

SEP 14 2009

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

MCPB No. 09-93
Site Plan No. 820050330
Project Name: Strathmore at Bel Pre, Lot 44
Date of Hearing: July 30, 2009

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on April 13, 2005, Faith Arts Academy Inc. ("Applicant"), filed an application for approval of a site plan for one lot for a private educational institutional use (modular unit classroom) associated with a religious organization, ("Site Plan" or "Plan") on 0.561 acres of R-90 zoned land, located on Layhill Road west of the intersection with Middlevale Lane within the Aspen Hill Master Plan ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820050330, Strathmore at Bel Pre, Lot 44 (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 24, 2008, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 4, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on December 4, 2008 the Planning Board voted to approve the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Cryor; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor; and

Approved as to
Legal Sufficiency:

Christina Sorrento 9/3/09

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WHEREAS, on July 9, 2009, the Planning Board granted a reconsideration of the adopted Site Plan Resolution dated April 24, 2009 to determine whether special Site Plan considerations are required for the Property and to make sure that the Site Plan ensures adequate protection of the adjacent park; and

WHEREAS, Planning Board staff ("Staff") issued a supplemental memorandum to the Planning Board, dated July 17, 2009, setting forth its analysis of, and recommendation for approval of the Application and issues associated with the reconsideration request, and incorporating the analysis from the November 24, 2008 staff report, subject to certain conditions ("Staff Report"); and

WHEREAS, following additional review and analysis of the Application by Staff on July 30, 2009, the Planning Board held a second public hearing on the Application to address the reasons for reconsideration (the "Reconsideration Hearing"); and

WHEREAS, at the Reconsideration Hearing, Staff confirmed that it properly reviewed the Site Plan in accordance with Chapter 59 of the Montgomery County Code, the Zoning Ordinance, as required by House Bill 399; and

WHEREAS, at the Reconsideration Hearing, the Planning Board heard testimony from Mr. Richard Kauffunger, who filed the application for reconsideration, as well as other individuals and received evidence regarding the use proposed for the lot, off-site parking in the adjacent surface parking lot for the Matthew Henson Trail, size of the classrooms proposed and clearing proposed through Park property for a sewer connection; and

WHEREAS, Staff confirmed that the Parks Department is constructing a sign, as discussed in the previous hearing, to notify park patrons that parking for the trail head is provided in the spaces allocated and notify patrons of the private educational use that parking in the trail head parking lot is intended for park patrons; and

WHEREAS, on July 30, 2009 the Planning Board approved the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Cryor; with a vote of [4-0], Commissioners Alfandre, Cryor, Hansen, and Wells-Harley voting in favor; and Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820050330 for one lot for a private educational institutional use (modular unit classroom) associated with a religious organization, on 0.561 gross acres in the R-90 zone, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of the approved Resolution for Preliminary Plan No. 120050870 ("Preliminary Plan").

2. Site Plan
Approval under the Preliminary Plan is limited to one lot for a 10,854 square foot modular building for a private institutional use to accommodate a maximum of 30 children for the entire Faith Arts Academy School
3. Park Planning and Stewardship
The Applicant shall comply with the following conditions as outlined in the Staff memorandum dated September 15, 2008 from Park Planning and Stewardship:
 - a. Any proposed church access through M-NCPPC owned or managed property off of Layhill Road must be approved by M-NCPPC Staff prior to its construction. Engineering details must be prepared by Applicant and submitted to M-NCPPC Staff for approval prior to proceeding with construction. A park permit is required for construction of any church related access or grading on the park property.
 - b. Applicant to prepare an Access Easement Agreement that allows church users to access the church and related facilities through the entrance located on M-NCPPC land. This proposed Agreement is to be submitted to M-NCPPC Staff for approval and execution prior to any construction by Applicant of a connection to the park entrance.
 - c. Applicant to submit detailed engineering documents regarding alignment and construction of any proposed sewer and water lines and stormwater outfall proposed on parkland for M-NCPPC approval prior to construction. A park permit is required for construction of these lines and outfall.
 - d. Any necessary acceleration/deceleration lanes required on Layhill Road when the Applicant constructs its access to the park/church entrance will be the sole responsibility of the Applicant.
4. Lighting
 - a. On-site street and parking lot downlighting fixtures must be full cut-off fixtures;
 - b. Deflectors must be installed on all up-lighting fixtures causing potential glare or excess illumination;
 - c. Illumination levels, excluding streetscape light fixtures, shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties.
5. Landscaping & Environment
 - a. Provide a more common variety of street tree along Layhill Road.
 - b. Provide additional foundation planting in the front of the proposed building.
6. Forest Conservation

