by the Final Forest Conservation Plan.
4. As part of the preconstruction activities occurring on the subject site, the Applicant must:
 - Remove all existing structures, fencing, play equipment and debris from the proposed Category I Forest Conservation Easements. This removal shall be coordinated with the M-NCPPC Forest Conservation Inspector.
 - Begin the initial treatments for the control of the invasive species, which shall be specified on the Final Forest Conservation Plan and coordinated with the M-NCPPC Forest Conservation Inspector. If necessary, the initial treatment may be delayed until seasonally appropriate.

RECOMMENDATION -For Special Exception S-2877

Staff recommends approval of Special Exception S-2877, subject to the following conditions:

1. The maximum allowable number of units must not exceed 75 units (56 one-bedroom units and 19 two-bedroom units);
2. The maximum number of residents may not exceed 86 persons.
3. The maximum number of employees associated with this use will be four with no more than three on-site at any one time.
4. Trash pick-up is to be after 9:00 a.m. on weekdays.
5. The Applicant must obtain two waivers of 25 feet each from the Board of Appeals for rear yard parking facility setbacks from the abutting residentially zoned property on proposed Lot 2 and for the parking drive aisle on proposed Lot 1.
6. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the subject application.
7. At the time of Preliminary Plan, the Applicant must submit a noise study to measure potential noise impacts to the site. Potential mitigation measures will be determined during review of the Preliminary Plan.
8. At the time of Preliminary Plan submission, the Applicant must show a Public Access Easement, measuring at least 20 feet wide over the entire full width of the existing looped driveway to permit access between the MD 193 and the special exception use.
9. The Applicant must provide a shuttle service for residents.

OVERVIEW

The applicant, Mt Jezreel Baptist Church, has filed two applications: (1) a special exception (S-2877) for the construction of housing and related facilities for senior adults and persons with disabilities; and (2) a Preliminary Plan of Subdivision (120150020) to subdivide the existing property comprising 9.45 acres into two lots. As developed, the site is composed of two unrecorded lots and developed with the existing church, surface parking lots and associated school located on the front portion of the property. The existing improvements will remain and become proposed Lot 2. The special exception use will be located in the rear portion of the site on proposed Lot 1.

The Preliminary Plan application (120150020) for this property will be heard by the Planning Board *after* the special exception application is reviewed and approved by the Board of Appeals. As part of the Preliminary Plan process, the applicant is also seeking to abandon an unimproved portion of Malibu Drive and incorporate this area into both subdivided lots. The Malibu Drive abandonment comprises approximately 11,950 square feet. The abandonment of Malibu Drive will occur at the same time the Preliminary Plan is heard by the Planning Board, but will be a separate action by the Planning Board. However, in the review of the subject exception request, the applicant has included the abandonment square footage into both proposed lots, thus increasing the area of the special exception to 3.18 acres and the developed church property to 6.55 acres yielding approximately 9.73 acres for the entire site as it presently exists.

The subject special exception use proposes an elderly housing complex of 75 units with a maximum of 86 residents, a maximum of 4 staff, and an associated parking facility for 55 vehicles. Access for the proposed special exception use will be from the southernmost looped driveway on the church property along MD 193. At the time of Preliminary Plan, the applicant will record an easement over this driveway to provide access to the subject special exception use.

Section 59-E.4.5 of the Zoning Ordinance allows waivers from parking facility standards. The Applicant has requested two waivers, of 25 feet each, related to the proposed parking facility and associated drive aisles. Under Section 59-E-2.83(b) of the Zoning Ordinance, special exception parking facilities in a residential zone must be setback not less than the required rear yard setback. Section 59-E-2.81(a) of the Zoning Ordinance also allows waivers of parking facilities that are located abutting or adjacent to a residentially zoned property.

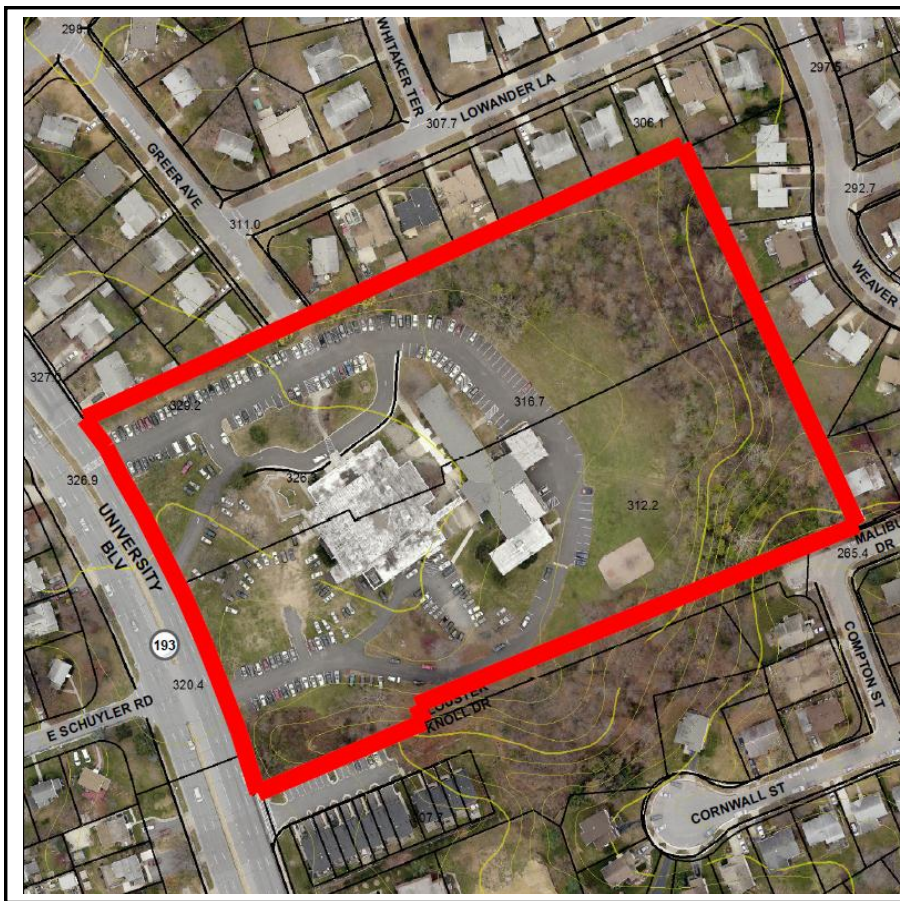
This staff report analyzes only the applicant's request for a special exception use for housing and elderly under Section 59-G.2.35 of the Zoning Ordinance, the submitted Preliminary Forest Conservation Plan (PFCP) and associated tree variance, and the parking standards waiver requests under Sections 59-E- 2.81 (a) and 2.83 (b) of the Zoning Ordinance. Issues related to the proposed subdivision of the subject property and abandonment of Malibu Drive will be addressed in a separate staff report at the time of Preliminary Plan review.

SITE DESCRIPTION

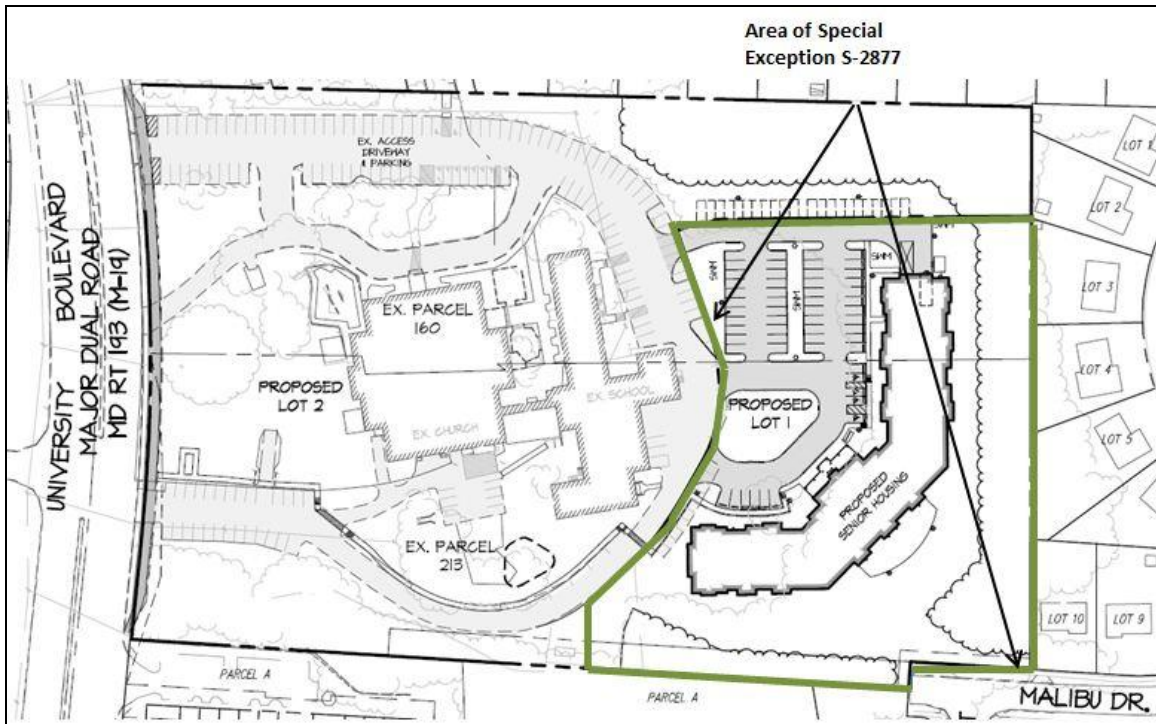
The subject property ("Property") is located at 420 East University Boulevard (MD 193) approximately 1,625 feet south of its intersection with Franklin Avenue. The Property consists of two unrecorded parcels, 160 and 213, for a total area of approximately 9.73 acres, including the unimproved area of Malibu Drive proposed to be abandoned along the southern property line. The Property is

rectangular in shape with approximately 500 feet of frontage along MD 193 and 110 feet frontage along Malibu Drive.

The front portion of the Property is developed with Mt. Jezreel Baptist Church. The primary access to the site is from a one-way looped driveway on MD 193 at the southwest corner of the Property. The looped driveway services the front portion of the Property, approximately 6.55 acres, which in addition to the existing church is also developed with a school, and surface parking lots. Two other secondary access points also serve the Property: a right-in/ right-out driveway, at the northwest corner of site and a right-in only driveway, at the center of the site's frontage. The area of the special exception comprises 3.18 acres in the rear portion of the site which is undeveloped, relatively flat and grassy with existing vegetation along the northern, eastern and southern lot lines. Steep slopes of 15-25% are found along the Property's southern and eastern lot lines.



Aerial of Entire Site (outlined in red)



Configuration of Entire Site with Existing Development (Special Exception highlighted in green)



View of Church Looking East from MD 193



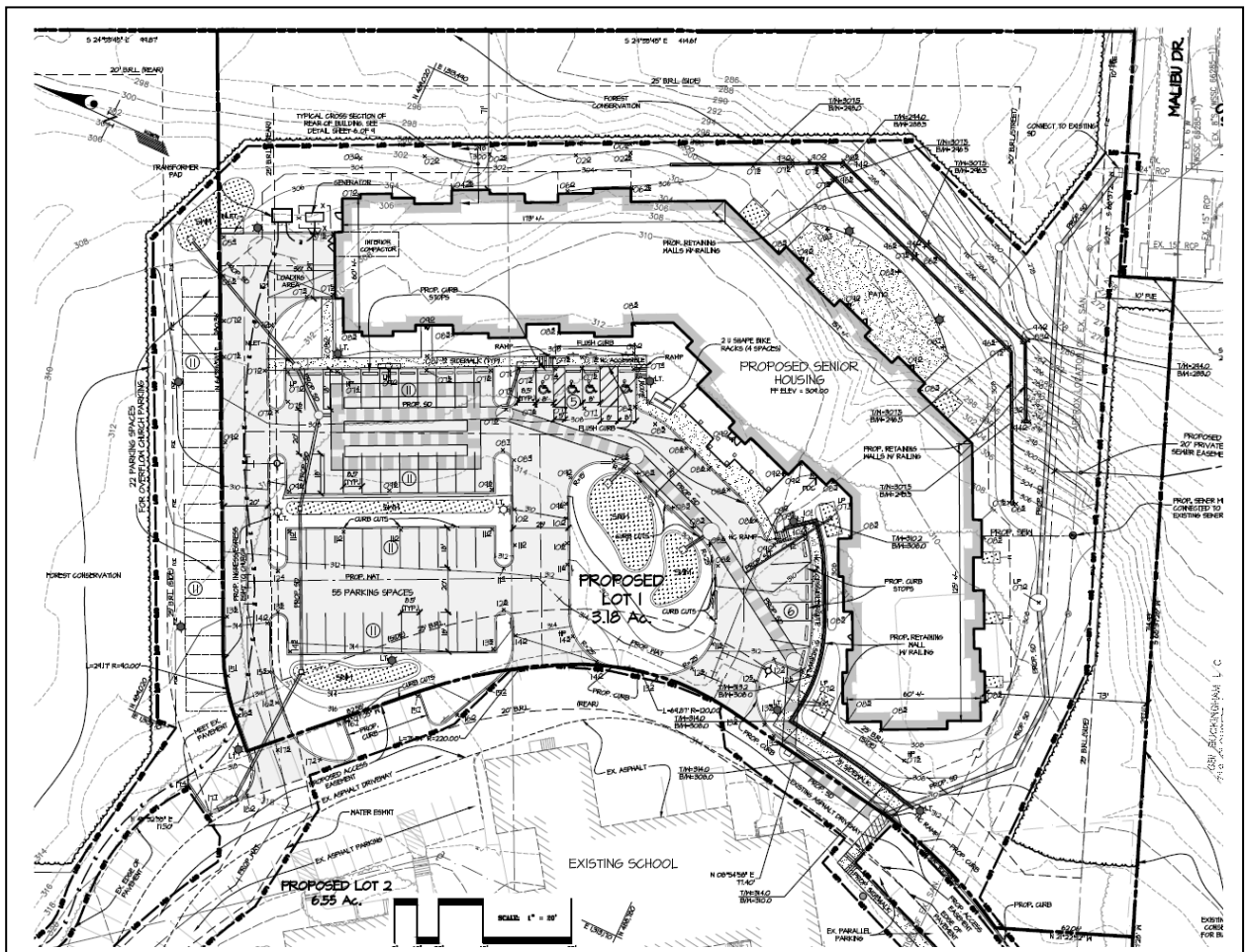
View of Area for Proposed Use

PROPOSED PROJECT

The applicant, Mt. Jezreel Baptist Church, seeks approval to construct housing and related facilities for the elderly. The proposed building will consist of 74,500 square feet with a total of 75 apartments (56 one-bedroom units and 19 two-bedroom units). The use will be developed on a site consisting of approximately 3.18 acres of R-60 zoned land.

