BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6933

PETITION OF PILGRIM LUTHERAN CHURCH
by Darrel Regier, President

OPINION OF THE BOARD
(Hearing Dates: December 3, 2025, and February 18, 2026)
(Effective Date of Opinion: March 13, 2026)

Case No. A-6933 is an application by Petitioner Pilgrim Lutheran Church for variance relief needed in connection with the proposed construction of an eight (8) foot tall retaining wall. The proposed construction requires a variance of three (3) feet as it is within two (2) feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.9.B.2.a of the Zoning Ordinance, because an eight (8) foot retaining wall is classified as an accessory structure. In addition to the five (5) foot minimum setback for accessory structures, the proposed retaining wall requires an additional setback because of its length. The minimum setback for an accessory structure with a length longer than 24 feet must be increased at a ratio of two (2) feet for every two (2) feet that the length of the proposed structure exceeds the 24 linear feet. Because the proposed retaining wall is 240 feet long, an additional setback of 216 feet is required. Accordingly, the proposed construction requires a total variance of 219 feet (3' + 216' = 219') from the required rear setback of 221 feet (5' + 216' = 221').

The Board of Appeals held a hearing on the application on December 3, 2025. Soo Lee-Cho, Esquire, appeared in support of the requested variance on behalf of Petitioner Pilgrim Lutheran Church, along with Darrel Regier, the Church's President. In addition, Ms. Lee-Cho had civil engineer Stephen Crum, P.E., and arborist Michael Galvin, RCA, testify as experts in support of the requested variance, as well as contractor and Gene Kreider. Abutting neighbors Julie Anderson and Jing Zhang participated in the December 3, 2025, and were represented by Michele Rosenfeld, Esquire. The proceedings could not be concluded that day, and were continued on the record. The Board held a second day of hearings on this application on February 18, 2026. Ms. Lee-Cho appeared again with Mr. Regier in support of the requested variance, and called engineers Robert Niber, Azaz Paracha, and Stephen Crum as expert witnesses to

testify in support of the variance. Ms. Rosenfeld also appeared again, accompanied by Ms. Anderson and Mr. Zhang.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lots 12-16, Block C, Massachusetts Avenue Hills Subdivision, located at 5500 and 5502 Massachusetts Avenue in Bethesda, Maryland, 20816, in the R-60 Zone. It is an elongated collection of properties that are located on the south side of Massachusetts Avenue and were platted in 1951. The property contains a primary structure that was built in 1957 and that houses the Church sanctuary, administrative offices, and other meeting space. See Exhibits 3, 4, and 7(a).

2. The Petitioner's November 23, 2025, Statement of Justification and Summary of Proof ("Statement") states that the subject property is encumbered with "unusual or extraordinary topographical conditions" sufficient to justify the grant of the requested variance. It states that the subject property is "constrained by a significant topographical disparity that exists between the Church property and its neighbors located immediately adjacent to the Church's rear property line," noting that "[t]he Church building sits as much as 20 feet lower in elevation than the immediately adjacent homes which sit at the top of an embankment that constitute the rear yards of the residential properties." The Statement states that "[t]he landscaped embankment is supported at the *toe of slope* by a 'utility pole or timber wall' located on the Church property." The Statement notes that "[t]he timber wall was installed in 1957 with the Church building's construction and was a permitted construction method deemed safe and adequate under then applicable building standards for the slope of the embankment." The Statement includes photographs showing the slope and existing wall. See Exhibit 16. The Petitioner includes an updated Site Plan showing the location of the proposed replacement retaining wall, as well as Retaining Wall Detail Sections, with their request. See Exhibits 5 and 17.

3. The Statement identifies three abutting properties on Namakagan Road (5505 Namakagan (Wijetunga), 5503 Namakagan (Zhang) and 5501 Namakagan (Anderson)) that would be impacted by the grant of the requested variance relief. See Exhibit 16. The Statement recounts the development history of these properties, as follows:

> At the time of the Church's construction in 1957, the lot for 5501 Namakagan was vacant and served as the garden for the original house built on 5503 Namakagan until the house currently located on 5501 Namakagan was built in 1983. The one-story ranch style residence constructed on 5501 was the typical style of home built on Namakagan up until the early 2000s.
>
> In 2002-2003, Rembrandt Builders of Bethesda redeveloped 5503 Namakagan (Zhang) with the current two-story residence, followed by the