The proposed development shall comply with the conditions of the preliminary forest conservation plan. The Applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits:

- a. Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
- b. The final forest conservation plan must reflect all requirements found in Section 109.B of the Forest Conservation Regulations (COMCOR 18-01AM). This includes:
 - i. A method of meeting this plan's planting requirements
 - ii. If off-site reforestation/afforestation is chosen, a reforestation/afforestation plan with full planting plan, location and maintenance plan must be included as part of the submission.
- c. A certified arborist must be present at the pre-construction meeting, during construction, and after construction to implement specific tree protection measures as identified on the forest conservation plan.
- d. All financial security must be submitted to M-NCPPC prior to any demolition, clearing, or grading on the Subject Property.

7. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated June 4, 2007, unless amended and approved by MCDPS.

8. Development Program

The Applicant must construct the proposed development in accordance with the Development Program. A Development Program shall be reviewed and approved by M-NCPPC Staff prior to approval of the Certified Site Plan. The Development Program shall include a phasing schedule as follows:

- a. Offsite easements/agreements must be executed prior to clearing and grading;
- b. Final paving and striping must be completed within six months of the occupancy of the classroom;
- c. Landscaping, including the street trees and foundation planting, and the on-site lighting must be completed within six months of the occupancy of the proposed building;
- d. Specify phasing of pre-construction meetings, dedications, sediment/erosion control, or other features.

9. Clearing and Grading

Applicant must ensure that there is no clearing or grading of the Subject Property prior to M-NCPPC approval of the Certified Site Plan.

10. Certified Site Plan

Prior to Certified Site Plan approval the following revisions shall be included and/or information provided, subject to Staff review and approval:

- a. Minor corrections and clarifications to site details and labeling;
- b. Minor corrections to the data table for parking;
- c. Additional foundation planting and changes to the plant list;
- d. Development Program, Inspection Schedule, and Site Plan Resolution.

BE IT FURTHER RESOLVED that all site development elements as shown on Strathmore at Bel Pre, Lot 44 drawings stamped by the M-NCPPC on September 5, 2008 shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The proposed development is not subject to a Development Plan, Diagrammatic Plan or Project Plan.

2. *The Site Plan meets all of the requirements of the R-90 zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the R-90 zone as demonstrated in the project Data Table shown below.

Requirements of the R-90 zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the R-90 Zone. The Board further finds that the proposed private educational use related to a religious organization is not subject to a special exception and is exempt from the special exception requirements under

Section 59-G-2.19(e) of the Montgomery County Zoning Ordinance. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standard	Permitted/Required	Development Standards Approved by the Board and Binding on the Applicant
Lot Area (square feet)	9,000	26,136
Max. Density	N/A ¹	10,854 ²
Min. MPDUs (% of total du)	Not Applicable	Not Applicable

Min. Building Setbacks (ft.)		
<i>From Street</i>	25	48
<i>Rear</i>	25	63
<i>Side</i>	8/25	12/44
<i>Min. lot width at BRL</i>	75	168
<i>Min. lot width at Street</i>	25	138
Max. Building Height (ft.)	35	15
Max. Building Coverage (%)	30	22
Min. Lot Width (ft.)	Not Specified	16
Max. Parking Spaces	Not Specified	12

¹ Density is limited by lot coverage for this use.