The Property has approximately 110 feet of frontage on Malibu Drive which is located at the rear of the site. Due to the steep slopes at the rear of the subject property, vehicular access to the proposed use cannot be provided from Malibu Drive. Thus, access will be provided on MD 193 via an existing looped driveway at the southwestern corner of the site which also provides access to the church. At the time of preliminary plan review, the applicant will record an access easement over the existing Church looped driveway which will ensure continued access to the proposed elderly housing facility is provided.

The applicant proposes to abandon the residue of the unimproved Malibu Drive right-of-way that runs along a portion of the southern lot line of both proposed lots. This unimproved right-of-way comprises approximately 11,950 square feet and will be incorporated into each proposed lot at the time of Preliminary Plan review.

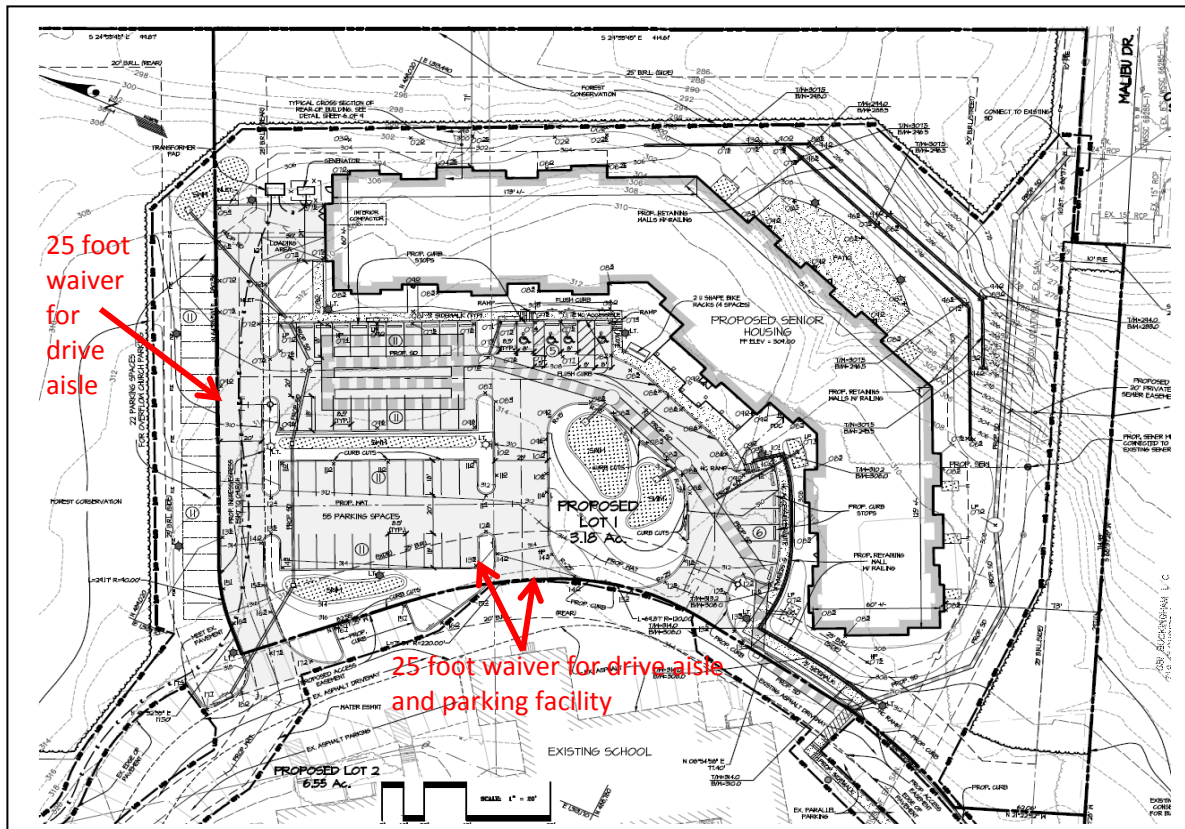


Proposed Special Exception Plan

The proposed elderly housing facility will be approximately 40 feet 2 inches in height and constructed of brick and fiber cement panels. A patio will be located at the rear of the building that will serve as an outdoor amenity for residents. Other community areas available to future residents include the lobby, community room, sitting room, library, wellness suite, fitness room, and cyber café. Additionally, programs with speakers on topics such as healthy eating, budgeting, and safety at home and on-line may be offered onsite for residents. There will also be organized activities for residents such as, yoga, bridge classes, and games.

There will be four employees associated with this proposed use. The maximum number of employees on on-site during the weekday from 9:00 a.m. to 5:00 p.m. will be three. Weekend staff will consist of one person. If special events are planned in the evenings or on weekends a maximum of three employees will be present.

One surface parking lot will accommodate 77 vehicles; although only 55 spaces will be allocated to the proposed use and located on the special exception property. The remaining 22 parking spaces will be allocated to the church and are located adjacent to the parking lot drive aisle on proposed Lot 2. The applicant proposes a shuttle service via church owned vans for residents to off- site activities such as cultural events, nature outings, shopping and visits to medical facilities. The applicant is also requesting three waivers: one for relief from the parking facility standards contained in the Zoning Ordinance, and two waivers, of 25 feet each for the required 25 foot rear yard setbacks of the proposed parking lot and associated drive aisles.



Location of Waiver Requests for Parking Facility

The grounds of the proposed senior housing facility will be landscaped with plantings which will create an attractive residential setting. Two terraced retaining walls along the eastern and southern property lines will be generously landscaped with evergreen and deciduous trees and groundcover to screen the proposed use from nearby residential uses. Parking areas will be screened from neighboring properties by proposed forest conservation easement areas along the northern and eastern lot lines. Trash pick-up is scheduled for 9 a.m. or later on weekdays. Other deliveries to the site will include but not be limited to UPS, FedEx, Comcast, and Verizon and will occur during regularly scheduled business hours.



Rendering of Entrance to Proposed Elderly Housing

Neighborhood Description

The neighborhood where the property is located is generally bounded to the north by Franklin Avenue, Northwest Branch Stream Valley Park property to the east, Piney Branch Road (MD 320) to the south, and Long Branch Parkway to the west. The neighborhood contains a mix of zones. North, east, and west of the Property, the lots are zoned R-60 and developed with one-family detached dwelling units. Immediately south of the site, the properties are zoned RT-12.5 and developed as a townhouse community. The Pickwick Village townhouse community is also zoned RT-12.5 and is located approximately 1,300 feet southwest of the site on MD 193.

Commercially zoned properties are clustered at the northwest and northeast quadrants of the intersection of MD 193 and MD 320, at the southern boundary of the neighborhood. These properties are zoned Commercial/Residential Town (CRT) with floor area ratios (FAR) that vary from 1.5 to 2.5 and are developed with various commercial uses. The Pineway Towers, a multi-family high-rise planned residential use zoned R-H, and the Montgomery Apartments, a multi-family high density residential use zoned R-10, are located adjacent to each other along MD 320. The defined neighborhood also contains Montgomery Knolls Elementary School, Eastern Middle School, Silver Spring Presbyterian Church, and Clifton Park Baptist Church.



Defined Neighborhood (outlined in Black)

Special exceptions in the defined neighborhood include:

- S-79 for non-residential medical practitioner approved on May 9, 1972;
- S-631 group residential facility approved August 2, 1978;
- S-763 for a service organization approved January 21, 1981;
- S-844 for a veterinary hospital approved November 24, 1982
- S-952 for an accessory apartment approved on August 1, 1984
- S-1081 for an accessory apartment approved on July 30, 1986;
- S-1424 housing for the elderly approved July 28, 1987;
- S-S-1482 for an accessory apartment on December 16, 1987 ;
- S-1718 for a boarding house approved October 10, 1989; and
- S-2639 for a telecommunication facility (monopole) approved July 27 2005.

Analysis

MASTER PLAN

The subject property is located within the *2000 East Silver Spring Master Plan*. The Master Plan reconfirmed the R-60 Zone for the property. While there was no specific mention of the Property in the Master Plan, the Plan did have recommendations relating to neighborhood protection that are applicable, including the Community Preservation, Stability and Character theme which provides for the preservation of neighborhood character, reinvestment into the community and quality of life enhancement throughout the East Silver Spring Area. Attachment A

The Plan also recommended the following for land uses including special exceptions along University Boulevard (page 29):

“Land uses next to commercial centers and along New Hampshire Avenue and University Boulevard including special exceptions, should follow these site development guidelines:

- 1. Screening from residential uses should be required for existing buildings and parking*
- 2. New or expanded structures should be sensitive to the character and the scale of the adjoining neighborhoods. Buildings should not be significantly larger than nearby structures. “*

The applicant is proposing the creation of an affordable, independent living community for the elderly. The goal of this proposed 75 unit development is to create a supportive community with access to shopping, services for residents, healthcare and public transportation. There are no specific land use comments regarding the Mt. Jezreel Property in the Master Plan. The proposed use is consistent with the overall vision and goals of the East Silver Spring Master Plan theme of Community Preservation, Stability and Character.

The special exception use will be adequately screened from nearby residential uses. The proposed building will be designed in a manner such that it has a residential appearance which is in keeping with the character of the surrounding neighborhood. The proposed 75 unit development of affordable housing for the elderly is in general conformance with the Master Plan and is an acceptable use on the Property.

TRANSPORTATION

Master-Planned Roads, Bus Rapid Transit and Bikeways

The Property is located within the boundary of the *Approved and Adopted 2000 East Silver Spring Master Plan*. The following recommendation summarizes comments for MD 193, taken from the *East Silver Spring Master Plan*, the *Countywide Bikeway Functional Master Plan*, and the *2013 Countywide Transit Corridors Functional Master Plan (CTCFMP)*:

- University Boulevard (MD 193) is designated as Major Highway M-19, with a 120-foot-wide right-of-way, between I-495 and Prince George’s County;
- University Boulevard is identified as a Bus Rapid Transit (BRT) Corridor with a 124-foot-wide right-of-way;
- Dual Bikeway (DB-5), a master planned bikeway, which includes a shared use path, is recommended along the east side of MD 193.

Although the 2013 *CTCFMP* specifies a 124-foot-wide right-of-way, staff recommends that only a 120-foot width be required at this site. This recommendation is based on the fact that MD 193 is not centered within the existing right-of-way along the site's frontage. This off-center right-of-way results in an existing wider-than-normal right-of-way on the west side of MD 193. As a result, any major reconstruction on this roadway would likely be implemented as a one-lane BRT in the median. At the time the median BRT is implemented, the roadway should be widened within the existing right-of-way along the western side of MD 193. A required shared use path along the site's frontage should be placed within a Public Improvement Easement at the time of Preliminary Plan. Attachment B

Future Abandonment of Malibu Drive

As shown on the submitted special exception plan, the applicant is proposing to abandon an unimproved portion of Malibu Drive which abuts the site along its southern lot line. This area of abandonment, consisting of approximately 11,950 square feet, will be incorporated into both proposed lots at the time of Preliminary Plan review.

This portion of Malibu Drive is an existing dedicated, but unimproved right-of-way which was platted in 1954 for public use. However, a portion of the right-of-way was abandoned in 1990 under MCPB Resolution No. 90-32AB, which was approved in conjunction with Plat 23121 for the abutting townhouse development along the site's southern lot line.

Under Section 50-15 (c) 2 of the Subdivision Regulations, the Planning Board has the authority to abandon previously dedicated rights-of-way, that are not improved or in use by the public. The applicant will need to submit an abandonment request for this portion of Malibu Drive in conjunction with the Preliminary Plan. At the time of Preliminary Plan review, staff will evaluate the abandonment request and make a recommendation to the Planning Board. The abandonment action for Malibu Drive will occur at the same time the Preliminary Plan is heard by the Planning Board, but will be a separate action by the Planning Board. If the abandonment is not approved by the Planning Board at a later date, the proposed use can still be developed as submitted under this Application.