> house on 5505 Namakagan (Wijetunga) in 2005. The backyard slope of the 5503 Namakagan property was subsequently changed to level and further extend the rear yard area at the top of the embankment by construction of a cylinder wall made of more than 100 stacked concrete cylinders (6in in diameter and 12 inches long) above the Church's existing timber wall. A sediment control permit (#205540) issued at the time of the 2002-2003 construction of the 5503 Namakagan property (attached hereto as **Exhibit A** [BOA Exhibit 16(a)]) depicts a development footprint that differs from the property's current improvements.
>
> [Footprint Comparison Incorporated in Statement but Not Reproduced]
>
> In contrast, the 5505 Namakagan (Wijetunga) property maintained the same slope of the embankment and did not level off its backyard much beyond the existing patio.

4. The Statement states that in 2022, after being told by the Director of the school that has operated in the Church since 2020 that "the embankment wall with 5501 Namakagan near the playground had been steadily eroding after each rainfall" since the school began its occupancy, the Church's concern about the stability of the wall "became heightened." See Exhibit 16. The Statement indicates that the Church worked to identify the cause of this erosion, and to devise a solution to the problem, as follows:

> ... Upon further investigation of whether stormwater run-off could be accelerating the erosion/degradation of the embankment, a large volume of rainwater spilling over the embankment from the roof downspouts of 5501, 5503, and 5505 Namakagan was identified and confirmed upon review of drainage area/pattern contours. (See attached Exhibit B [BOA Exhibit 16(b)]). As part of the new retaining wall construction, the Church seeks to incorporate a drainage system in the reconstituted embankment that would better control stormwater run-off into swales/basins and raingardens, and redirect overflow into the Massachusetts Ave/Little Falls storm drain system.

In addition, the Statement states that the condition of some of the trees on the abutting properties has contributed to the destabilization of the existing embankment, stating that "the condition of existing trees located on the adjoining neighbors' properties, if left unaddressed, poses a significant hazard to the embankment in its current state." The Statement states that a "*Forest Conservation Exemption and Tree Save Plan* has been prepared in accordance with County requirements to assess potential tree impacts of the retaining wall project," and that a "separate PowerPoint slide presentation has been prepared to facilitate testimony specifically addressing tree impact issues." These documents are included as Exhibits C and D to the Statement [BOA Exhibits 16(c) and (d)]. See Exhibits 16, 16(c), and 16(d).

5. The Statement states that "the embankment and timber wall have become highly unstable and are at risk of collapse" for the reasons set forth in the preceding paragraphs,

and that because of this, "[t]he Church is seeking to replace the timber wall with a concrete retaining wall structure that is 8 feet in height as shown on the Variance Site Plan and Retaining Wall Detail Sections." The Statement states that the requested variance "is necessary to achieve construction of the **proposed 8' tall retaining wall**... (emphasis in original)," and that the need for a variance "cannot be avoided due to the site's existing topography near the rear boundary line of the Property." The Statement states that "granting of the variances will not be adverse to the use and enjoyment of abutting or confronting properties, as it will facilitate replacement of a structurally compromised timber wall located at the toe of an existing embankment that is in danger of collapse with a new concrete retaining wall necessary to maintain stability of a pre-existing topographical condition." See Exhibit 16.

6. The Statement states that "the special circumstances/conditions necessitating the variances are not the result of actions by the Petitioners," that "the requested variance is the minimum necessary to overcome the practical difficulties" caused by these conditions, and that "the variance can be granted without substantial impairment to the intent and integrity of the general plan." See Exhibit 16.

7. The Building Permit Denial indicates that a variance is needed for the proposed replacement retaining wall because it is eight (8) feet tall, and is therefore considered an accessory structure.[1] The Building Permit Denial further indicates that in addition to having to meet the five (5) foot accessory structure setback, the minimum setback for an "accessory structure with a length longer than 24' ... must be increased at a ratio of 2' for every 2' that exceeds the 24 linear feet." See Exhibit 14.

8. The Retaining Wall Details drawing shows that in the location proposed, the new retaining wall will be wholly located on the Church's property, with the rear face of the wall being two (2) feet from the shared property line. In addition, the Retaining Wall Details drawing shows that the proposed wall location would allow for an asphalt path, approximately eleven or twelve feet wide, between the rear of the Church building and the retaining wall. The photographs in the Statement show that a similar path currently exists between the Church building and the embankment. See Exhibits 5 and 16.

