



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

**MCPB No. 11-100**  
**Preliminary Plan No. 120100080**  
**St. Jude AME Church**  
**Date of Hearing: October 20, 2011**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on January 8, 2010, Troy McWilliams for the St. Jude AME Church ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.93 acres of land in the RE-2/TDR zone, located on Brink Road approximately 1,000 feet east of the intersection with Wildcat Road ("Property" or "Subject Property"), in the Agriculture & Rural Open Space (AROS) Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100080, St. Jude AME Church ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 7, 2011, setting forth its analysis, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on October 20, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 20, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Anderson; with a vote of 4-0, Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley, voting in favor with Commissioner Presley absent.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue

*Christina Sorent* 1/18/12  
MNCPPC Legal Department

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NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100080 to create one lot on the Subject Property, subject to the following conditions:

1. Development is limited to a house of worship with no weekday child daycare or weekday educational uses.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan dated February 14, 2011. The Applicant must meet all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate, including
  - 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. Mitigation for the loss of three specimen trees to be provided by planting nine, 3-inch caliper native trees on site. The proposed mitigation must be included on the Final Forest Conservation Plan.
  - c. Final Sediment Control Plan must be consistent with the final limit of disturbance as approved by M-NCPPC Staff.
3. The Applicant must dedicate, and the record plat must reflect, the master-planned recommended 80-foot right-of-way (68 feet from centerline to match the existing right-of-way dedication from existing properties) for Brink Road as shown on the Preliminary Plan.
4. The Applicant must construct a five-foot wide sidewalk along the frontage of Brink Road prior to issuance of a building permit unless construction is waived by MCDPS.
5. The Applicant must provide one inverted-U bike rack within 50 feet of the main entrance.
6. The Applicant must comply with the conditions of approval of the Montgomery County Fire and Rescue (MCF&R) letter dated January 10, 2011. These conditions may be amended by MCF&R, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. The Applicant must comply with the conditions of approval of the Montgomery County Department of Transportation (MCDOT) letter dated July 29, 2010. These conditions may be amended by the MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must comply with the conditions of the MCDPS stormwater management concept approval letter dated June 29, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

9. The Applicant must comply with the conditions of the MCDPS Well and Septic approval letter dated June 23, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
10. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
11. All necessary easements must be shown on the Record Plat.

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

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

The Property is located within the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (1980) ("AROS Master Plan"). In general, the AROS Master Plan recommends the "preservation of agriculture and rural open space utilizing traditional and innovative planning techniques." The agricultural opportunities on this Property, however, are extremely limited due to the size and narrow shape of the Property. The subdivision will not further reduce the amount of farmland within the AROS Master Plan boundary and is consistent with the low-density development envisioned and allowed by the Master Plan. Thus, the Planning Board finds the Preliminary Plan substantially conforms with the recommendations of the AROS Master Plan.

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

Pursuant to Montgomery County Code, Section 50-35(k)(6), an Adequate Public Facilities (APF) review for roads and public transportation facilities is not required for any place of worship, including a residence for religious staff, parish hall or an addition to a school associated with a place of worship. According to the Applicant's traffic statement, submitted September 22, 2009, the proposed use on the Property does not include a weekday childcare facility or weekday private school and, therefore; it will not generate more than two weekday peak-hour trips. The Board finds that an APF review, for Local Area Transportation Review and Policy Area Mobility Reviews is not required.

Safe and adequate vehicular ingress and egress will be provided by the full movement driveway from Brink Road. Pedestrian access is provided via a

sidewalk along the east side of the proposed driveway, which will connect to, and circle the house of worship.

Other public facilities and services are available and can be provided to serve the Subject Property. The Property will be served by a private well and a private septic system, both of which have been approved by the Montgomery County Department of Permitting Services. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Electrical, gas, and telecommunications services are also available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Application meets the requirements and standards of all applicable sections of the Subdivision Regulations, Montgomery County Code, Chapter 50. The lot size, width, shape and orientation are appropriate for the location of the subdivision given the Subject Property's use as a place of worship.

Further, the Board finds that the lot complies with Section 59-C-1.32 of the Zoning Ordinance. While Section 59-C-1.32 specifies a minimum lot size in the RE-2 zone of 87,120 square feet, it provides the following exemption in Footnote 1:

"The following lots shall have the area and dimensional requirements of the zone applicable to them prior to their classification (Sectional Map Amendment (SMA)) in the RE-2, RE-2C, and RE-1 zones: . . . (2) A lot created by deed on or before the approval date of the most recent sectional map amendment that included the lot,..."