In correspondence to the Applicant the Hearing Examiner has stated that the abandonment issue can be addressed at the time of Preliminary Plan review and the acreage of abandonment can be included in both proposed lots. The future abandonment will not impact the special exception use. Attachment C

Vehicular Access and Parking

The site is located on two unrecorded parcels that are developed with the existing Mount Jezreel Baptist Church and associated school which has vehicular access via three curb cuts on University Boulevard (M-19). M-19 is classified as a Major Highway with three travel lanes in each direction along the site's frontage. All three access points are uncontrolled and operate in the following manner:

1. A right-in/ right-out driveway, at the northwest corner of site;
2. A right-in only driveway, at the center of the site's frontage; and
3. A full-movement driveway opposite Schuyler Road, at the southwest corner of site.

The Application does not propose any modifications to the existing vehicular access points. However, the proposed use will modify the site’s internal circulation patterns to allow access to the senior adult housing units proposed at the rear of the site. There will be no adverse impacts resulting from the proposed special exception use, and internal circulation will remain safe, adequate, and efficient. The Application will have no adverse traffic impact on existing area roadway conditions or pedestrian facilities and is consistent with the Master Plan recommendations.

MD 193 is a state right-of-way maintained by the State Highway Administration (MSHA). The MSHA review concluded that the right-in only access point at the center of the site’s frontage will need to be closed due to its proximity, approximately 160 feet, to the existing two full movement access points at the northwest and southwest corners of the site. Furthermore, MSHA states this center access point provides the same movement as the existing access points and closing it will eliminate a potential point of conflict and enhance safety along the MD 193 corridor. This and other transportation-related issues will be addressed during the review of the subsequent Preliminary Plan for the special exception use and the existing church.

Pedestrian and Transit Service

The site’s frontage on M-193 has an existing five-foot wide sidewalk. This sidewalk is part of a continuous sidewalk network connecting the Mount Jezreel Baptist Church to the immediate neighborhood and to Piney Branch Road (MD 320). The intersection of MD 193 and MD 320 is approximately 3,160 feet south of the Property. Under the special exception request, the applicant proposes to construct a new sidewalk leading from the existing sidewalk on MD 193 into the site and connecting to the elderly housing complex. This new sidewalk creates a new safe, lighted, pedestrian link from the site into the immediate neighborhood. Transit service is available from a bus stop along the site’s frontage and along MD 320. Specific transit routes within walking distance to the site include:

1. Metrobus routes: C2 and C4 – along the MD 193 frontage
2. Ride-On route: 14 along the MD 193 frontage
3. Ride-On routes: 16, 20, and 24 are within a 15-20 minute walk of the site on MD 320

Local Area Transportation Review (LATR)

The proposed use will generate fewer than 30 peak hour trips and is therefore required only to submit a traffic statement to demonstrate the proposed special exception use impact on the transportation network. Based on the LATR trip generation rate, the proposed 75 senior adult dwelling units would generate 15 new morning peak-hour trips and 19 new evening peak-hour trips (Table 1). As a result of the minimal increase in site generated traffic during the morning peak-hour, the traffic generated by the proposed special exception use would not adversely impact the existing traffic conditions.

TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED SENIOR ADULT HOUSING

	AM Peak Hour (total)	PM Peak Hour (total)
75 Senior Adult Dwelling Units	15	19

Trip generation for Senior Adult Dwelling Units based on ITE LUC 252.

An evaluation of the proposed development’s Transportation Adequate Public Facilities will be completed during the review of the Preliminary Plan of Subdivision for the entire 9.73 acre property.

Transportation Policy Area Review (TPAR)

New developments within the Silver Spring – Takoma Park Policy Area must satisfy the Transportation Policy Area Review (TPAR) test by making a one-time payment equal to 25% of the general district impact tax. This payment will be a required as for a condition of the Preliminary Plan.

ENVIRONMENT

Environmental Guidelines and Forest Conservation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # [420141620](#) was approved for the project on July 22, 2014. The approved NRI/FSD shows there are 2.97 acres of forest onsite. The forest area is contiguous with offsite forest, along the southern lot line, that is protected within an existing Category I Conservation Easement. This off-site existing Category I Conservation Easement was approved with the Preliminary Plan (120040476) for townhouses abutting the southern lot line.

Man-made steep slopes exist within the onsite forest areas. There are no highly erodible soils, wetlands, or stream valley buffer on or near the subject property. Four ephemeral channels located with the forest areas only convey water in direct response to rainfall. These ephemeral channels do not meet the definition of a stream and therefore do not have an associated stream valley buffer. The Property is located within the Northwest Branch watershed, which is a Use IV watershed¹. The on-site forest stand is rated as moderate-priority for retention due to lack of buffer areas and the presence of invasive species, such as, Japanese knotweed.

Extensive control of invasive species along with supplemental native plantings will need to be addressed as part of the forest management plan which will be specified as part of the Final Forest Conservation Plan (FFCP) approval. Additionally the forest areas also contain piles of debris and rubble that will also need to be addressed by the FFCP. The Property contains numerous native trees, some of which are significant or specimen in size. The larger trees are discussed in further detail in the following paragraphs.

The special exception application is subject to the Chapter 22A Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan (PFCP) was submitted via email on March 25, 2015, for approval. The Property contains 2.97 acres of existing forest. The PFCP application proposes 1.56 acres of on-site forest clearing and the protection of 1.41 acres of retained forest. The planting requirements for the project are 1.33 acres. The Applicant will plant 0.66 acres of forest on the property and together with 1.41 acres of retained forest will result in 2.07 acres of onsite forest to be placed within Category I Conservation Easement. The remaining 0.67-acre reforestation requirement will be satisfied by the purchase of equivalent credits in an off-site Forest Conservation Bank.

¹ Use IV: Recreational Trout Waters

Waters that are capable of holding or supporting adult trout for put and take fishing, and that are managed as a special fishery by periodic stocking and seasonal catching (cold or warm waters).

Under Chapter 22A-12 (g) (2) (D) and (E) a fee-in-lieu payment can be made instead of planting offsite or onsite reforestation, if among other things, a property is less than acre and the reforestation requirements are more than ½ acre in size. The entire site is approximately 9.73 acres, but the area of the special exception is approximately 3.18 acres. The forest conservation requirements are reviewed across the entire site 9.73 acre site and the reforestation requirements for the proposed use are greater than ½ acre; therefore, 0.67 acre reforestation is required. The project is not eligible to make a fee-in-lieu payment but can use the off-site forest mitigation bank to meet the requirement. Staff recommends approval of the PFCP. Attachment D

Tree Save and Forest Conservation Variance

Section 22A-12(b) (3) of the 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The application includes removal and disturbance of trees that are ≥ 30” DBH. Therefore, a variance is required. The applicant submitted a variance request on March 20, 2015, for the impacts and removal of subject trees. The applicant’s request is to remove one subject tree and to impact, but retain, three subject trees, affecting a total of four trees that are considered high- priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Attachment E

TABLE 2
TREE PROPOSED TO BE REMOVED

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
2	Norway Maple	33”	100%	Fair	REMOVE

TABLE 3
TREES PROPOSED TO BE IMPACTED BUT RETAINED

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
1	Red Maple	34"	37%	Good	SAVE
9	Red Oak	53"	3%	Good	SAVE
12	White Mulberry	43"	10%	Fair /Poor	SAVE

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. In addition to the required findings outlined numerically below, staff has determined that the Applicant

has demonstrated that enforcement of the variance provision would result in an unwarranted hardship because of the impacts from the existing pedestrian sidewalk modifications that are required under this proposed development. Furthermore, the impacts to tree #12 are triggered by implementation of the Master Plan recommendation for a shared use access path along MD 193.

Variance Findings

Staff has made the following determination based on the required findings for granting of the requested variance:

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

The tree impacts are associated with pedestrian improvement modifications fronting and within the site. The Master Plan recommends a shared use path along the MD 193 frontage. Further, interior pathway connections within the subject site have been located to reduce forest and tree impacts while also providing a safe and efficient connection for future residents and visitors to the site. Moreover, the one tree proposed for removal is a Norway maple, which is an invasive species that will have to be mitigated with native plantings. As these elements would be required of any applicant in a similar situation, granting the requested variance would not confer a special privilege.

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

The requested variance is based on proposed development allowed under the existing zoning and the need to provide safe and adequate pedestrian circulation along the front of and within the subject site. The variance can be granted under this condition if the impacts are avoided or minimized and any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance and removals and mitigation is provided for the resources disturbed.

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.*

Montgomery County Department of Permitting Services (MCDPS) staff approved the stormwater management concept for the project on January 28, 2015. The SWM concept proposes to meet the required SWM goals via microbiofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing storm drain. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met. Additionally, staff notes that the retained onsite vegetation along with supplemental plantings will further enhance water quality by providing shading, water retention and uptake. Furthermore, the proposed Category I easements will maintain slope stabilization by protecting the associated forest cover. Therefore, the application will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendations

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 applicant's request was forwarded to the County Arborist on March 23, 2015. The County Arborist issued a response to the variance request on April 1, 2015 and recommended that the variance be approved with the condition that appropriate mitigation is provided for the resources disturbed. Attachment F

Mitigation for Trees Subject to the Variance Provisions

Mitigation should be at a rate that approximates the form and function of the trees removed. The typical recommendation is that replacements occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. The proposed removal is for one 30" DBH Norway maple. Therefore, the proposed three 3"- caliper trees (9 caliper inches total) more than satisfies this requirement. The replacement trees will provide some immediate canopy and will eventually exceed the canopy area where the large tree has been removed.

Variance Recommendation

As a result of the above findings, Staff recommends that the Planning Board approve the applicant's request for a variance from the Forest Conservation Law to impact (but retain) three subject trees and remove one subject tree, thereby, affecting a total of four subject trees associated with the application. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

Stormwater Management

The Montgomery County Department of Permitting Services, Water Resources Section approved stormwater management concept plan (#263675) for the subject site on January 28, 2015. Stormwater management goals will be met through the use of micro bio-filters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing storm drain. (Attachment G)

Noise

At the time of Preliminary Plan the Applicant will need to submit a noise study for the property. Potential mitigation measures will be determined during review of the Preliminary Plan.

COMMUNITY COMMENTS

Staff received a letter from the Clifton Park neighborhood concerning the loss of forest and habitat, increased stormwater runoff and adverse impacts to water quality, stability of the site, traffic congestion, and decline in property values that will occur if the proposed special exception use is approved.

The community's letter was based on the Applicant's initial submission which showed less forest preservation on site, particularly along the southern property line. Since the letter was written, the Applicant has revised the plan at the request of Staff to increase the retention of existing on-site trees along the eastern and southern properties by placing these areas in Category I Forest conservation easements. As submitted, the plan shows forest preservation, most notably, the increased retention of the existing forest and re-planting of areas along the southern property line. The proposed conservation easements capture the priority area on the site. The easements will provide a number of benefits such as connecting with and adding to the existing offsite forested easement area abutting to the south, protecting the topographically unstable slopes and providing a buffer between the proposed use and the existing abutting residential uses. Stormwater flows will be reduced from current levels, as the storm flows will be diverted and detained within new structures.

With respect to site stability the Applicant is proposing two terraced retaining walls feet along the eastern and southern property lines. From Malibu Drive looking west into the site, the outer wall is 11 feet in height and the inner wall varies generally from 11 feet to 17 feet with the majority of the wall at 11 feet in height. The walls will be constructed of materials that are residential in character and will be generously landscaped with a mix of evergreen trees, deciduous trees, perennials and groundcover.

Based on the submitted traffic statement, the proposed use will not generate significant traffic impacts to adversely impact the surrounding network. A copy of this letter community correspondence is included in Attachment H.

59-G-1.2.1 Standard for evaluation of Special Exceptions.

Inherent and non-inherent characteristics

A special exception must not be granted absent the findings required by Section 59-G-1 of the Montgomery County Zoning Ordinance. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The inherent characteristics associated with Housing and Related Facilities for Senior Adults and persons with Disabilities include: (1) buildings and structures;(2) lighting; (3) traffic to and from the site by staff, visitors and residents; (4) deliveries of supplies and trash pick-up, (5) parking areas; (6) noise associated with the generator, trash pick-up and deliveries.

In reviewing the application, staff finds that the inherent characteristics of size, scale and scope associated with the proposed application are minimal and not likely to result in any unacceptable noise, traffic disruption, or environmental impacts at the subject site. Staff finds that the physical and operational characteristics of the proposed use are no different than what is normally associated with elderly housing facilities. The proposed landscaping on the grounds and in the parking area will continue

the existing general residential character of the neighborhood. Noise associated with trash pick-ups, as well as deliveries to the proposed use will not be excessive. Adequate parking is available to serve future residents, visitors and employees to the special exception use. The property is served by a transit stop located along the site's frontage on MD 193. Therefore, based on the submitted plans, the applicant's statement of operations and other submitted documentation, staff does not find any non-inherent adverse effects associated with the application.

59-G-1.21. General Conditions

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the R-60 Zone.

