

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed DDS-567 & VDDS-567 requesting 1) a departure from bufferyard setbacks from property lines and 2) a variance from retaining walls over six feet in height, being less than setback requirements from property lines in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on July 20, 2006, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject site is known as part of Lot 1, Block T, and is located in the northeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Sheridan Street. The subject site is L-shaped and has frontage on and proposed access to both of these roadways. The site wraps around the rear of the Takoma Park Square shopping center located at the corner of the intersection. The property is wooded along the narrow pipe stem portion located on the north side of the shopping center and is generally cleared east of the center, where it starts sloping downward over 30 feet toward the adjacent Keystone apartment complex. The cross slope is between 12 to 18 percent. The wooded area of the property is heavily littered.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	C-S-C	C-S-C
Use(s)	Undeveloped	Church
Acreage	1.44	1.44
Lots	1	1
Square Footage/GFA	0.0	19,800

Other Development Data:

The site plan provides 88 required parking spaces, including four spaces for handicapped parking, and one loading space. A two-story church is proposed to contain 19,800 square feet. Building area totals 6,181 square feet and paved surfaces cover 38,323 square feet. Total site coverage proposed totals 44,504 square feet, or 71 percent of the site.

- C. **History:** The property was changed from the C-1 Zone to the C-S-C Zone via the 1990 Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67 for the purpose of implementing the retail commercial land use recommendations in the 1989 Langley Park-College Park-Greenbelt and Vicinity master plan.

D. **Master Plan Recommendation:**

The 2002 General Plan shows the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods. The Community Planning Division (May 9, 2006, memorandum) indicates

that there are no master plan or General Plan issues with the request. Such issues were addressed in Preliminary Plan of Subdivision 4-05015.

The 1989 approved master plan for Langley Park, College Park, and Greenbelt recommends retail commercial use. The subject site is illustrated on the plan map with a conditional reserve designation, meaning the site has moderate development constraints that require innovative site planning to protect or meet environmental needs. The Community Planning Division indicates no master plan issues with the request. A church is a permitted use in the C-S-C Zone and is, therefore, consistent with the master plan.

- E. **Request:** The request seeks approval of departures from the *Landscape Manual* design standards for width of landscape buffer strips and planting requirements. The departure was filed because the applicant was denied alternative compliance to *Landscape Manual* requirements on October 5, 2005. The Alternative Compliance Committee found that “the proposed ground cover does not provide any plant material to meet the requirements of the *Landscape Manual*” (ACP-05011). Also, variances are requested to allow retaining walls higher than the six-foot maximum and located within required bufferyards.

The applicant indicates the departures and variances are necessary “...to alleviate circumstances which are unique to the site [and are] more prevalent in areas of the County developed prior to December 29, 1949.” Specifically, they indicate that: “...development of the three adjoining properties created the subject property and requires multiple techniques be employed in order to permit development due to surrounding topographies”—leaving an undeveloped site with severe topography. They assert the church will be a more preferable use of the property than the current situation where the undeveloped site is “...often used for loitering or littering.”

The applicant views the property with its steep slopes as “a classic ‘in-fill’ site,” enabling the proposed church to act “...as a transitional use between the commercial shopping center and the multifamily residential.” It is believed that the church use will enhance the visual, functional and environmental quality of the site and the neighborhood. Several retaining walls are proposed along the north, east, and west/southwest property lines in order to overcome differences in grade between the subject site and adjacent developed properties. The height of some of these walls and their location relative to property lines and required bufferyards necessitate the departures and variance.

- F. **Surrounding Uses:** The subject site is surrounded by the following uses and zoning:

North—PEPCO substation in the R-55 Zone

East—Multifamily complex (Keystone Apartments) in the R-10 Zone

South—South of the subject site’s pipe stem leading to New Hampshire Avenue and west of the larger portion of the site is a 16,980-square-foot shopping center in the C-S-C Zone. The rear wall of the shopping center is approximately five feet from the property lines of the subject site. South of Sheridan Street is a bank building in the C-O Zone.

West—Across New Hampshire Avenue is a vacant office building and two vehicle repair facilities located in the City of Takoma Park and Montgomery County.

The neighborhood containing the subject site is predominantly residential in nature, with commercial uses in the C-O and C-S-C Zones occurring along New Hampshire Avenue. Neighborhood boundaries are New Hampshire Avenue (west), Eastern Avenue (south), Riggs Road (east), and East-West Highway (north).

G. Other Issues:

The Transportation Planning Section indicates no issues other than noting that New Hampshire Avenue has a proposed and existing right-of-way of 100 feet (May 1, 2006, memorandum).