9. The Prehearing Submission filed by Ms. Rosenfeld on behalf of abutting property owners Julie Anderson (5501 Namakagan Road) and Jing Zhang (5503 Namakagan

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[1] In accordance with Section 59.6.4.3.C.3.c of the Zoning Ordinance, the proposed retaining wall could have been located along the property line without a variance if it were not taller than 6.5 feet and/or did not abut residentially-zoned property, as follows:

> **3. Exemptions from Building Line and Setbacks**
> Building line and setback requirements do not apply to:
> * * * * *
> c. any other wall or fence that is not on a property abutting a national historic park and is:
> i. 6.5 feet or less in height when not abutting a Commercial/Residential, Employment, or Industrial zone; or
> ii. 8 feet or less in height when the fence abuts:
> (A) a Commercial/Residential, Employment, or Industrial zone; or
> * * * * *

Road) ("Opposition Submission") sets forth the reasons for her clients' opposition to the Church's variance request. See Exhibit 13. The Opposition Submission lays out three reasons the requested variance relief should be denied. The first reason identified in the Opposition Submission is that the Petitioner's variance Application failed to correctly state the required setback distance for the proposed retaining wall, and as a result, failed to request the correct variance. As a result of this assertion, the Petitioner requested (and was granted) a continuance so that a corrected building permit denial could be obtained from the Department of Permitting Services, and the proceedings could be properly noticed. See Exhibit 13. The remaining reasons set forth by Ms. Rosenfeld in the Opposition Submission for her clients' opposition to the requested variance relief are as follows:

1. The Variance Relies on Cut/Fill and Tree/Understory Removal from My Clients' Properties That My Clients Have Not Consented to Allow.

2. The Variance Does Not Begin to Meet Multiple Standards Necessary for Approval.

With respect to the allegations about non-consensual cut/fill and tree/understory removal, the Opposition Submission states that the Petitioner's Forest Conservation Exemption & Tree Save Plan provides for an "extensive amount of clearing, grading and tree/understory removal proposed on [Ms. Rosenfeld's] Clients' properties necessary to build the proposed replacement retaining wall." See Exhibit 13. The Opposition Submission details the actions that Ms. Rosenfeld's clients object to, including:

a. Removal of a 30" white oak (Tree #6) located on both Clients' properties;

b. Requested removal of three additional trees from Ms. Anderson's property (Tree No. 7 (a 40" Tulip Poplar), No. 12 (a 28" Red Oak) and No. 13 (a 28" White Ash));

c. Removal of all other vegetation within the limits of disturbance (including trees, shrubbery and other understory vegetation from both properties);

d. Removal of an "upper" retaining wall located on Mr. Zhang's property; and

e. Extensive cut/fill within both Clients' properties.

10. The Opposition Submission states that the variance request "does not begin to meet multiple standards necessary for approval" of a variance under Section 59.7.3.2.E of the Zoning Ordinance, and proceeds to list seven reasons the application should not be granted. First, the Opposition Submission notes that the Church property is over an acre in size, and states that denial of the variance "does not deprive the applicant of reasonable use of its property." In addition, the Opposition Submission then asserts that "there are alternative means by which the Applicant can build a new retaining wall" in conformance with the variance standards. See Exhibit 13.

Second, the Opposition Submission states that the "new work proposed on [Ms. Rosenfeld's] Clients' property is entirely within steep slopes, an environmentally sensitive feature to be protected and preserved, not further eroded," and that the requested variance "seeks to impair, not avoid, this environmentally sensitive feature." See Exhibit 13.

Next, the Opposition Submission states that "[t]he topographical conditions that exist along the wall were created by the Church itself at the time it elected to cut into the steep slope and build the original wall," and that as a result, the "special circumstances or conditions" that make the property unique "are the direct result of the actions of the applicant." See Exhibit 13.

The Opposition Submission asserts that the requested variance relief is not the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on the property. See Exhibit 13.

The Opposition Submission states that the "driveway that abuts the existing wall is approximately 8 – 10 feet wide" and that this driveway is "not used in connection with worship services or any other functional purposes related to the use of the building." Because of this, the Opposition Submission states that "[t]here are other ways to design the wall using the driveway space that would either (a) eliminate entirely the need to access and disturb [Ms. Rosenfeld's] Clients' properties; or (b) materially reduce the need to use [Ms. Rosenfeld's] Clients' properties, including the potential to save some or all of the trees proposed for removal." See Exhibit 13.