The proposed use is allowed by special exception in the R-60 Zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

With the recommended conditions of approval, the proposed special exception satisfies the standards and requirements prescribed in Section 59-G-2.35 of the Zoning Ordinance for housing and related facilities for senior adults and persons with disabilities.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The proposed senior housing facility is consistent with the approved and adopted 2000 East Silver Spring Master Plan recommendations for preservation of neighborhood character, reinvestment into the community and quality of life enhancement.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The senior housing facility will be in harmony with the general character of the surrounding residential neighborhood considering population density, design, scale and bulk of the proposed new structure. The proposed building will be constructed in the rear of the property in a flat and undeveloped portion of the site. It will be located

approximately 112 feet from the nearest single-family home and buffered by the proposed forest conservation easements along the northern, eastern and southern lot lines. The proposed parking facility is sited behind the existing church and is also buffered from view by the forest conservation easements. The building height for the proposed use is comparable to the 35 foot height of the existing residential uses in the surrounding neighborhood. The scale, bulk and massing of the building has been broken up through the use of brick and fiber cement panel construction materials thereby creating a residential appearance. The residential appearance is further refined with the building's front entrance designed as a front porch. Adequate parking will be provided for future residents and visitors.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. The proposed facility is designed in a manner that is compatible with the one-family residential neighborhood. The physical and operational characteristics of the proposed use are no different than what is normally associated with housing for the elderly facilities. Outdoor activities by residents will be limited. The grounds will be well landscaped; parking areas will be screened from neighboring properties by the use of evergreen vegetation along the perimeter and the use of foundation plantings to soften the building/ground connection.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use will not cause any objectionable adverse effects. According to the applicant's statement of operations, the proposed exterior lighting fixtures will be installed and maintained with light shields to prevent spillage or glare on nearby residential properties. The applicant's submitted lighting plan shows the foot candle lighting level of 0.0 along the adjacent residentially developed properties. There will be limited outdoor activity and there will be no use of the property that will generate noise in an obtrusive manner.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The approval of this special exception use will not increase the number, intensity, or scope of special exception uses sufficiently to adversely affect or alter the predominantly residential nature of the area. According to research of the records, the majority of the approved special exception uses are residentially oriented such as accessory apartments,

group and elderly housing. The proposed use is a residential use that will not alter the predominantly residential nature of the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed residential design, limited on-site activity, and minimal peak hour traffic impacts of the proposed use will not have any adverse effect on residents, visitors, or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

- (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

A Preliminary Plan of subdivision (120150020) has been submitted by the applicant and will be heard by the Planning Board after the Board of Appeals makes a decision on this special exception application. The Planning Board will determine Adequacy of Public Facilities (APF) at the time of Preliminary Plan review and approval. At the time of Preliminary Plan submission, the Applicant will must undertake the following:

- *submit a traffic study for the entire site (9.73+ acres) to satisfy the Local Area Transportation Review (LATR) test;*
- *submit to M-NCPPC staff an abandonment application for the unimproved portion of Malibu Drive;*
- *dedicate approximately 10 feet of right-of-way at the northern corner of the Property to achieve the master plan recommended minimum right-of-way of 120 feet of right-of-way, along University Boulevard (MD 193);*
- *provide a Public Improvement Easement, measuring 10-feet wide, over the shared use path along the site's MD 193 frontage; and*
- *eliminate the right-in only access point at the center of the Property's frontage along MD 193.*

- (B) If the special exception:
- (i) does not require approval of a new preliminary plan of subdivision; and
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact; then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed

development under the Growth Policy standards in effect when the application was submitted.

Not Applicable.

- (C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

The application satisfies transportation related requirements and will not reduce the safety of vehicular or pedestrian traffic. The access point for the proposed special exception use is safe and traffic and vehicular circulation patterns within the site will be designed in a safe and efficient manner. The parking area is designed in a manner that provides a safe and efficient separation of vehicular and pedestrian activities within the subject property.

59-G-1.23 General Development Standards

- (a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.35.

The Property is zoned R-60. Table 4 lists the development standards proposed by this Application.

TABLE 4
DEVELOPMENT STANDARDS IN THE R-60 ZONE

Standards	Required	Proposed
Minimum Lot Area	6,000 sq ft	3.18 acres ¹
Minimum Lot Width at street line	25 ft	110 ft
Minimum Building Setback from Street	25 ft	138 ft
Minimum Building Setback from adjoining lot --side lot line --rear lot line	8/18 ft 20 ft	30 ft 50 ft
Maximum Building Height	35 feet	4 stories at 40 ft. 2 inches ²
Maximum Building Coverage	35%	18%

¹The entire property consisting of the existing church and the proposed use consists of approximately 9.73 acres, including the Malibu Drive abandonment of 11,950 square feet. The applicant is proposing to construct the elderly housing facility on only 3.18 acres of the site which includes the abandoned right-of-way for Malibu Drive.

²Section 59-G-2.35 (c) (2) of the Zoning Ordinance for housing and related facilities for the senior adults and persons with disabilities, states “maximum building height: four stories or the height limit of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.”

Staff finds that the proposed building complies with the development standards of the R-60 Zone except building height. The R-60 zone permits a 35 foot height limitation. Specific requirements of housing for the elderly contained in Section 59-2.35 (c) (2) of the Zoning Ordinance, allows a building height up to 6 stories if the additional height is in conformity with the general character of the neighborhood. In this instance, Staff believes the additional increase of height of approximately 5 feet, 2 inches is minimal in nature and is consistent with the general character of the neighborhood. The proposed height request is discussed more fully on page 27 of this report.

- (b) **Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-59-E 2.83 and 59- E- 2.81 of the Zoning Ordinance

The provisions of Section 59-E-2.83 states

- Parking and Loading facilities for special exception uses in residential zones applies to an off-street parking facility for a special exception use that is located in a one-family residential zone if 3 or more parking spaces are provided. These standards are intended to mitigate potential adverse visual, noise, and environmental impacts of parking facilities on adjacent properties. In addition, these requirements improve the compatibility and attractiveness of parking facilities, promote pedestrian-friendly streets, and provide relief from unshaded paved areas.

These provisions are as follows:

Location. Parking facilities must be located to maintain a residential character and a pedestrian-friendly street orientation.

The proposed parking areas will be screened from the residential properties to the north and east by placing the existing forest into a Category I Forest Conservation easement. This easement will retain the existing trees and ensure their continued health and viability. Additionally, supplemental plantings are proposed along the northern edge of the parking facility to further maintain the residential character of this site. The parking areas will include sidewalks leading to the proposed elderly housing complex which will create a pedestrian-friendly environment for residents and visitors.

Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

The applicant is proposing a total of 55 parking spaces for the proposed use. The parking facility will be located in the rear and side yards of the special exception use. The proposed lot fronts on Malibu Drive, therefore the rear yard is the along the northern property line. The applicant has requested a waiver from Section 59-E-.4.5 of the Zoning Ordinance, from the parking standards with respect to rear yard setbacks.

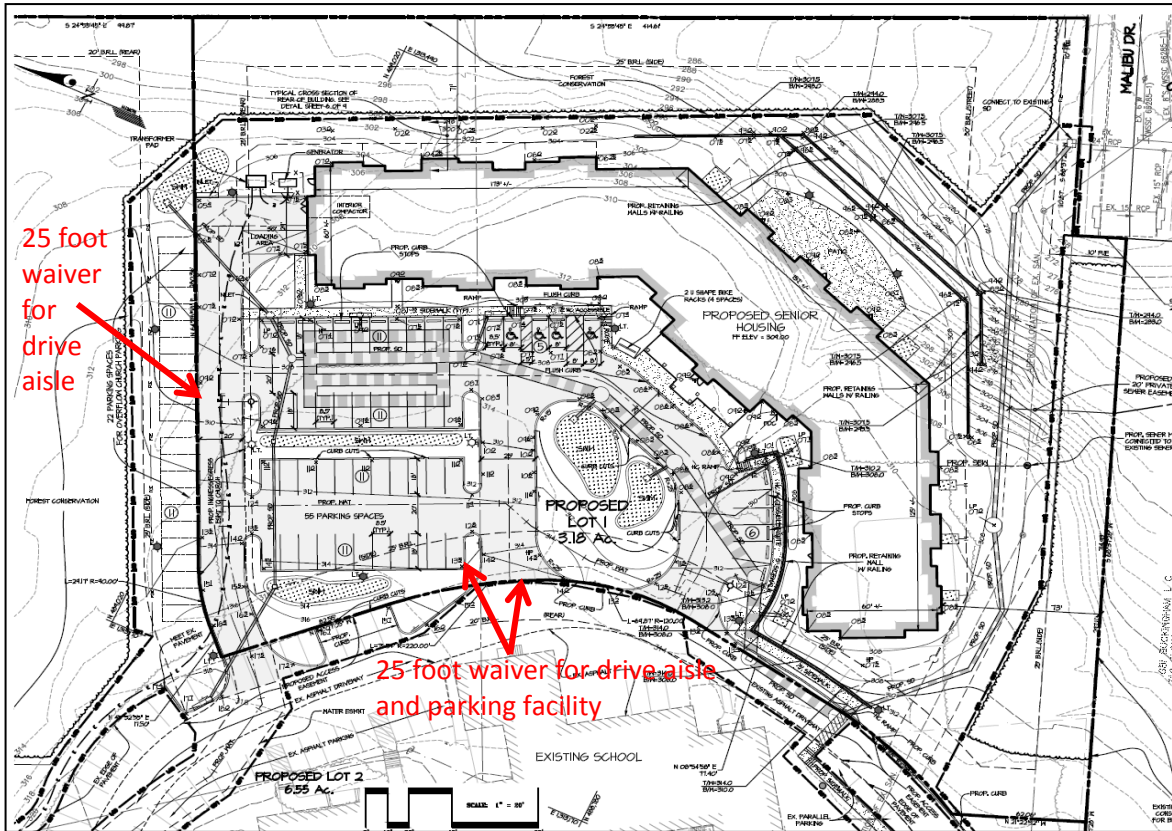
As shown on the submitted plan, the drive aisle for the parking facility is located within the entire rear yard setback, which necessitated a waiver of the rear yard setback. The applicant has requested a waiver of 25 feet for the rear yard setback, for the entire drive aisle, which is slightly larger than the R-60 Zone required 20 foot rear yard setback. See graphic on the following page.

Parking Facilities within or adjoining residential zones - Section 59-E-2.81 (a)

The entrance to the proposed parking facility and entrance driveway is located in the side yard of the special exception use. However, this side lot line abuts the rear lot line of residentially zoned and developed R-60 property. The applicant has also requested a waiver from Section 59-E-2.81 (a) of the Zoning Ordinance, which states, "parking spaces and drive lanes for a parking facility located in a residential zone must be setback from property line a distance equal to the applicable setback required for the property adjoining the parking facility." Based on this provision the setback for the parking facility and entrance driveway would be determined by the required rear yard setback of 20 feet in the R-60 Zone. The applicant has requested a waiver of 25 feet from the rear yard setback.

The proposed parking facility is located approximately 7 feet from the rear yard, while the driveway is located completely within the required rear yard setback. The adjoining residentially zoned property is developed as the Mt. Jezreel Baptist Church and its school, the owner of the entire site. The parking facility will face the rear of the school building and the existing looped driveway. Staff supports both waivers as necessary to

accomplish the goal of providing housing for elderly which is a quality of life goal of the master plan.



Location of Waiver Requests for Parking Facility

Screening. Each parking and loading facility, including driveway and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be at least 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of them. Along all street right-of-ways, screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence, or masonry wall.

The parking and loading facility has been sited away from the street right-of-way and designed to be effectively screened from abutting lots through the use of a mix of ornamental, evergreen and shade trees, and shrubs, and perennials. No outside dumpster is proposed. A compactor located within the building and adjacent to the loading dock will remove trash from the proposed facility. A generator next to the loading dock will be enclosed which will screen it from the residential abutting lots to the east.

Shading of paved areas. Trees must be planted and maintained throughout the parking facility to ensure that at least 30 percent of the paved area, including driveways, are

shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.

Based on the area of the tree crown at 15 years after the parking facility is built, the applicant has submitted information which indicates that 33 % of the parking area will be shaded.

Compliance Requirement. For any cumulative enlargement of a surface parking facility that is greater than 50% of the total parking area approved before May 6, 2002, the entire off-street parking facility must be brought into conformance with this section. An existing surface parking facility included as part of a special exception granted before May 6, 2001, is a conforming use.

Not applicable to the proposed special exception use as the surface parking facility is proposed under this application.

- (c) **Minimum frontage.** “In the following special exceptions, the Board may waive the requirements for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21: (1) Rifle, pistol and skeet-shooting range, outdoor...”

Not applicable to the proposed special exception use.

- (d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

The proposed project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the Code) and was reviewed and recommended for approval as part of this application.

- (e) **Water quality plan.** *Not applicable, the property is not in a Special Protection Area (SPA).*
- (f) **Signs.** The display of a sign must comply with Article 59-F.

There is no sign proposed for the requested use.

- (g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed, or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

The scale and bulk of the proposed building will have the exterior appearance of a residential building through the use of brick and fiber cement panel construction materials. These building materials will replicate the building materials used in existing residential development in the surrounding area. Additionally, the proposed use is well related to the surrounding residential

area by its siting at the rear of the property which reduces its minimal height increase from views along MD 193 and screened by forest; its landscaping consisting of deciduous and evergreen trees, shrubs and perennials, groundcover, and vines which are found in other residentially zoned properties in the area. The building has been divided into large distinct planes through architectural articulation which achieves a compatible scale and massing to the surrounding area.

- (h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety: (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass; (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

As shown on the applicant's submitted lighting plan, lighting levels along the side and rear lot lines will not exceed the 0.1 foot candle lighting level and the luminaires will incorporate control devices to minimize glare and light trespass. Based on this submittal, this requirement has been met.

Sec. 59-G-2.35. Housing and related facilities for senior adults and persons with disabilities.

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

- (a) Prerequisites for granting:

- (1) A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

- (A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.
- (B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.
- (C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.
- (D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.

The Applicant's submittal statement indicates that approximately 89% of the proposed units are intended for individuals with incomes at or below 60% of the HUD "Area Median Income" for Montgomery County. Of the proposed 75 units, 4 units will be offered at or below 30% of the Area Median Income (AMI); 5 units will be offered at or below 40% of the AMI; 12 units will be offered at or below 50% of the AMI; 46 units will be offered at or below 60% of the AMI, and 8 units will be offered

at market rates. This minimum percentage for each category will be determined by agreement with the Department of Housing and Community Affairs in accord with Executive Regulations.

