



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-112
Preliminary Plan No. 11999001A
Montgomery Chinese Christian Church
Date of Hearing: November 10, 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 March 30, 2011, Montgomery Chinese Christian Church ("Applicant"), filed an application for approval of an amendment to a preliminary plan of subdivision of property that would amend the previously approved Preliminary Plan No. 119990010, for a 240 seat house of worship with no weekday uses, and would amend the conservation easements on 4.95 acres of land in the R-200 zone, located in the southeast corner of the intersection of McKnew Road and Sandy Spring Road (MD 198) ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11999001A, Montgomery Chinese Christian Church ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated October 28, 2011, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on November 10, 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 November 10, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Anderson,

Approved as to
Legal Sufficiency:

Christina Sorrento 2/7/12
MNCPPC Legal Department

8787 Georgia Avenue, Suite 200, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

seconded by Commissioner Dreyfuss, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, 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 50, the Planning Board approved Preliminary Plan No. 11999001A to amend the previously approved Preliminary Plan No. 119990010 for a 240 seat house of worship with no weekday uses, and to amend the conservation easements on the Subject Property, subject to the following conditions:

1. Under this approval, the uses on the Subject Property are limited to a house of worship with no weekday child daycare or weekday private educational classes. This approval supersedes the existing Adequate Public Facilities agreements with the Planning Board.
2. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan. The Applicant must satisfy all conditions prior to the recordation of the record plat or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
 - a. The record plat must reflect a Category I conservation easement over all areas of forest conservation as shown on the Final Forest Conservation Plan.
 - b. Final Sediment Control Plan must be consistent with the final limit of disturbance as approved by the M-NCPPC Staff.
 - c. Permanent Category I Forest Conservation Easement signs must be placed along the perimeter of the conservation easement area.
 - d. Permanent barriers must be installed to block entry into the Category I conservation easement area at the existing driveway entrance in the southwestern corner of the Property.
 - e. Prior to issuance of the building permit, the Applicant must provide and implement an Invasive Species Removal and Management Program for the area within the proposed Category I conservation easement.
 - f. Prior to the issuance of the building permit, the Applicant must install split rail fencing as shown on the Final Forest Conservation Plan.
3. Other necessary easements must be shown on the record plat.
4. Prior to recordation of plat, the Applicant must revise the Landscape and Lighting Plan to incorporate additional shade trees around the proposed parking lot.

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 1998 Fairland Master Plan makes no specific recommendations for the Property other than to continue the R-200 zoning in the general area south of Sandy Spring Road and east of the Burtonsville Industrial area located adjacent to the intersection of Rt. 29 and Sandy Spring Road. The Master Plan is silent on private institutional uses. As a permitted use in the R-200 zone, a private institutional use is in substantial conformance with the Fairland Master Plan.

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

A. Roads and Transportation Facilities

This house of worship is exempt from the requirements of Adequate Public Facilities (APF) review under Section 50-35(k)(6) because the use does not generate peak hour trips. The Montgomery County Department of Transportation will address any frontage improvements with the issuance of access permits. No additional dedications are required for McKnew Road or Sandy Spring Road.

B. Other Public Facilities and Services

While houses of worship are generally exempt from APF review, the Planning Board finds that all local utilities, including water, sewer, telecommunications and electrical service are adequate and can serve the proposed use. Construction of local utility extensions may be required to serve the building. Montgomery County Fire and Rescue Services has review authority at the time of building permit to address access for emergency vehicles.

3. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:

A. Forest Conservation

A Final Forest Conservation Plan was approved on December 10, 1998 as part of the approval of Preliminary Plan No. 119990010. The Forest Conservation Plan allowed for forest clearing and included a planting requirement. The retained forest and the planted forest were to be protected in three separate conservation easements onsite. There are approximately 1.14 acres of forest on the Property. Per the amended Final Forest Conservation Plan, the Applicant will retain and protect all 1.14 acres of forest in a Category I conservation easement.

The conservation easements on the Property will be amended to protect the 1.14 acres of existing forest in one contiguous easement.

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, while this project will not require the removal of any Protected Trees, 30 inches and greater DBH, the project will impact three Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Tree survives anticipated construction impacts, 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. Disturbance to the trees is due to the development of the site. The Property is currently developed and these trees are located within the developable area of the site (outside of the environmental buffer), and outside of the existing forest. Granting a variance request to allow land disturbance within the developable portion of a site does not confer a unique privilege to this Applicant.

- 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 that are the result of actions of the Applicant. The variance is based upon existing site conditions, required site development and stormwater management best management practices.

- 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 proposed development 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.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Sediment Control Plan and Stormwater Management Plan will be approved by the Montgomery County Department of Permitting Services prior to any land disturbing activity on the Property.

C. Forest Conservation Variance Mitigation

The Board agrees with the Staff recommendation that no mitigation is recommended for trees impacted but retained. These trees are candidates for safe retention and will receive adequate tree protection measures.

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

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

This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan and sediment and erosion control plan meet MCDPS' standards.

- 5. The lot complies with the Subdivision Regulations and Zoning Ordinance*

The lot complies with Chapter 50, the Subdivision Regulations. The size, shape, width and orientation of the lot are appropriate in this location given the approved use on the Property. The lot and the use comply with the protection of environmentally sensitive resources. This amended Preliminary Plan provides superior protection of the forest resource.

The proposed lot complies with the Zoning Ordinance requirements for the R-200 zone. The lot meets all area and dimensional requirements with regard to area, frontage, width, and setbacks in that zone as specified in Section 59-C-1.32.

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 21 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).

* * * * *

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and Commissioner Presley abstaining, at its regular meeting held on Thursday, February 16, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board