The Opposition Submission states that "it is a longstanding principle of Maryland law that a property owner has an obligation to maintain existing lateral support for the soil and structures of an abutting property owner. See *Mullan v. Hacker*, 187 Md. 261 (1946)." The Opposition Submission proceeds to state that "[t]he applicant's failure to design a wall that can be accommodated within its own property boundaries, rather rely on the neighboring properties, confirms that the proposed Variance request does not even attempt to minimize the amount of Variance requested, let alone prove that it does so," and again asserts that the Church "has ample room to design a replacement wall that does not encroach upon, or threaten the stability of" the properties belonging to Ms. Rosenfeld's clients. See Exhibit 13.

Finally, the Opposition Submission states that granting the requested variance relief "will cause materially adverse impacts on [Ms. Rosenfeld's] Clients' properties through extensive clearing and grading of their Properties, removal of substantial trees, and causing premature removal of an 'upper' retaining wall on Mr. Zhang's property." See Exhibit 13.

11. The record contains an email dated November 17, 2025, from Gayathri Wijetunga, who lives at 5505 Namakagan Road. Ms. Wijetunga opposes the grant of the requested variance relief. Her email expresses concern about trees, erosion, and privacy, among

other things. See Exhibit 18. In light of its brevity, the body of her email is reproduced below:

> The plan shown to us by Mr. Darrel Reiger, the President of the Pilgrim Lutheran Church encroaches on our property and proposes removal of two healthy trees that acts as a canopy and a root system that supports the slope and the soil underneath our home. This is a serious issue as the proposal carries a high risk of landslides and soil erosion. It will also curb the privacy that we are currently enjoying on our property. In addition, the proposed plan does not have a complete retaining wall parallel to our entire property line. Therefore, we are unable to support this plan unless they redesign the plan to completely address relevant issues and concerns.

11. After receiving Ms. Lee-Cho's November 23, 2025, Statement of Justification and Summary of Proof, Ms. Rosenfeld filed a Motion to Postpone the December 3, 2025, hearing date, with supporting documentation. See Exhibits 21 and 21(a)-(g). In response to Ms. Rosenfeld's Motion, Ms. Lee-Cho filed a Response to Motion to Postpone, objecting to the requested postponement and requesting that the hearing be held on December 3, 2025, as scheduled. See Exhibits 22 and 22(a)-(c). The Board considered the Motion to Postpone and Response at the outset of the December 3, 2025, hearing. The Board's disposition of these motions is recounted in paragraph 17, below.

12. On January 16, 2026, Ms. Lee-Cho submitted a Prehearing Submission on behalf of the Petitioner. See Exhibit 23. The Prehearing Submission indicated that the Petitioner may introduce the following five documents at the hearing, and included copies of those documents:

1. SavATree Basic Tree Risk Assessment Report dated January 8, 2026
2. Notice of Liability Letter dated January 16, 2026 – Zhang Property
3. Notice of Liability Letter dated January 16, 2026 – Anderson Property
4. Notice of Liability Letter dated January 16, 2026 – Wijetunga Property
5. Resume of Steve Adamchak

The Prehearing Submission further indicated that the Petitioner may call one or more of the following witnesses at the hearing: Stephen E. Crum, P.E., Steve Adamchak, P.E., and Michael F. Galvin, RCA (Registered Consulting Arborist). See Exhibit 23.

The SavATree Basic Tree Risk Assessment Report describes the process used and the information relied on in creating the Tree Risk Assessment. It states that "[t]he trees at issue are at elevations of up to 20 feet higher than the Church and are proximate to the property line; stormwater impacts exist that have served to erode and contribute to the embankment becoming destabilized." The Tree Risk Assessment states that "the premise of the project is that the slope behind the church is eroding and failing," and notes that "[a]n assessment of the rate of failure of the slope is beyond the scope of this report." The Tree Risk Assessment goes on to state that "the condition of the slope enhances the risk of failure of the trees in question due the fact that such considerable portions of their

CRZs [critical root zones] being on the slope." The Tree Risk Assessment states that seven (7) of the 15 trees on abutting properties that have diameters of greater than 24 inches are being proposed for removal, and states that "[i]f any of the seven trees were to fail, the consequences would be severe." The Tree Risk Assessment includes detailed analysis of the current health of the trees on the abutting properties, and the likely impact that construction of the proposed retaining wall would have on the health of those trees. The Tree Risk Assessment sets out risk mitigation strategies for each of the various trees, including removal in some cases. See Exhibit 23(a).