- (2) The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities.

The Property is located approximately 0.5 miles north of the intersection of MD 193 and MD 320. A transit stop is located on MD 193 in front of the site which provides residents with access to two Metro bus routes and one Ride-on route. Bus service is also available along MD 320, approximately a 15-20 minute walk from the proposed use. This special exception use is in close proximity to several public facilities: The Long Branch Community Center, on MD 320, is over ¼ mile from the site, while the Long Branch Public library on Arliss Avenue is 1 ½ miles from the site. The Arliss Avenue Shopping Center is located at the intersection of Arliss Avenue and MD 320 Piney Branch Road is slightly more than 1 mile from the site and offers a range of retail services for future residents. Finally, the applicant is also proposing to use vans owned by the Church to take residents to shopping areas, medical services, and other community and recreational services.

- (3) The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.

The proposed use will be located at the rear of the entire 9.73 acre site. This location ensures the elderly housing facility will be reasonably well protected from excessive noise and air pollution generated by vehicular traffic along MD 193 and from other harmful physical influences.

- (b) Occupancy of a dwelling unit is restricted to the following:

- (1) A senior adult or person with disabilities, as defined in Section 59-A-2.1;
- (2) The spouse of a senior or disabled resident, regardless of age or disability;
- (3) A resident care-giver, if needed to assist a senior or disabled resident; or
- (4) In a development designed primarily for persons with disabilities rather than senior adults, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or disability.

According to the applicant's statement of operations, occupancy will be primarily restricted to senior adult residents 62 years of age and older.

Additional Occupancy Provisions are:

- (5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)

The applicant's statement indicates that the applicant will comply with the requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968 and will demonstrate its compliance with that law at the appropriate time in the review process.

- (6) Resident staff necessary for operation of the facility are also allowed to live on site.

Not applicable as no resident staff are proposed to live on-site.

- (c) Development standards, other than density, in residential zones where allowed by special exception:

- (1) Minimum setbacks:

- (A) From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies.

The proposed elderly housing complex lot fronts on Malibu Drive, a public right-of-way. Due to steep slopes at the rear of the Property, access from Malibu Drive is unfeasible. Therefore, the site will access from a driveway located on MD 193. However, the street frontage setbacks are determined from Malibu Drive. The applicant is proposing a height of 40 feet 2 inches for the elderly housing complex which exceeds the 35 foot height limit for the R-60 zone. Since the proposed building height exceeds this height limit, the setback requirement is 50 feet. As shown on the submitted special exception plan, the proposed building will be setback approximately 138 feet from Malibu Drive; within that 138 foot setback, 50 feet of that area will be planted with trees and maintained as green area. Thus, this requirement has been satisfied.

- (B) From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.

In the R-60 zone, the minimum side yard setback is 8 feet and a minimum combined side yard setback of 18 feet; the minimum rear yard setback is 20 feet. The proposed building will be setback 50 feet from the rear lot line. From the side yard lot line the building setback will be approximately 30 feet. The minimum setback requirement for the side and rear lot lines has been satisfied.

- (2) Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the

neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.

The height limit in the R-60 Zone is 35 feet. The applicant has submitted a statement of justification requesting the height of the proposed building to be 40 feet 2 inches. The applicant's statement notes that the additional height is permitted if the proposed use is in conformity with the general character of the neighborhood. The neighborhood for the proposed use is defined as Franklin Avenue to the north, Northwest Branch Stream Valley Park property to the east, Piney Branch Road (MD 320) to the south, and Long Branch Parkway to the west. The applicant states that within this defined neighborhood there are numerous examples where the additional height and massing makes the requested height in conformance with the neighborhood.

For example, the applicant states that "the abutting Mt Jezreel Baptist Church and its associated school are substantial buildings, institutional in nature and that the church's rooftop tower extends the height of the building to more than forty feet. The other institutional uses in the defined neighborhood have design elements such as belfries that exceed the 35 foot height limit."

Staff notes that belfries are exempt from height controls under Section 59-B.1.1 of the Zoning Ordinance. However, these existing institutional uses have been setback from the roadway a distance larger than the required 25 feet in the R-60 Zone which gives the appearance of a reduced overall height for the entire building. Staff also notes that the proposed elderly housing complex will be setback, approximately 500 feet, from MD 193 which will appear to diminish its height from pedestrians or motorists travelling in the neighborhood. The building will be setback approximately 117 feet from the nearest residence to the east.

The bulk and scale of the building has been designed to achieve a compatible residential appearance with the defined neighborhood. The proposed retaining walls along the eastern and southern property lines will be terraced and generously landscaped with evergreen and deciduous trees that will mitigate the views of the proposed development from the surrounding residential areas. The existing onsite forested areas and existing vegetation coupled with new plantings along the southern, eastern and northern lot lines will also diminish the proposed building's 5 feet 2 inch increase in height from nearby residential uses. The requested additional building height conforms to the general character of the defined neighbor when considering the limited traffic, parking conditions, population density generated by the proposed use.

- (3) Maximum lot coverage: As specified by the relevant zone.

The R-60 Zone specifies the maximum lot coverage as 35%. As submitted, the lot coverage for the proposed use is 18%; well within the range for maximum lot

coverage. If Malibu Drive is not abandoned at a later date, lot coverage for the proposed use would be 19% and would satisfy this requirement for R-60 Zone.

(4) Minimum green area:

- (A) R-60, R-90, and the RT Zones: 50 percent
- (B) R-150 and R-200 Zones: 60 percent
- (C) RE-1, RE-2, and RE-2C Zone: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.

As submitted the special exception application proposes a green area of 54% which satisfies this requirement for the R-60 Zone. If Malibu Drive is not abandoned at a later date, green area for the proposed use would be 51% and would satisfy this requirement for R-60 Zone.

- (d) Development standards, other than density, in the R-30, R-20, R-10 and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that the lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.

Not applicable.

(e) Maximum density:

In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the development standards by Paragraph (c) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title "Housing Standards," of this Code, as amended.

The proposed building conforms to all applicable development standards for the zone and the use. The minimum unit size will comply with the relevant standards of Chapter 26, "Housing Standards" of the County Code, as amended.

(f) Parking and loading:

Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.

The total number of parking spaces required for this senior housing facility is 53. A total of 55 parking spaces are provided. The application satisfies the parking requirement as demonstrated by the following table.

Unit Type	Parking Ratio	Spaces Required
56 1 bedroom units	0.65	37
19 2 bedroom units	0.85	16
Total parking Required		53
Total Parking Provided		55

Additional provisions:

- (1) One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or persons with disabilities. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.
 - (A) Provision for on-site meal service;
 - (B) Medical or therapy facilities or space for mobile medical or therapy services;
 - (C) Nursing care;
 - (D) Personal care services;
 - (E) Day care for senior adults or persons with disabilities;
 - (F) On-site facilities for recreation, hobbies or similar activities; or
 - (G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.

The Applicant stated that the proposed building will have community areas available to all residents such as a community room, sitting room, wellness center, cyber café, library, and an outdoor patio. These areas will serve as on-site facilities for hobbies, recreation and similar activities. The Applicant proposes to offer a van shuttle service for future residents which will provide transportation to off-site facilities and services.

- (2) Retail facilities may be included to serve exclusively the residents of the building.

No retail facilities are proposed under this application.

- (3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.

The applicant has provided a vicinity map showing the above-referenced information as part of the application.

- (4) Construction is subject to all applicable Federal, State and County licenses or certificates.

All applicable licenses and certificates will need to be obtained by the applicant prior to the issuance of building permits.

- (h) Provisions governing facilities approved prior to March 7, 1990:
- (1) A housing facility for senior adults or persons with disabilities existing before May 6, 2002, is a conforming use and structure, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved that are in compliance with the special exception standards in effect at the time the modification is filed. If damaged, the facility may be rebuilt, repaired or reconstructed as it existed on May 6, 2002.
 - (2) A housing facility for senior adults or persons with disabilities existing on March 7, 1990, or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.

Not applicable. This is a new facility.

CONCLUSION

Staff recommends approval of Special Exception S-2877 for housing and related facilities for senior adults and persons with disabilities subject to the conditions stated on page 2 of this staff report. Staff recommends approval the Preliminary Forest Conservation Plan, and associated tree variance subject to the conditions stated at the beginning of this staff report.

Staff also recommends approval of the three requested waivers:

- from the parking facility standards under Sect. 59-E-4.5 of Zoning Ordinance ;
- for the 25 foot waiver of rear yard setbacks for a parking facility drive aisle in the R-60 Zone under 59-E 2.83 of the Zoning Ordinance; and
- for the 25 foot waiver of rear yards setbacks for a parking facility adjacent residential property under Sect 59-E-2.81 of the Zoning Ordinance.

Attachments

Attachment A – Master Plan staff memo

Attachment B –Transportation memos

Attachment C –Hearing Examiner correspondence

Attachment D –Environmental staff memo

Attachment E –Applicants’ variance request

Attachment F- County Arborist Memo

Attachment G –MCDPS memo -stormwater management concept plan

Attachment H – Community Correspondence

MEMORANDUM

DATE: April 30, 2015
TO: Kathy Reilly
VIA:

FROM: Melissa Williams, Area One Division
REVIEW TYPE: Special Exception for Mt. Jezreel Affordable Housing Community for the Elderly
CASE NUMBER: No. SE- 2877
ZONE: R-60
LOCATION: 4200 University Boulevard, East
MASTER PLAN: East Silver Spring Master Plan

Master Plan Conformance

4200 University Boulevard, East is zoned for R-60 Single Family Residential. The property is not defined in the East Silver Spring Plan but is located less than 1.5 miles from the Four Corners Shopping.

While there was no specific mention of the Mt. Jezreel property in the Master Plan, the Plan did have recommendations relating to neighborhood protection that are applicable, including the Community Preservation, Stability and Character theme which provides for the preservation of neighborhood character, reinvestment into the community and quality of life enhancement throughout the East Silver Spring Area.

Additionally, The Plan recommended the following for land uses including special exceptions along University Boulevard (see page 29):

“Land uses next to commercial centers and along New Hampshire Avenue and University Boulevard including special exceptions, should follow these site development guidelines:

- 1. Screening from residential uses should be required for existing buildings and parking*
- 2. New or expanded structures should be sensitive to the character and the scale of the adjoining neighborhoods. Buildings should not be significantly larger than nearby structures. “*

The applicant is proposing the creation of an affordable, independent living community for the elderly. The goal of this 75 unit development is to create a supportive community with access to shopping, services for residents, healthcare and public transportation. While the Master Plan makes no specific (land use/zoning) comments regarding the Mt. Jezreel site, Staff believes that the applicants proposed use is in line with the overall vision and goals of the East Silver Spring Master Plan theme of Community Preservation, Stability and Character.

Recommendation

Staff believes that the 75 unit development of affordable housing for the elderly is an acceptable use for 4200 University Boulevard, East.

March 2, 2015

MEMORANDUM

TO: Kathy Reilly, AICP, Planner Coordinator
Area 1 Planning Division

FROM: Matthew Folden, AICP, Planner Coordinator
Area 1 Planning Division

SUBJECT: Mount Jezreel Baptist Church
Board of Appeals Petition No. S-2877
420 E. University Boulevard, Silver Spring
Silver Spring/ Takoma Park Policy Area

This memorandum summarizes the transportation review of the subject Board of Appeals petition. The Petitioner is requesting special exception approval to construct and operate a senior adult housing development at the existing Mount Jezreel Baptist Church, located at 420 E. University Boulevard in Silver Spring. The requested special exception is a conditional use within the existing R-60 zone. The requested special exception proposes a maximum of 75 age-restricted dwelling units.

RECOMMENDATIONS

Staff finds that the requested special exception will have no adverse traffic impact on existing area roadway conditions or pedestrian facilities, as proposed. As a result, staff recommends approval of the special exception application and offers the following conditions and comments:

1. Limit the special exception use to a maximum of up to 75 senior adult dwelling units.
2. At the time of Preliminary Plan submission, the applicant must dedicate a minimum of 120' of right-of-way, along University Boulevard (MD 193).
3. At the time of Preliminary Plan submission, the applicant must provide a Public Improvement Easement, measuring 10-feet wide, over the shared use path along the site's MD 193 frontage.
4. At the time of Preliminary Plan submission, the applicant must provide a Public Access Easement, measuring at least 20-feet wide over the full-width of the internal driveway, to permit - access between University Boulevard and the special exception use.
5. At the time of Preliminary Plan submission, the applicant must submit a traffic impact study.

DISCUSSION**Vehicular Access and Parking**

The site is located on the grounds of the existing Mount Jezreel Baptist Church¹, which has vehicular access via three curb cuts on University Boulevard (M-19). M-19 is classified as a Major Highway with three travel lanes in each direction along the site frontage. These three access points are all uncontrolled and operate in the following manner:

1. A right-in/ right-out driveway (at the northwest corner of site)
2. A right-in only driveway (at the center of the site's frontage)
3. A full-movement driveway opposite Schuyler Road (at the southwest corner of site)

The subject special exception application does not propose any modifications to the existing vehicular access points, however, the proposed development will modify the site's internal circulation to allow access to the senior adult housing units proposed at the rear of the site. Staff finds that no adverse impacts will result from the proposed special exception use and that internal circulation will remain safe, adequate, and efficient.