The State Highway Administration (April 27, 2006 letter) indicates New Hampshire Avenue is state owned and maintained and carries 38,150 vehicle trips per day. Sheridan Street is county owned and maintained. The 30-foot-wide curbed entrance shown at New Hampshire Avenue is inconsistent with *State Highway Access Manual* (SHAM) guidelines for right-in/right-out entrance design criteria (SHAM Standard 11.1.4). The proposed connection to MD 650 and any other ingress/egress improvements must be coordinated with the SHA Engineering Access Permits Division.

The Environmental Planning Section indicates the subject site is exempt from the woodland conservation requirements and that there are no other environmental issues (May 1, 2006, memorandum). A June 15, 2006, memorandum from the archeology consultant indicates that a Phase I (Identification) archeological survey is not recommended.

The Historic Preservation Section indicates that there are no effects on historic resources (May 1, 2006, memorandum).

The Permit Review Section indicates that the site plan must include a note to reflect that signs or arrows, in accordance with Section 27-561(b), shall mark the directions of traffic movement on driveways. Also, the site plan must demonstrate a 22-foot-wide access for two-way driveways.

H. Design Requirements—Authority:

Section 27-587—Departures from Design Standards: This section authorizes the Planning Board to grant departures from parking and loading design standards, including standards contained in the *Landscape Manual* (landscaping, screening and buffering), in accordance with procedures in Section 27-239.01 (discussed in Section I below).

Exhibit 1 is the site plan that shows the location of the retaining walls relative to property, buffer yard, and building setback lines. Exhibit 2 shows the proposed landscape plan. Exhibit 3 shows the site elevation cross-section between the shopping center (west) and apartments (east). Exhibit 4 illustrates the location, design, height, and landscaping proposed along the east property line adjacent to the apartments. Exhibit 5 shows the east retaining wall cross-section. The following describes each requested departure relative to pipe stem property lines and the east and west property lines, including the location of retaining walls:

North Property Line (pipe stem portion) Requirements: Section 27-462 requires a 12-foot wide side yard setback for the commercially zoned subject property adjacent to the residentially zoned

PEPCO substation property. We note that a variance of ten feet is required from this section because a retaining wall over six feet in height is proposed two feet in from the property line and within the required side yard setback. Section 27-447 prohibits fences and walls (including retaining walls) higher than six feet being located in any required yard.

The *Landscape Manual* does not require a landscape bufferyard or building setback along the north boundary because the church and PEPCO substation are both medium intensity uses. However, because parking is proposed along this property line, Section 4.3(b)(1) of the *Landscape Manual* requires a five-foot-wide perimeter landscape strip containing one tree and three shrubs per 35 linear feet of parking lot perimeter adjacent to the property line. The 4.3(b) landscape schedule indicates 317 linear feet along the north property line. The schedule should reflect the correct measurement of 336.36 feet.

Applicant's proposal: The site plan provides the five-foot-wide perimeter landscape strip. However, the applicant requests a departure from the required number of plant units within this strip because of the need to construct a retaining wall two feet in from the PEPCO property line and within the perimeter strip. The north retaining wall will range in height from approximately two feet at New Hampshire Avenue to 18 feet at the northeast corner of the site. In lieu of providing the required number of plant units, the applicant proposes an attractive architectural retaining wall with iron fencing on top, along with vines (winter creeper) and euonymus fortunei shrubs planted in front of the wall. The applicant believes these alternative plant materials, together with the architectural retaining wall and iron fencing, provide an attractive perimeter property treatment. The adjoining PEPCO property is higher in elevation than the subject site and the proposed wall and landscaping will only be visible from the subject property. The applicant believes increasing the width of the landscape strip on either the north or south side of the pipe-stem, in order to provide the required plant units, would severely constrict the use of the property for access and parking through the pipe stem portion of the site. Retaining walls are necessary adjacent to both the PEPCO and shopping center properties in order to bring the subject property's access drive to grade with New Hampshire

South Property Line (pipe stem portion) Requirements: An adjacent shopping center (high intensity use) shares 250 feet of property line along the south side of the subject property's pipe stem (medium intensity use). Section 27-462 does not require a yard setback from adjoining land in a nonresidential zone (shopping center in the C-S-C Zone), except where a buffer is required by the *Landscape Manual*. Section 4.7 of the *Landscape Manual* requires a 20-foot-wide landscape buffer strip and a 30-foot-wide building setback between incompatible uses.