The Property was created by a deed recorded prior to 1900 and has remained unchanged in that original metes and bounds configuration since then with an area of 83,898 square feet. The most recent SMA that included the Subject Property was approved in February of 1990 (G-652), when the zoning of the Property was changed from RE-2 to RE-2/TDR. The Property also existed at the time of the previous SMA that included the Property, adopted in August of 1974 (F-925), which changed the zoning of the Property from R-200 to RE-2. The R-200 zone requires a minimum area of 20,000 square feet for a lot and the RE-2 zone requires a minimum area of 87,120 square feet. In situations such as this, the Planning Board has historically recognized that if a property meets the area and dimensional requirements of the zoning applied by the SMA that preceded

the most recent SMA, it continues to comply with Section 59-C-1.32 of the Zoning Ordinance.

The Property met the area and dimensional requirements of the zone in place prior to adoption of SMA F-925 in 1974. Therefore, the Planning Board finds that the Property complies with Section 59-C-1.32 of the Zoning Ordinance.

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

A. Forest Conservation

As required by the Montgomery County Forest Conservation Law, the Applicant submitted a Preliminary Forest Conservation Plan (FCP) for the project with the Preliminary Plan. The Preliminary FCP proposes to clear the 0.83 acres of forest onsite for the construction of the stormwater management facilities and septic field. There is a 0.82 acre forest planting requirement that will be met offsite and finalized by Staff at the time of the Final FCP. There are no other sensitive environmental features on the Property. The Planning Board finds that with the conditions, the Preliminary Plan is in compliance with the Forest Conservation Law.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require 3 Protected Trees 30 inches DBH (Diameter at Breast Height) and greater to be removed. Further, the project will impact 5 Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree Variance will not confer on the Applicant a special privilege*

*that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant. The Property is less than two acres in size and the layout of the development is limited by the narrow, linear shape of the Property. The Protected Trees and their critical root zones lie within the developable area of the site. The three trees proposed for removal are located within the portion of the Property that meets the requirements for placement of a required septic field. One tree will be impacted by grading necessary for the construction of the required stormwater management facility, and the other four trees are located adjacent to the eastern property line and will be impacted by grading necessary for the construction of the church and associated parking lot. The narrow width of the Property limits the options available for its layout. The development activities that result in the removal and impacts to trees subject to the variance requirement are within the existing developed area of the Property. Staff has determined that the removal and impacts to the trees subject to the variance requirement cannot be avoided. Therefore, the Planning Board finds that granting this variance does not confer a special privilege that would be denied to other applicants.

- ii. The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions.

- iii. The need for the Tree Variance 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 conditions on the Subject Property and not a result of land or building use on a neighboring property.

- iv. Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

MCDPS has found the stormwater management concept for the Property to be acceptable and conditionally approved it on June 29, 2010. The granting of this variance request will not result in the removal of any trees or impacts to critical root zones located within the environmental buffers. Therefore, granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.

C. Forest Conservation Variance mitigation.

There are three (3) trees proposed for removal in this variance request. The mitigation rate is based on the form and function of the trees removed. Accordingly, replacement must occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. Thus, for the 108 caliper inches of trees removed, the Applicant must mitigate by planting nine (9) native canopy trees with a minimum size of 3" DBH on the Property. While these replacement trees will not be as large as the trees lost, they will provide some immediate canopy and ultimately replace the canopy lost by the removal of the trees. There is some disturbance within the critical root zones of five other trees but they are good candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for the trees that will be impacted but retained.

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

- 5. The Board finds that the Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The Montgomery County Department of Permitting Services, Stormwater Management Section, approved the stormwater management concept for the project on June 29, 2010. The concept consists of onsite water quality control and on site recharge through the use of Environmental Site Design. Therefore, the Board finds that the Application meets all applicable stormwater management requirements.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

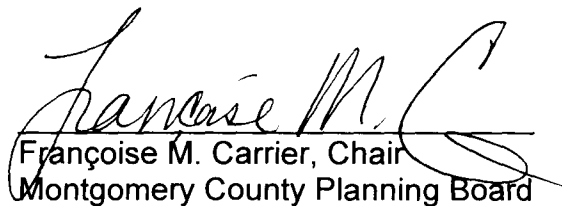
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 2 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley abstaining, at its regular meeting held on Thursday, January 26, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board