Pedestrian and Transit Service

The site frontage on M-19 has an existing five-foot wide sidewalk at the back-of-curb. This sidewalk is part of a continuous sidewalk network connecting the Mount Jezreel Baptist Church with the immediate vicinity, including to Piney Branch Road (MD 320), approximately 0.5 miles to the south. Transit service is available from a bus stop along the site frontage and along Piney Branch Road. Specific transit routes within walking distance to the site include:

1. Metrobus routes: C2 and C4
2. Ride-On route: 14
3. Ride-On routes: 16, 20, and 24 are within a 10 minute (0.5 mi) walk of the site on MD 320

Master-Planned Roads and Bikeways

The *Approved and Adopted 2000 East Silver Spring Master Plan, 2005 Countywide Bikeway Functional Master Plan, and 2013 Countywide Transit Corridors Functional Master Plan (CTCFMP)* make the following recommendations:

- University Boulevard (MD 193) is designated as Major Highway M-19, with a 120-foot-wide right-of-way, between I-495 and Prince George's County. University Boulevard is identified as a Bus Rapid Transit (BRT) Corridor with a 124-foot-wide right-of-way. Dual Bikeway (DB-5), a master planned bikeway that includes a shared use path, is recommended along the east side of MD 193.

Although the 2013 CTCFMP calls for a 124-foot-wide right-of-way, staff recommends that only the 120-foot width be required in this location based on a wider-than-normal right-of-way on the opposite (western) side of MD 193; the established building lines of existing single family homes adjacent to the site's frontage; and the existence of the ultimate six-lane divided roadway configuration, as called for in the East Silver Spring Master Plan. As a result, any major reconstruction on this roadway would likely be implemented as a one-lane BRT in the median. At the time the median busway is implemented, the roadway should be widened within the existing right-of-way along the west side of MD 193. The

¹ The subject special exception petition will be followed by a future Preliminary Plan that will subdivide a portion of the Mount Jezreel Baptist Church property and the subject's special exception application into two lots. An evaluation of the proposed development's Transportation Adequate Public Facilities will be completed at the time of Preliminary Plan.

required shared use path along the site’s frontage should be placed within a Public Improvement Easement at the time of preliminary plan.

Future Abandonment of Malibu Drive

The Planning Board has the authority to abandon previously dedicated rights-of-way, that are not improved or in use by the public, through section 50-15(c)2 of the Subdivision Regulations. As part of the future preliminary plan submittal, the Applicant will request abandonment of a portion of Malibu Drive, an existing dedicated but unimproved right-of-way along the southeast corner of the property. Staff will review the right-of-way abandonment request at the time of preliminary plan and will make a recommendation to the Planning Board based on the analysis completed at that time.

Local Area Transportation Review (LATR)

The subject special exception petition generates fewer than 30 peak hour trips and is therefore required to submit a traffic statement to demonstrate the proposed special exception use impact on the transportation network. Based on the LATR trip generation rate, the proposed 75 senior adult dwelling units would generate 15 new morning peak-hour trips and 19 new evening peak-hour trips (Table 1). As a result of the minimal increase in site generated traffic during the morning peak-hour, staff finds that the traffic generated by the proposed special exception use would not adversely impact the existing traffic conditions.

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED SENIOR ADULT HOUSING**

	AM Peak Hour (total)	PM Peak Hour (total)
75 Senior Adult Dwelling Units	15	19

Trip generation for Senior Adult Dwelling Units based on ITE LUC 252.

Transportation Policy Area Review (TPAR)

New developments within the Silver Spring – Takoma Park Policy Area must satisfy the Transportation Policy Area Review (TPAR) test by making a one-time payment equal to 25% of the general district impact tax. This payment will be a requirement of approval for the subsequent Preliminary Plan.

May 11, 2015

RE: Montgomery County
MD 193
Mt. Jezreel Senior Housing
SHA Tracking No. 14APMO036XX
County No. 120150020
Traffic Impact Study
Mile Point 5.52

Mr. Matthew Folden, AICP
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Folden:

Thank you for the opportunity to review the Traffic Impact Study (TIS) prepared by Temoss, LLC, dated January 2015 (received on March 30, 2015), for the Mt. Jezreel Senior Housing and School redevelopment in Montgomery County, Maryland. The State Highway Administration (SHA) review is complete and we are pleased to respond.

The review determined the major report findings and the SHA comments and conclusions as follows:

- Access to the existing church and school site is via two (2) full movement site accesses to MD 193 (University Boulevard East) and one (1) inbound only access along MD 193.
- The proposed development would create 75 attached senior housing units and increase the school's enrollment to 80 students.
- The study analyzed the following intersections under existing, background and future conditions:
 - MD 193 intersection with E. Franklin Avenue
 - MD 193 intersection with Buckingham Drive/W. Wayne Avenue
 - MD X intersection with Site Accesses
- The report concludes that the study intersections will continue to operate at acceptable levels of service under future conditions.

Based on the information provided, the SHA offers the following comment:

1. The existing inbound-only access along MD 193 is located between and in very close proximity (approximately 160 feet) to the two (2) full movement accesses. The inbound-only access does not appear to provide unique utility to the site as it connects to

Mr. Matthew Folden
14APMO036XX
Page No. 2
May 11, 2015

the u-shaped internal driveway only 100 feet from the north access point. The SHA requests that the developer close this redundant access to eliminate a potential point of conflict and enhance corridor safety.

The SHA concurs with the report findings for this project as currently proposed and will not require the submission of any additional traffic analyses. However, an access permit will be required for the closure of the in-bound only access and any other construction within the SHA right of way. Please submit seven (7) hard copies and one (1) electronic copy of design plans and a point-by-point response addressing the above comment to the SHA Access Management Division addressed to Mr. Brian M. Romanowski. Please reference the SHA Tracking Number on future submissions. Unless specifically indicated in the SHA response on this report, the comments contained herewith do not supersede previous comments made on this development. If you have questions or comments regarding the enclosed traffic review, please contact Mr. Eric Waltman at 410-545-5597 or ewaltman@sha.state.md.us.

Sincerely,

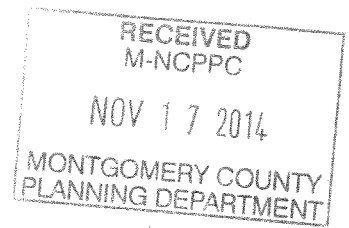
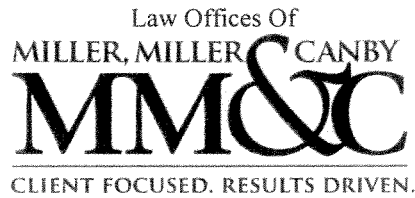


Brian M. Romanowski, Chief
Access Management Division



BMR/elw

cc: Ms. Samantha Biddle, SHA RIPD
Ms. Rola Daher, SHA DSED
Mr. Scott Holcomb, SAH DSED
Mr. Mark McKenzie, SHA AMD
Ms. Anyesha Mookherjee, SHA District 3
Mr. Cherian Eapen, Temoss LLC
Mr. Scott Newill, SHA AMD
Mr. Steve Rochon, SHA TDSD
Ms. Tina Saxon, SHA RIPD
Ms. Lisa Shemer, SHA DSED
Mr. Johnson Owusu-Amoako, SHA TDSD
Mr. Eric Waltman, SHA AMD



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JSKLINE@MMCANBY.COM

November 12, 2014

Ms. Kathy Reilly
 Zoning Analyst
 MNCPPC
 8787 Georgie Avenue
 Silver Spring, MD 20910

RE: Special Exception Case No. S-2877,
 Petition of Mt. Jezreel Baptist Church

Dear Kathy,

Pursuant to the requests in your letter dated October 8, 2014, I am pleased to provide the following information and materials.

1. Abandonment of Malibu Drive

A remaining portion of Malibu Drive abuts the property which is owned by the Petitioner. Malibu Drive was platted for public use by a plat recorded in 1954 (attached). The southern half of platted Malibu Drive was abandoned in conjunction with the processing of a preliminary plan of subdivision for "Block 2, BUCKINGHAM TERRACE" (attached) approved by the Planning Board in 1990. The text within the highlighted abandoned strip of Malibu Drive shown on the attached record plat reads: "Malibu St. 11,978 SF Abandoned by M.C.P.B. Resolution No. 90-32AB and by this Plat." (See enlarged version of text from plat attached).

Similarly, since Malibu Drive has previously been found not to be necessary for public use, the Petitioner has filed a preliminary plan of subdivision for the property of Mt. Jezreel Baptist Church, part of which is the subject of Special Exception Case No. S-2877, within which abandonment of the remaining platted portion of Malibu Drive has been requested. Section 49-68 of the County Code ("Road Code") allows for abandonment of platted rights-of-way during the subdivision or resubdivision review process when platted streets have not been placed into public use.

Finally, Mr. Martin Grossman of the Office of Zoning and Administrative Hearings has provided the Petitioner with a letter (attached) concluding that "...there is ample precedent for the Board of Appeals to act on a special exception matter which, at least in part, is conditioned upon a subsequent abandonment proceeding."

2. Parking Waiver

The Petitioner wishes to subject the minimum amount of its 9.73 acre parcel of land to the special exception (and to minimize the area subject to a mortgage to finance construction of the proposed elderly senior's facility). Accordingly, the area of the entire tract devoted to the special exception is only 3.18 acres of the entire 9.73 acre parcel of land.

In the interest of efficiency, it was determined that parking to serve the Church's needs and parking for the senior's housing facility should share common drive lanes without regard to the location of boundary lines between lots dedicated to different purposes, that is, the church on one lot (Lot 2) and the senior's building on another lot (Lot1) .

As a result of the design goal above, a drive lane within the special exception area is immediately adjacent to the northern boundary line of the special exception area and proposed Lot 1 whereas a setback of twenty-five (25) feet is required under Section 59-E-2.83(b) of the Zoning Ordinance (because the parking for the senior's housing is located in the rear yard of Lot 1 which has its frontage on Malibu Drive). For that reason, the Petitioner has requested a parking waiver of 25 feet so that the parking for both church and seniors housing uses can share the common driveway between them instead of having to respect artificial lot lines that would then force substantial setbacks from the boundary lines of those lots.

The staff is correct that extending the boundaries of the senior's housing lot to the northernmost limits of the Church's holdings would eliminate the need for these requested waivers because then all of the parking and drive lanes that support the seniors building and the Church's replacement parking would be located on a single lot and the effects of 59-E-2.81(b) would not come into consideration. But that resolution is inconsistent with the Church's goal of maintaining control of the maximum land area possible within its own lot (Lot 2).

Since nothing changes in the field regardless of the solution chosen, granting of the requested waivers is the best way to grant the relief sought by the Petitioner.

3. Inherent /Non-inherent Effects

A. Inherent Effects

In other cases dealing with this use category, planners have identified the following inherent characteristics:

- a. Size and mass of buildings and structures and outdoor assembly space
- b. Lighting
- c. Traffic
- d. Deliveries

e. Parking

f. Noise associated with normal garbage pickup and normal deliveries

The petition does not propose a building of greater size, height, or activity level than is found in other comparable situation and the application proposes a structure that is compatible with its surroundings.

Site lighting has been designed to provide adequate comfort and security for residents but will not be bothersome to surrounding residents.

Traffic to and from the site is via entrances and exits fronting on University Boulevard so no traffic will enter residential neighborhoods in order to access the site. There is adequate sight distance along University Boulevard in order to make safe turning movements to and from the site and the volume of traffic associated with a senior's facility of the size proposed does not even meet with County's threshold requiring a local area traffic review.

Deliveries of supplies will occur during business hours and will take place at a location (either the front door or a loading area on the northern edge of the building) which is set back a substantial distance (approximately 150 feet) from any surrounding residences, or is screened by the new building itself.

Parking areas are located in the "elbow" of the proposed building where the structure itself will screen noise and lights from residents located to the east or the south. Parking is set back approximately 150 feet from residences to the north (which are generally sited at a lower elevation than the parking lot).

Finally, as stated above, the location of the trash pickup and deliveries is well separated, and screened by the proposed senior's housing building, from surrounding single family residences.

B. Non-Inherent Effects

The only feature of the Petitioner's proposal that goes beyond the "Inherent Effect" test, is the Petitioner's proposal to construct a building that has its first floor higher in elevation than the first floor elevation of houses located to the east, southeast and southern sides of the building. The question therefore is whether the taller building (in terms of first floor elevations) will "tower" over the existing single family residences.

The proposed building will be taller in both absolute height and in terms of perception from the existing single family structures. For that reason, the building is "canted" or "bent" so that the distances between the building and the perimeter lot lines are maximized. Furthermore, the Petitioner will endeavor to maximize preservation of existing vegetation, and will plant additional vegetation, to create filtered views of the new building on its east and south facades. Finally, the south and east facades of the building will be detailed in a manner that is residential in its form and its design features.

4. Number of Employees

The number of employees that will be working at the facility at any given time will be three. That maximum number will be realized only during weekdays (Monday through Friday). On the weekends, staff will not exceed one in number.

5. Lighting

The Petitioner's Statement of Operations has been amended to indicate that yard lights will have a cutoff switch that will shut the lights off when they are no longer needed to illuminate the parking lot.

6. Parking

During meetings and discussions with the neighborhood, there were some comments from the residents living north of the Church's property that parishioners parked on public streets during Sunday services and/or special events at the Church. In response, the Church has agreed to implement an active campaign to educate parishioners and to encourage them to park on the Church's property.

Furthermore, the Church plans to create 22 new parking spaces on the Church's proposed Lot 22 that will be accessed from the internal road that loops around the Church and which will share an access driveway that also leads to parking for the senior's housing facility.