Applicant's Proposal: The proposed church building meets the building setbacks. However, only a five-foot-wide landscape buffer strip along the south property line is provided because of the need to use the pipe stem for access and parking. A retaining wall less than six feet in height is proposed two feet in from the property line and within the five-foot-wide landscape buffer strip. Therefore, a departure of 18 feet from the minimum width of the landscape strip is requested. Also, a departure is requested from the number of plant units required because the applicant must build a retaining wall two feet from the property line and within the five-foot wide landscape strip. A variance, as requested by the applicant, is not required because Section 27-462 requires no setbacks from adjoining land in a nonresidential zone, except requiring conformance with building and landscape buffer strip setbacks in the *Landscape Manual*. Thus a departure from these requirements is needed.

East Property Line (Sheridan Apartments): Section 4.7 of the *Landscape Manual* requires a 30-foot building setback and a 20-foot landscape strip setback from the adjacent apartments (less intense use). As noted above, the building setback is provided. A variance is not needed because Section 27-462 requires the greater of a 12-foot setback or the landscape buffer strip required by the *Landscape Manual*.

Applicant's Proposal: The subject property shares a boundary of approximately 340 feet with the adjacent apartment complex. Along the entire length of the church building (approximately 170 feet), a 30-foot-wide landscaped green space is provided. However, a consistent width of 20 feet is not provided. Within the area normally required for the 20-foot landscape strip, the applicant proposes two parallel retaining walls (Exhibit 3), with the taller retaining wall being 6.5 feet off the property line. Therefore, a departure of 13.5 feet is requested to the required landscape yard setback (due to the retaining wall location). A description of the two retaining walls follows:

- Wall 1 is built on the common property line extending north from Sheridan Street to the approximate middle of the church building. Being less than six feet in height, it is not subject to setback requirements. It is constructed with one color of blocks. An existing retaining wall along the property line and into the adjacent apartment complex must be demolished to facilitate development of the church. The applicant indicates that a grading easement has been obtained from the apartment owner to demolish the existing wall and construct the proposed wall.
- Wall 2 is 19 feet higher than the top of Wall 1 where it bends to form a T at the southeast corner of the proposed church building. Continuing south toward Sheridan Street, the height decreases gradually until Wall 2 is 14 feet higher than Wall 1. Going north from the T, Wall 2 drops to a height of 7.5 feet above Wall 1 and continues north until it reaches grade near the northeast corner of the church building, where it increases in height but remains lower in elevation than the adjoining property. Exhibit 3 also provides a general illustration of the wall heights and cross-sections as shown on the site plan.

Wall 2 is constructed with two colors of blocks designed in an attractive pattern to provide some visual detail. Within the 6.5-foot setback strip between the walls, landscaping in a mulched bed is proposed along with Leyland Cypress trees to help screen the taller wall. Additional landscaping will be planted above the retaining wall in front of the church building to buffer views from the adjacent four-story apartment buildings. Also, in order to provide a visual break to the wall, the wall curves inward toward the parking lot in the vicinity of the T to allow landscaping with larger plants and trees. Within this area and the remainder of the landscape strip, the applicant indicates the number of plant units provided exceeds the minimum required by Section 4.7 of the *Landscape Manual* by over 80 percent.

Another departure is associated with the east property line and wall 2. Specifically, Section 4.7, Table IV, Footnote 2, of the *Landscape Manual* permits parking only in that part of the bufferyard created by the minimum building setback that is not part of the minimum landscaped yard. The site plan depicts four parking spaces north of the church and eight parking spaces to the south that are within the required yard setback. The closest point of these parking spaces to the eastern property line is 11 feet. The departure is necessary because parking spaces are shown within the 20-foot-wide

landscape yard along the east property line where the minimum building setback is 30 feet. Because retaining walls are needed within the 20-foot-wide landscape strip, a departure of nine feet is requested. Where the parking spaces encroach into the required landscape strip, the retaining wall is 12 to 13 feet high. The applicant indicates the parking lot will not be visible from the adjacent apartments because the retaining walls are 12 to 13 feet high in these areas. Therefore, the applicant believes there is no reason to set the parking spaces back an additional nine feet from the eastern property line.

West Property Line (Shopping Center): The subject property shares 291 feet of property line with the east boundary of the L-shaped shopping center. The rear wall of the adjacent shopping center is setback approximately five feet from the subject property. The *Landscape Manual* requires a 20-foot-wide landscape buffer strip with 217 plant units on the subject property.