² Approximate footprint of the building is 5,427 square feet.

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

a. Locations of buildings and structures

The proposed modular classroom is sited an adequate distance from Layhill Road and proportionally on the site to accommodate the parking needs of the classroom and adjacent church activities. The height of the proposed building is 15 feet, which is relatively low in scale compared to the surrounding buildings, existing church and existing houses to the west of the church. The building is rectangular in shape and is sited approximately 48 feet from Layhill Road with a building envelope adequately suited for the building. Parking for patrons of the classroom is located in front of the building with the primary office entrance on the south side closest to the existing church and parking for the church. The location of the modular building is adequate, safe, and efficient.

b. Open Spaces

The Site Plan proposes approximately 22 percent building coverage, which is under the maximum allowed by 8 percent. The site has no green space requirement within the zone. The site has ample open space around the perimeter of the building, and the access to the adjacent park and church is adequate, safe, and efficient.

c. Landscaping and Lighting

The proposed landscaping on the site consists of a double row of trees along Layhill Road. The Applicant will need to provide additional foundation planting around the proposed classroom building and on the north side to provide for a buffer to the existing parking for the Matthew Henson trail head. As amended, landscaping will provide for adequate, safe, and efficient site buffering and planting.

The lighting plan consists of wall-mounted fixtures on the building façade to provide for illumination and safety for church patrons of the classroom and parking areas. All site lighting will provide adequate, safe, and efficient site illumination.

d. Recreation Facilities

The Application is not subject to the Recreation Guidelines as this is not considered a residential project.

e. Pedestrian and Vehicular Circulation Systems

Vehicular access to the school is limited to ingress only via the shared access driveway across the M-NCPPC property from Layhill Road for the school directly across from Middlevale Lane. The one-way access drive continues to the adjacent church property toward the south, which contains a right-in-right-out at Layhill Road. Pedestrian access is provided via a striped crosswalk driveway connecting the site to the existing church and driveways connecting the site to the sidewalk on Layhill Road. Local Area Transportation and Policy Area Mobility Reviews are not required for this exempt use.

The Parks Department is constructing a sign to notify park patrons that parking for the trail head is provided in the spaces allocated and to notify patrons of the private educational use that parking in the trail head parking lot is intended for park patrons only. The sign will be placed in the most appropriate location to provide for enhanced visibility of the parking area associated with the trail.

Therefore, the Planning Board finds that the vehicular and pedestrian circulation is adequate, safe and efficient.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed classroom is buffered adequately from properties to the north and creates an appropriate front onto Layhill Road. The development provides an extension of the adjacent church facility and is compatible with the other existing and proposed residential and institutional uses surrounding the site. The proposed buildings adequately transition to the existing church on the adjacent lot to the south.

At the first hearing, the Planning Board heard testimony about the appearance of, and parking issues associated with, both the school and the adjacent church, which are located on separate lots. Specifically, representatives of local civic groups testified that the church parking lot houses a dumpster and a trailer, and expressed a desire to see those items removed. These representatives further testified that the dumpster and trailer render 16 parking spaces unusable, and expressed a concern that these conditions could result in inadequate church parking, which, in turn, might lead to overflow parking in the adjacent Matthew Henson Park parking area. Concerns about the appearance of items in the church parking lot and the adequacy of parking at the church are beyond the scope of this proceeding. However, the Board notes that it also heard testimony from Staff that even with 16 spaces eliminated the church currently exceeds the number of spaces

required. The issue of potential overflow parking at the adjacent trailhead will be addressed by signage restricting parking to park users.