The Petitioner and its design team looks forward to working with you and your colleagues on this matter.

Sincerely yours,

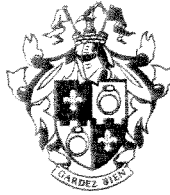
MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody". The signature is written in a cursive style and is positioned above a solid horizontal line.

Jody S. Kline

JSK/sf

cc: Donna Creedon
Kevin Foster
Todd Reddan
Logan Schutz



MONTGOMERY COUNTY, MARYLAND

January 28, 2014

Jody S. Kline, Esquire
Damon B. Orobona, Esquire
Miller, Miller & Canby
200-B Monroe Street
Rockville, Maryland 20850

Re: Your letter of January 23, 2014, concerning the sequencing of a potential special exception application and a request for a right-of-way abandonment for Mount Jezreel Baptist Church's senior housing project

Dear Messrs. Kline and Orobona:

This is in response to your letter of January 23, 2014, regarding the appropriate sequencing of a potential special exception application by Mount Jezreel Baptist Church's for a senior housing project, given that it must also obtain a right-of-way abandonment as part of its preliminary plan approval.

I should preface my remarks with the cautionary note that the type of special exception you mentioned (senior housing per Zoning Ordinance §59-G-2.35) would have to be approved by the Board of Appeals, after a hearing before the assigned Hearing Examiner. Thus, a ruling on any issue in the special exception case, including sequencing, would have to be made by the Board of Appeals following a hearing at which all parties would have the opportunity for input on the issue. Also, to avoid any concerns about *ex parte* contacts, your letter and this response will be made part of the record in any special exception application you may file in this case.

Having said that (and subject to any subsequent rulings in the case), I agree with the suggestion in your letter that, in this type of situation, it is appropriate to file a special exception application first, and if the special exception is granted, to condition it upon approval of a preliminary plan of subdivision which accomplishes any required right-of-way abandonment pursuant to Montgomery County Code Section 49-68.

I base this conclusion upon the language in Zoning Ordinance §59-G-1.21(9)(A), which provides:

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities

in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception. [Emphasis added.]

As mentioned in your letter, there is precedent for the Board of Appeals conditioning a special exception on approval of a preliminary plan, even when public facilities review is not the sole concern of the subdivision process.

Moreover, in approving the special exception modification application of Suburban Hospital, effective December 9, 2010, the Board of Appeals imposed the following condition (Opinion page 21):

1. All of the single family houses owned by Suburban Hospital, except those on the eight lots abutting only Lincoln Street between Old Georgetown Road and Grant Street (if the abandonment of Lincoln Street between Old Georgetown Road and Grant Street is approved by the County Council), and except Lots 7 and 8 on Southwick Street adjacent to the proposed Alternate Garage must be retained. [Emphasis added.]

Thus, there is ample precedent for the Board of Appeals to act on a special exception matter which, at least in part, is conditioned upon a subsequent abandonment proceeding.¹

Sincerely,



Martin L. Grossman, Director
Office of Zoning and Administrative Hearings

cc: Katherine Freeman, Executive Director
Board of Appeals
Mark Pfefferle, Chief, Development Applications and Regulatory Coordination
M-NCPPC Technical Staff
Case File, Special Exception Application
of Mount Jezreel Baptist Church

¹ The abandonment proceeding in the *Suburban Hospital* case required approval of the County Council because it involved a right-of-way already being used by the public as a street. The subject of the Mount Jezreel Baptist Church abandonment matter is reportedly not in the public use, and therefore may be subject to abandonment proceedings before the Planning Board pursuant to Code Section 49-68.



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

MEMORANDUM

TO: Kathy Reilly, Planner Coordinator, Area 1

FROM: Marco Fuster, Senior Planner Area 1

DATE: April 13, 2015

SUBJECT: **Environmental Review for S-2877 Mt. Jezreel Senior Housing**

RECOMMENDATION

Area 1 staff recommends **approval** of the Preliminary Forest Conservation Plan and Preliminary Plan 120130170 **with the following conditions:**

1. Approval of a Final Forest Conservation Plan must be secured, consistent with the approved Preliminary Forest Conservation Plan and associated conditions, prior to any clearing, grading or demolition on the site.
2. A Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to demolition, clearing, or grading and the Liber Folio for the easement must be referenced on the record plat.
3. The certificate of compliance for the off-site forest mitigation bank providing an equivalent credit of 0.67 acres (or amount as determined by the FFCP) must be submitted by applicant, then approved by M-NCPPC Office of the General Counsel prior to demolition, clearing, or grading.
4. As part of the preconstruction activities the applicant shall remove all existing structures, fencing, play equipment and debris from the proposed Category I Forest Conservation Easements (in coordination with the Forest Conservation Inspector).
5. The initial treatments for the control of the invasive species (to be specified on the FFCP) shall begin as part of the preconstruction activities (in coordination with the Forest Conservation Inspector). If necessary the initial treatment may be delayed until seasonally appropriate.

Environment

Environmental Guidelines and Forest Conservation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # [420141620](#) was approved for the project on July 22, 2014. The approved NRI/FSD shows there are 2.79 acres of forest onsite. The forest area is contiguous with offsite forest towards the south that is protected within an existing Category I Conservation Easement (associated with the Buckingham Terrace Townhomes which were constructed approximately nine years ago). There are manmade steep slopes present within the onsite forest areas; however there are no highly erodible soils, wetlands, or stream valley buffer on or near the subject property. There are four ephemeral channels located within the forest areas and generally running towards the south east. The channels only convey water in direct response to rainfall. The ephemeral channels do not meet the definition of a stream and therefore do not have an associated stream valley buffer. The site is located within the Northwest Branch watershed, which is a Use IV watershed¹. The on-site forest stand is rated as moderate priority for retention due to lack of buffer areas and the presence of invasive species (such as Japanese knotweed). Extensive control of invasive species along with supplemental native plantings will need to be addressed as part of the forest management plan (that will be specified as part of the FFCP approval). Additionally the forest areas also contain piles of debris and rubble that will also be addressed by the FFCP. The subject property contains numerous native trees, some of which are significant or specimen in size. The larger trees are discussed in more detail further below.

The application is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Preliminary Forest Conservation Plan has been submitted for approval (sent by email on March 25, 2015). The application includes 1.56 acres of on-site forest clearing, which is accounted for by the protection of 1.41 acres of retained forest and the planting of 0.66 acres of forest (2.07 acres of total onsite forest within Category I Conservation Easement). Additionally, there is a remaining 0.67 acre reforestation requirement that will be satisfied by the purchase of equivalent credits in an offsite Forest Conservation Bank.

Tree Save & Forest Conservation Variance

Section 22A-12(b)(3) of the 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at

¹ Use IV: Recreational Trout Waters

Waters that are capable of holding or supporting adult trout for put and take fishing, and that are managed as a special fishery by periodic stocking and seasonal catching (cold or warm waters).

least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Since the application includes removals and disturbance of trees that are $\geq 30''$ DBH, a variance is required. The applicant submitted a variance request on March 20, 2015 for the impacts and removals of subject trees (see Attachment B for variance request). The applicant's request is to remove one subject tree and to impact, (but retain) three subject trees, affecting a total of four trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Tree to be Removed

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
2	Norway Maple	33"	X	Fair	REMOVE

Trees to be Impacted but Retained

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
1	Red Maple	34"	37%	Good	SAVE
9	Red Oak	53"	3%	Good	SAVE
12	White Mulberry		10%	Fair /Poor	SAVE

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. In addition to the required findings outlined numerically below, staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship because the impacts are due to pedestrian sidewalk modifications that are required element of the development and furthermore the impacts to tree #12 are triggered by implementation of the Master Plan recommended, shared use access path for along University Boulevard.

Staff has reviewed this application, and, based on the existing circumstances and conditions on the property, staff agrees that there is an unwarranted hardship.

Variance Findings

Staff has made the following determination based on the required findings for granting of the requested variance:

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

The tree impacts are associated with pedestrian modifications fronting and within the site. The impacts are related to a Master Plan recommended shared pathway along the public road frontage and interior pathway connections that have been sited to reduce forest and tree impacts (while also providing a safe and efficient connection that addresses transportation concerns). Furthermore the one subject tree removal is of a Norway maple which is an invasive species that will be mitigated with native plantings. Therefore, the variance request would be granted to any applicant in a similar situation.

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

The requested variance is based on proposed development allowed under the existing zoning and the need to provide safe and adequate pedestrian circulation. Staff finds that the variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance and removals and mitigation is provided for the resources disturbed.

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.*

MCDPS staff approved the stormwater management concept for the project on January 28, 2015. The SWM concept proposes to meet the required SWM goals via microbiofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing stormdrain. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met. Therefore, the application will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendations

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 applicant's request was forwarded to the County Arborist on March 23, 2015. The County Arborist issued a response to the variance request on April 1, 2015 (Attachment A) and recommended that the variance be approved with the condition that appropriate mitigation be provided for the resources disturbed. Additionally, the County Arborist provided general recommendations on tree preservation techniques and calculating required mitigation.

Mitigation for Trees Subject to the Variance Provisions

Mitigation should be at a rate that approximates the form and function of the trees removed. The typical recommendation is that replacements occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. The one proposed removal is a 30" DBH Norway maple. Therefore Staff finds that the proposed three 3" caliper trees (9 caliper inches total) more than satisfies the 30 caliper inches of trees removed. The replacement trees will provide some immediate canopy and will eventually exceed the canopy area where the large tree has been removed.

Staff Recommendation on the Variance

As a result of the above findings, staff recommends that the Planning Board approve the applicant's request for a variance from the Forest Conservation Law to impact (but retain) three subject trees and remove one subject tree (affecting a total of four subject trees) associated with the application. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

Stormwater Management

As previously mentioned in the variance section of the report, the MCDPS staff approved the stormwater management concept for the project on January 28, 2015. The SWM concept proposes to meet the required SWM goals via microbiofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing stormdrain.

Noise

At the time of Preliminary Plan review any potential noise producing elements such as generators, exhaust vents, etc. will be assessed. Enclosures or other means of mitigating noise impacts for the existing and offsite residents and the new building tenants will be addressed.

GLW GUTSCHICK, LITTLE, & WEBER, P.A.
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

March 20, 2015

Forest Conservation Program Manager
Maryland National Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Mount Jezreel Senior Housing - Variance Request
Special Exception SE-2877

On behalf of our client, Mission First Housing Development Corporation, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:*
- (i) 30 inches or more; or*
 - (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.*

The Subject Property, Mount Jezreel Baptist Church, Parcels 160 and 213, is located 400 feet south from the intersection of East Melbourne Avenue and University Boulevard East (MD Route 193) in Silver Spring, Maryland. The existing site contains a Church and Private School on the western portion of the site adjacent to University Boulevard, and the rear or eastern portion of the property is unused and contains an open grass area and “Early Successional” forest stand (see NRI/FSD). Existing single family homes abut the property to the north, east, and part of the southern property boundary and across University Boulevard to the west. An existing townhouse development and associated forest conservation easement make up the remaining area adjacent to the southern property line. The applicant has requested Special Exception approval for a 75 unit senior apartment facility including parking, pedestrian and vehicular access, landscaping, storm water management, utilities and passive recreation areas.

As part of development on the Subject Property, the applicant is requesting a variance to affect the following trees that measures 30” or greater in diameter at breast height (dbh).

Request to impact the critical root zones of three trees:

- Tree #1 – 34” Red Maple, good condition
- Tree #9 – 53” Red Oak, good condition
- Tree #12 – 43” White Mulberry, fair/ poor condition (Crown and Trunk Damage)

Request to remove one tree:

Tree #2 – 30” Norway Maple, fair condition (Crown and Trunk Damage)

<u>TREE #</u>	<u>TREE TYPE</u>	<u>% DISTURBED</u>	<u>REASON</u>
1	Red Maple	37%	Sidewalk & bollard light installation
2	Norway Maple	100%	Sidewalk & tot-lot installation
9	Red Oak	3%	Sidewalk installation
12	White Mulberry	10%	Shared-use path installation

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:

Impacts to Critical Root Zones (CRZ) of Tree #1, and 9

The proposed development of a senior housing facility is located on the rear or eastern portion of a site, behind the existing church and school facility, and furthest from University Boulevard. There is existing circular vehicular access from University Boulevard traversing the site, serving the existing facilities, and will also serve as the vehicular access for the proposed senior housing. The proposed residential senior housing project will require pedestrian connectivity to University Boulevard for access to public bus transportation. Currently however, there is no pedestrian sidewalk connection to University Boulevard, or public transportation from the rear or eastern portion of the Subject Property.

To provide safe pedestrian connectivity, construction of a sidewalk with lighting from the housing facility to the bus stop at the southern end of University Boulevard will be required, and this sidewalk and lighting will impact the critical root zones of Tree #1 & 9 (also see impacts for Tree #2 below). Tree #9 (Red Oak) is located off-site, and contains existing critical root zone impacts (CRZ) from 12’-14’ of fill and asphalt driveway construction associated with the original church construction in the 1950’s (that also limits any roots in that CRZ impact area). Construction of the required 5’ sidewalk will have very minimal surface grading impacts to one side of Tree #9’s already impacted critical root zone (CRZ). Tree # 1 (Red Maple) also has existing critical root zone impacts, this time created by the cut condition required for installation of the existing asphalt driveway associated with the original church construction in the 1950’s. The proposed 5’ sidewalk and lighting will be located parallel to the existing driveway, in a gravel area currently used for car parking. The proposed sidewalk area is several feet below the growing level of Tree #1, and will require very limited grading that impacts the existing roots of Tree #1.