Applicant's Proposal: Because of grade differences, the applicant is proposing a five-foot-wide landscape buffer strip along the property line with the shopping center, with an architectural retaining wall topped with decorative iron fencing. The church and parking lot will be lower in grade than the shopping center and will be separated by the retaining wall located two feet inside the proposed five-foot-wide landscape buffer strip. In lieu of the normally required plant units in the 20-foot buffer strip, the applicant is proposing a combination of vines (winter creeper and euonymus fortunei shrubs). A departure of 18 feet is, therefore, requested from the minimum width of the landscape strip because 130 feet of the wall, as measured from the northeast corner of the shopping center site toward Sheridan Street, exceeds six feet in height and is not setback 20 feet from the property line. Also, a departure is needed from the number of plant units required because of the retaining wall location. A variance, as requested by the applicant, is not needed because there is no setback required from the adjacent nonresidential zone, other than the building setback and landscape yard required by the *Landscape Manual*. The church meets the required building setback of 30 feet.

I. Criteria for Approval

(A) Section 27-239.01(b)(7)(A) provides that in order for the Planning Board to grant the departure, it shall make the following findings:

- 1. The purposes of this Subtitle will be equally well or better served by the applicant's proposal.**

Staff Comment: The purposes of the Zoning Ordinance are many and varied as set forth in Section 27-102. They can best be summarized as promoting the health, safety and welfare of county residents by providing for orderly growth and development while promoting the most beneficial relationship between the uses of land and buildings and protecting landowners from adverse impacts of adjoining development. In this application, the facts establish that granting the requested departures from landscape buffer yard widths and planting materials, together with the requested variance regarding yard setbacks from the PEPCO property, will not jeopardize these purposes. The applicant is attempting to develop a very difficult site with the type of use that will further a beneficial relationship between the uses on adjoining properties, namely the shopping center and apartments. The adjacent apartment owner has granted a grading easement to the applicant so that the applicant can proceed with development plans.

Staff agrees that provision of the required landscape buffer strip setbacks and required plant units is not possible on the subject property because of the need to construct extensive retaining walls, without undue hardship to the applicant. To meet the requirements would require reducing the size of the proposed church and associated parking, thereby compromising congregation growth plans and space requirements. Staff recognizes that the subject property is a classic infill site that exists primarily as a result of development actions taken by adjacent property owners in addressing topographical problems on their sites. Such problems are common in older Developed Tier communities. Also, it is likely that any development of the subject property would face the same challenges as this applicant. Staff concurs with the applicant that development of the site would both ensure maintenance while strengthening the surrounding community by eliminating continuing litter and loitering problems.

2. The departure is the minimum necessary, given the specific circumstances of the request.

Staff Comment: Staff finds that the requested departures and variance are the minimum necessary in order for the applicant to achieve their development plans. This finding is made in recognition of the applicant's specific needs regarding church size and within the context of the site's unique shape, topographic challenges, adjacent uses, and the need to provide required parking and have access to New Hampshire Avenue and Sheridan Street. In addition, the applicant is proposing alternative landscaping to complement the retaining walls, together with decorative iron fencing on top, in an attempt to meet the purposes of the *Landscape Manual* that require buffering the church from adjoining uses. Staff finds that the departures from required yard setbacks is reasonable while recognizing that the height and location of retaining walls and decorative fencing on top will help separate the property and screen views from adjacent properties.

3. The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949.

Staff Comment: The departures and variance are necessary to alleviate topographical circumstances that are unique to this site and commonly impact other properties in older Developed Tier communities. The request is also necessary because the subject property has been bypassed and left with unique development problems caused by others in developing adjacent properties. This requires that the applicant employ extraordinary development techniques (retaining walls around nearly the entire site) to overcome problems associated with topography and buffering from adjacent land uses. The topography and shape of the subject property are a challenge to almost any development.

Staff agrees that the difference in elevation between the pipe stem portion of the subject and adjacent properties to the north and south requires the use of retaining walls in order to accommodate the proposed use. Setting back the retaining walls the required distance along the pipe stem would impose an unreasonable hardship by eliminating a second two-way ingress/egress to New Hampshire Avenue or required parking. This is especially the case between the apartments (east) and shopping center (west). Setting back the east and west retaining walls will result in eliminating over 40 parking spaces.

4. The departure will not impair the visual, functional or environmental quality or integrity of the site or of the surrounding neighborhood.

Staff Comment: Approval of the requested departures and variance will not impair the visual, functional or environmental quality or integrity of the site or neighborhood, given the unique topographical challenges of the site. In fact, the proposed use, architectural retaining walls, and landscaping will be a compatible addition to the neighborhood that will help eliminate loitering and littering problems, while visually screening the adjacent apartments from the shopping center. We agree that the proposed landscape and retaining wall treatments will enhance the rear of the shopping center as viewed from the subject property. Staff also finds that the environmental quality of the site will be enhanced with properly engineered retaining walls that will help stabilize the property.