Additionally, at the first hearing, there were two primary design concerns raised with respect to the proposed building. The civic group representatives argued that the proposed building should be screened from the Matthew Henson Park, and that the building wall facing Layhill Road should be broken up with design details that will prevent it from having a monotonous appearance. The Board finds that the design concerns raised with respect to the proposed building have been addressed. Specifically, the desire to have the building wall fronting on Layhill Road broken up with design features will be addressed by the location of the front door to the school and windows along that façade. Enhanced planting between the proposed building and the Matthew Henson Park will adequately screen the building from the park. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.

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

The proposed storm water management concept approved on June 4, 2007, includes on-site channel protection measures via a dry pond and flow dispersion; on-site water quality control via sand filters, bio-filters, a proprietary filter with structural pretreatment, and non-structural methods; and on-site recharge via non-structural methods including dry wells and recharge trenches.

The Maryland Department of Natural Resources (DNR) granted an exemption from the forest conservation requirements to allow minor clearing in August of 2001 (FCA-File#CO2-04), and the Department of Permitting Services granted approval of a sediment control permit (SC permit 203877). After the Preliminary and Site Plans were filed in 2005, the Applicant was required to submit a forest conservation plan addressing the forest conservation requirements and account for the forest clearing with the applications.

The conditions of approval for the Site Plan and forest conservation plan require the Applicant to obtain these approvals prior to any clearing and grading on the Property. The Applicant is responsible for mitigating any clearing associated with the proposed development. The Planning Board

finds that the Site Plan meets all of the applicable requirements of the Forest Conservation Law.

6. *Community Concerns.*

At the Reconsideration Hearing, Mr. Kauffunger raised three main objections to the Site Plan. First, Mr. Kauffunger argued that the Application should have gone through a Special Exception process because the Property is not owned by Faith Community Baptist Church but by Faith Arts Academy, Inc. At the Reconsideration Hearing, Staff referred to the Special Exception exemptions under Section 59-G-2.19(e) and testified that the common practice is to grant an exemption for a private educational institution associated with a religious organization as long as the religious organization is using the school as their own. This argument was outside of the scope of reconsideration hearing, which is limited to the reasons for which reconsideration was granted. But even if it was properly before the Board, this development did not require a Special Exception for the reasons explained by Staff. Namely, Section 59-G-2.19(e) provides that "[t]he requirements of Section G-2.19," which creates a Special Exception requirements for private educational institutions generally, "do not apply to the use of any lot, lots or tract of land for any private educational institution or parochial school, which is located in a building or on premises owned or leased by any church or religious institution...."

The second objection Mr. Kauffunger raised is that the school is too big for the number of students it is limited to by the Application. The Preliminary Plan and Site Plan approvals both limit the number of students to 30. Any increase in enrollment above 30 students will require APF review and a traffic study, which may result in additional improvements and requirements. The Planning Board is not responsible for determining whether a school is too big for the number of students. As long as the appropriate requirements such as APF are met, the Planning Board does not have the authority to limit the classroom to student ratio. Therefore, the Planning Board finds that the appropriate requirements of the zone were met and the Site Plan was properly approved.

The third argument is that Mr. Kauffunger believes that the State Delegation wanted a more stringent Site Plan review for this Property and that is what is required by House Bill 399. This argument is the original reason the Board granted reconsideration. The Planning Board and its Staff re-examined House Bill 399, which governs this Property in preparation for the Reconsideration Hearing. House Bill 399 specifically states that the Application must undergo site plan review under Chapter 59 of the Montgomery County Code. The Bill did not create more stringent standards than those already applied to this Application by Chapter 59. The Planning Board finds that the

Application meets all of the applicable site plan criteria under Chapter 59 as required by House Bill 399.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

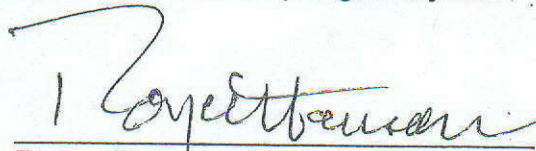
BE IT FURTHER RESOLVED, that the date of this Resolution is SEP 14 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board