The current proposed sidewalk location, on the north side of the existing driveway, was moved from the originally designed location on opposite side of the driveway, (at the request of multiple review agencies) to limit the overall site impact to specimen trees, allow for increased forest conservation areas, provide joint connectivity and public transportation access to the existing school, provide residents better access to the church, and provide younger guests of residents access to the tot-lot. Providing a sidewalk along the north side of the existing driveway will provide the most direct and safest access for senior residents to public transportation while mitigating any minor environmental impact.

As an alternative to the proposed pedestrian sidewalk location, providing a pedestrian access route on the north side of the Subject Property, to eliminate any impacts the critical root zones of specimen trees, would create a significantly longer and difficult walk for mobility impaired senior residents, and would be significantly less safe due to the increased number of driveway crossings required for residents to access public transportation. Providing a significantly longer alternative route would clearly be an undue hardship on the future residents and create a less safe environment for future senior residents that inherently have walking and mobility issues.

Impacts to Critical Root Zones (CRZ) of Tree #12

The proposed senior housing development on the Subject Property will require frontage improvements along University Boulevard as part of the subdivision process with M-NCPPC, as well as the site access permit process with the Maryland State Highway Administration (MHTA). Based on the recommendations in the Silver Spring East Master Plan, the existing vehicular paving and lane configuration on University Boulevard is adequate as constructed, but a 10' shared-use path is required to be installed on the east side of University Boulevard, across the frontage of the Subject Property, by the applicant. To construct the required shared use pedestrian path, there will be minor grading and paving impacts to the critical root zone (CRZ) of Tree #12, which is located on-site. Only 10% or less of the critical root zone will be disturbed for this minor construction impact. Not constructing the shared-use path the applicant would be unable to fulfill the requirement of subdivision and would therefore deny the applicant the ability to subdivide the property or obtain an access permit from MHTA, and would clearly be an undue hardship on the applicant and owners of the property not to enjoy the full and customary use of their property.

Removal of Tree #2

Tree # 2 is a Norway Maple (invasive species) located near the existing southern driveway. It is in fair condition due to existing trunk and crown damage, and is proposed to be removed for the following reasons. First, to provide pedestrian connectivity for the senior housing facility, construction of a sidewalk to the bus stop at the southern end of University Boulevard will be required, and this sidewalk will impact the critical root zones of Tree #2. (See sidewalk impacts discussion above for Tree # 1 & 9. The entire discussion, justification, and conclusions also apply to tree #2.) Second, as part of the senior housing development, relocation of the existing school tot-lot facility is required. After analysis, the only available safe location that does require students to cross the driveway for access to the play facility is in the general location of Tree #2. Other alternate locations near University Boulevard, closer to traffic and further from the school are less safe and therefore were not acceptable. The combination of sidewalk construction and tot-lot relocation require the removal of Tree #2. The alternative of locating the tot-lot in a less safe location is an unacceptable and an undue hardship for the school, the students, the church and the applicant. Third, invasive plants have great potential for habitat destruction and environmental degradation. Lacking insect and or animal predators that kept these species under control in their native land, these non-native invasives, left unchecked, compete and kill native understory trees which affects bird, insect, and animal populations and negatively alters the composition of forest landscapes. It is important to target invasive species for removal to reduce the negative impacts of invasives and encourage the return of a healthy and diverse ecosystem of plants and wildlife.

2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:

The subject specimen trees are located mostly on the western and southern portions of the site. With the configuration of the existing development on the Subject Property including the church buildings, school building, parking areas and driveway access in the central portion of the site and existing forest along the rear of the property, the remaining potential development area for a senior housing facility was very limited to the rear central portion of the site. The proposed development has been specifically designed to utilize as

much of the existing site development as possible, including the existing site/driveway access, existing utility lines, and site grading to limit the overall impacts to the site. Great care has been taken to locate development to minimize impacts to significant and specimen trees, but as discussed above, impacts to specimen trees were unavoidable. The sidewalk layout along the southern property line has been revised to minimize disturbance to existing trees, and create better and safer pedestrian connectivity for the residents. Construction of a shared-use path along University Boulevard is recommended in the Silver Spring East Master Plan and will be required for any development on the Subject Property.

Not granting the variance for construction of the shared-use path would not allow the applicant to fulfill the recommendations of the Master Plan, therefore create an undue hardship on the applicant due to denial of subdivision of the property, and therefore deny the applicant ability to full use the property compared to similar properties. Not allowing implementation of the Master Plan is also not in the public interest. The inability to impact the specimen trees for the installation of sidewalk and tot-lot will create an unwarranted hardship and less safe condition for future residents of the facility and students at the school, and therefore creating an unwarranted hardship on the applicant. By enforcement of this chapter, it will deprive the landowner the full rights to build on the property compared to similar properties. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner.

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:

The variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. Storm Water Management Concept Plans (SM File #263675) was approved on January 28, 2015 by Montgomery County Department of Permitting Service. The approval of these plans confirms that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filter, planter boxes and structural underground storage, and therefore verify that State water quality standard will not be violated or that a measurable degradation in water quality will not occur. In addition to providing state-of-the-art “Environmental Site Design” storm water management for a site that currently has no storm water management and completely uncontrolled runoff, the proposed development will provide stabilization of eroding “man-made” steep slopes in the southeastern area of the site through the use of retaining walls, building construction, and slope re-grading. Erosion and water run-off will further be controlled by reduced the existing uncontrolled overland flow on adjacent properties, and provide forest cover through additional site reforestation. There are no existing streams, wetlands, or associated environmental buffers on site, therefore; there will be no impacts to any sensitive environmental features.

4. Provide any other information appropriate to support the request:

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the Master Plan shared-use path requirements, ADA pedestrian access requirement, existing public transportation routes, or plant the existing trees. The applicant has taken great care to locate development in the buildable area of the site while trying to minimize disturbance to the significant and specimen trees along the southern property line by redesigning the pedestrian access to the site. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to impact the critical root zone of three specimen trees and removal of one specimen tree on the subject

property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Julie Soss, ASLA



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

April 1, 2015

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

RE: Mt. Jezreel Senior Housing, S-2877, NRI/FSD application accepted on 4/25/2014

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

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, I make the following findings as the result of my review:

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 criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the

255 Rockville Pike, Suite 120 • Rockville, Maryland 20850 • 240-777-7770 • 240-777-7765 FAX
www.montgomerycountymd.gov/dep



variance can be granted under this criterion, 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 criterion.
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 criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet 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.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

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

Sincerely,



Laura Miller
County Arborist

cc: Marco Fuster, Senior Planner



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

RECEIVED
Diane R. Schwartz Jones
Director

January 28, 2015

FEB 02 2015

Mr. Todd Reddan
Gutschick, Little and Weber, PA
3909 National Drive
Burtonsville, MD 20866

Gutschick, Little & Weber, P.A.

Re: Stormwater Management **CONCEPT** Request
for Mt. Jezreel Senior Housing
Preliminary Plan #: 120150020
SM File #: 263675
Tract Size/Zone: 9.2 acres/ R-60
Total Concept Area: 2.89 acres
Lots/Block: Proposed lots 1 and 2
Parcel(s): Existing Parcels 160 and 213
Watershed: NW Branch

Dear Mr. Reddan:

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 proposes to meet required stormwater management goals via micro biofilters, planter boxes and structural underground storage so as not to exceed the capacity of the downstream existing storm drain.

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

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
5. The structural underground storage computations must be approved by the DPS Right of Way section to ensure proper attenuation to the existing storm drain at the detailed design stage.

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

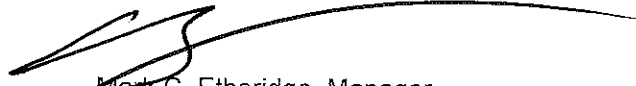
Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

Mr. Todd Reddan
January 28, 2015
Page 2 of 2

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 William Campbell at 240-777-6345.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: wrc

cc: C. Conlon
SM File # 263675

ESD Acres:	2.89
STRUCTURAL Acres:	3.76
WAIVED Acres:	0

Reilly, Kathy

From: vsano@aol.com
Sent: Tuesday, October 14, 2014 8:53 PM
To: Reilly, Kathy
Subject: Mt. Jezreel Baptist Church Elderly Housing Project
Attachments: CLIFTON_PARK_NEW_LETTER_TO_REV._SPEARMAN_MT._JEZREEL_CHURCH_(1).docx

Dear Ms. Reilly,

Thanks for taking time to speak with me about the Mt. Jezreel Baptist Church Elderly Housing Project Sept. 30. Sorry it took so long to get back to you. Attached is the letter that I sent to the church last May; it was signed by residents of 35 households in the Clifton Park neighborhood. Later, several of the neighbors who signed the letter attended a neighborhood meeting called by the church to discuss the project and presented our concerns. I have a hard copy of the signatures, but not an electronic version I can send you. If you would like to see the signatures, I can take a photo of them with my iPhone and send them that way. Please let me know; I'd be happy to do that. Marco Fuster never got in touch with me. If you can provide a phone number for him, I'll give him a call. Thanks again.

Sincerely,

Victoria Baldassano

240-389-8432
vsano@aol.com
9310 Compton Street
Silver Spring, Md. 20901

Victoria A. Baldassano for the
Undersigned Residents of Clifton Park*
9310 Compton Street
Silver Spring, Md. 20901
240-389-8432 / vsano@aol.com

Rev. Eldridge Spearman
Mount Jezreel Baptist Church
420 University Blvd. East
Silver Spring, MD 20901
May 13, 2014

Dear Rev. Spearman,

We are writing to express serious objections regarding the church's plans to build a senior housing facility on its property. This letter was prepared by Victoria Baldassano and signed by residents of the Clifton Park neighborhood (signatures are attached). The undersigned include those whose homes are adjacent to the proposed housing cite as well as residents who live in other parts of our community.

Residents whose homes are next to the proposed site recently received a certified letter with copies of the Preliminary Plan of Subdivision and Stormwater Management Concept Plan the church has filed with the Montgomery County Department of Permitting services. We understand that the church plans to build 75 senior housing units (56 1-bedroom units and 19 2-bedroom units). Since the property is currently zoned for religious facilities only, the church would have to obtain a Special Exception from the county to build the facility.

From a review of the plans, we see that the project would involve removing almost the entire forest on land owned by the church, with the exception of a very small forest conservation area. We are concerned about the negative effects this would have on the surrounding neighborhood. In particular, we ask that the church redesign its plan to avoid the removal of any trees in the forest. Below is a list of our concerns:

1. **Negative Environmental Impact:** Removal of the forest on land owned by the church would negatively affect the entire neighborhood. We value our green spaces for their beauty and shade and the life giving oxygen they provide, which helps combat global warming. Moreover, these woods are part of the Northwest Branch and provide a habitat for many different kinds of wildlife, which would be displaced. Planting a few trees and creating a 50-foot setback between the facility and adjacent homes would not sufficiently mitigate the loss of the forest. In 2000 the Maryland National Capital Park and Planning Commission adopted a Master Plan for East Silver Spring that addressed many issues, including the need for conservation of woodlands and trees in our neighborhood. The plan noted that "trees and forest play an important role in urban communities such as East Silver Spring, providing shade, urban heat reduction, aesthetic beauty, wildlife habitat, improved air quality, recreation benefits and the potential for reduced energy costs for homeowners."

As you know, the Montgomery County Department of Environmental Protection (DEP) has recently initiated a Green Streets Project in the Clifton Park and Franklin Knolls neighborhoods. The county will install 176 low impact development projects, which involve using vegetation to trap and absorb rainfall runoff into the soil. According to the DEP, this is part of a larger effort to "reduce storm water runoff, minimize pollution, promote infiltration, and restore stream conditions in the Northwest Branch, the Anacostia River, and the Chesapeake Bay." The Department notes that "[t]he Northwest Branch has been degraded by years of uncontrolled/untreated storm flows, which impact habitat for fish and other aquatic life and pollute the water. The impact on water quality not only affects the ecosystem, it can also directly affect human health and safety..." Removal of the forest would undoubtedly create more storm runoff, negatively impacting this important project.

2. **Stability of the Proposed Site:** We understand that the site of the proposed senior housing facility was created from landfill about 60 years ago. Moreover, the trees on the southeast corner of the site grow on a steep slope that leads down to neighboring homes. The plan calls for the land in this area to be leveled. Two 20-foot-high retaining walls would be built to hold back the soil. Given the heavy rainfall our area has experienced over the years and the nature of the terrain, we are concerned about the stability of the land, potential erosion of the remaining surrounding landscape, and possible flooding of nearby homes.

3. **Traffic Congestion and Parking Issues:** University Blvd. has become increasingly congested over the past few years, to the point where it is sometimes difficult for residents to drive out of the neighborhood. The senior housing facility would create increased traffic from visitors and housing personnel, which would exacerbate this problem. Parking is likely to be an issue as well, as the designated parking spaces indicated on the plan may not be sufficient. At present church vehicles often crowd nearby streets on Sunday, creating a nuisance for local residents and a potential obstacle for emergency vehicles.

4. **Decline in Property Values:** Homes in the Clifton Park neighborhood have lost significant value as a result of the recent economic decline, and those values have not yet been restored. Removing the woods would likely have a further negative effect on housing values.

We ask that you seriously consider our concerns and work with the community to resolve these issues. Thank you.

Sincerely,

Victoria Baldassano and other
Residents of the Clifton Park Neighborhood*

*The names and contact information for residents who signed this letter are attached. Some residents signed directly, while others gave permission via e-mail or phone to add their names.