(B) Section 27-239.01(b)(7)(B) requires that a departure from a standard contained in the *Landscape Manual*, the Planning Board shall find, in addition to the requirements in paragraph (A) above, that there is no feasible proposal for alternative compliance, as defined in the *Landscape Manual*, which would exhibit equal or better design characteristics.

Staff Comment: Staff finds that there is no feasible proposal for satisfying alternative compliance that would exhibit equal or better design than that proposed by the subject application. Following a denial of Alternative Compliance application ACP-05011 on April 18, 2005, the applicant submitted this application for departures from design standards. The alternative compliance request was denied because the site plan provided only one-tenth of the required landscape yard between the site and adjacent shopping center. Also, the proposed ground cover was not a plant material required by Section 4.7 of the *Landscape Manual*. However, staff finds that the landscaping strips, architectural retaining walls, decorative iron fencing, and plant materials proposed in the subject request are an attempt to provide equal or better design characteristics, given the constraints faced by the applicant.

J. Variance Findings:

Section 27-230 - Criteria for granting appeals involving variances.

(a) A variance may only be granted when the Board of Appeals finds that:

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and**
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.**

Section 27-239.03—Planning Board Authority: This section authorizes the Planning Board to grant variances in conjunction with a case where it has final decision-making authority, as in the case

of this DDS application. However, the Planning Board shall follow the criteria in Section 27-230 above.

Applicant's Proposal: The applicant is requesting a variance to Section 27-462 that requires a 12-foot setback from the side lot of the adjoining residentially zoned PEPCO property along the north property line. A variance of ten feet is required from this section because a retaining wall over six feet in height is proposed two feet in from the property line and within the required side yard setback. Section 27-447 prohibits fences and walls (including retaining walls) higher than six feet being located in any required yard. A departure from the bufferyard setback requirements of the *Landscape Manual* is not required because the PEPCO and subject property are both medium intensity uses.

Staff Comment: Staff finds that the requested variance is justified in the context of Section 27-230 for the following reasons:

- As discussed above relative to the requested departures, the subject property has exceptional topographical conditions that require the construction of substantial retaining walls around most of the site. The site drops up to 30 feet from the shopping center to the apartment complex approximately 150 feet to the east. The topography, coupled with the site's shape and narrowness along the 50-foot-wide pipe-stem and adjacency to the shopping center, combine to create extraordinary site development conditions.
- Requiring conformance with the Subtitle will result in peculiar and unusual practical difficulties because the applicant could not develop the site for its proposed church use. There simply would not be enough area for the church and required parking and bufferyards. In addition, there is no benefit that will be provided by strict conformance with setback requirements because the subject property and north retaining wall will be lower than the PEPCO property. The wall and landscaping proposed will only be visible from the subject property. Along the east property line the proposed wall system provides a tiered appearance from the apartments and allows for landscaping with Leyland Cypress and architectural treatments that will help buffer the site and larger wall from the apartments.
- Approval of the variance will not substantially impair the intent, purpose, or integrity of the General Plan or master plan. The Community Planning Division staff indicates that there are no master plan or General Plan issues related to the joint departure and variance application (May 9, 2006, memorandum). The church is a permitted use within the C-S-C Zone and thereby conforms to the master plan land use recommendations. The proposed use will eliminate the property being a place of loitering and littering. The use also conforms to the master plan guideline (p. 110) that encourages churches to locate in commercial areas to help establish these areas as focal points.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted applications, subject to the following conditions:

1. The proposed driveway connection to MD 650 and any other ingress/egress improvements must be coordinated with the SHA Engineering Access Permits Division.
2. Note 15 on the site and landscaping plans shall be revised to indicate that signs or arrows, in accordance with Section 27-561(b), shall mark the directions of traffic movement on driveways.
3. The site plan shall be revised to clearly demonstrate that a 22-foot-wide access driveway for two-way traffic or a 20-foot-wide aisle is provided where there is no parking.
4. The landscape schedule for Section 4.3(c), Interior Planting, must be provided on the landscape plan in accordance with Section 2.2(c) of the *Landscape Manual*.
5. The 4.3(b) landscape schedule adjacent to the PEPCO property indicates a linear distance of 317 feet that shall be corrected to reflect the correct distance of 336.36 feet.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Vaughns, Eley and Parker voting in favor of the motion at its regular meeting held on Thursday, July 20, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7th day of September 2006.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:RB:bjs