13. On February 5, 2026, the Board received a second email from abutting property owner Gayathri Wijetunga. Ms. Wijetunga states in her second email that after listening to the December 3, 2025, Board proceedings and reviewing the SavATree Basic Tree Risk Assessment Report and Notice of Liability that were emailed to her by counsel for the Petitioner, she opposes the variance as currently proposed. Ms. Wijetunga indicates in her email that she would only reconsider her position "if the project is redesigned to significantly reduce the limit of disturbance (LOD) so that impacts to [her] property and [her] trees are minimized." Her email further states that "if either of the two trees on [her] property must be removed or if their root systems are damaged as a result of the church's construction, the retaining wall must extend parallel to [the] entire shared property line to adequately protect [her] property." Ms. Wijetunga's email indicates that she has "carefully maintained and trimmed these trees to protect nearby structures while preserving sufficient canopy and root strength to prevent erosion and landslides." It asserts that the "two trees in question are healthy and provide critical slope stabilization through their canopy and root systems, which support the soil beneath [her] home," and that "[r]emoving these trees, or damaging their root systems, would substantially increase the risk of erosion and landslides and pose a serious threat to the structural integrity of [her] house." Ms. Wijetunga's email states that she was informed by counsel for the Church that construction of the proposed retaining wall will damage the root systems of these trees and may cause them to die prematurely. Her email thus proceeds to state that "[i]f the trees are removed or their root systems are disturbed, and a retaining wall is not constructed parallel to [her] entire property line, the resulting conditions would create a significant and unacceptable risk to [her] property." Ms. Wijetunga's email states that if her concerns are not addressed, she will "deny permission for any portion of the construction to involve the use of [her] property, including temporary access, staging, or the removal or alteration of trees located on [her] land," and further states that she "do[es] not consent to any work being performed from or on [her] property." See Exhibit 24.

14. On February 9, 2026, Ms. Lee-Cho submitted an Amended Prehearing Submission that she clarified is intended as a supplement to, and not a replacement for, her original Prehearing Submission. See Exhibit 25. The Amended Prehearing Submission includes the resume of Robert J. Niber, P.E., and indicates that he will be testifying as an expert in geotechnical engineering in lieu of Mr. Adamchak. See Exhibit 25(a). The Amended Prehearing Submission includes a new PowerPoint presentation prepared by Mr. Niber regarding Retaining Wall Replacement and Slope Stabilization. See Exhibit 25(b). The PowerPoint contains numerous photographs showing existing conditions. The

PowerPoint lists the following existing conditions as contributing to the failure of the existing timber wall:

- **70-year-old, failed, deteriorated 'utility pole' retaining wall**
  – water presence promotes further pole deterioration
- **Steep unstable slope/hillside**
  – soil movement/bulge evident at critical location
- **Unpermitted 'test cylinder' wall**
  – surcharge load is driving force to unstable slope
- **Large trees**
  – heavy driving forces to unstable slope
- **Poor improper drainage**
  – surface water/residential downspout runoff onto steep slope
  – continued loss of soil shear strength = failure

The PowerPoint states that the Petitioner needs to have the requested variance granted "as first step to confirm that proposed retaining wall design is in fact 'buildable' in compliance with County laws." The PowerPoint states that once the Petitioner knows the proposed retaining wall is "allowable," work can begin on a "Support of Excavation" ("SOE") plan. The PowerPoint states that the SOE will require the cooperation of uphill property owners "to determine safe sequencing of slope stabilization efforts," and notes that "[a]dditional soil borings" will be required. The PowerPoint further states that "critical components" of the SOE will include wooden fence removal, concrete cylinder wall removal, and tree removal. The PowerPoint notes that "existing improvements and trees are contributing to slope failure," and states that the abutting residential properties have a "share responsibility to prevent catastrophic property damage." Finally, the PowerPoint states that replacement of the existing retaining wall will allow for "[g]rading to unload slope / improved drainage" and "[l]andscaping / tree and ground cover replacement." See Exhibit 25(b).

15. On February 9, 2026, Ms. Rosenfeld submitted a Supplemental Prehearing Submission with twelve attachments (Supplemental Opposition Submission). See Exhibits 26 and 26(a)-(l). The Supplemental Opposition Submission restates, and in many instances amplifies, the seven reasons cited in the original Opposition Submission by Ms. Rosenfeld and her clients as supporting their contention that the requested variance does not satisfy the variance test in Section 59.7.3.2.E of the Zoning Ordinance. To this end, the Supplemental Opposition Statement suggests alternative ways to design and install the replacement wall so as to minimize its impact on abutting properties and "ensur[e] robust tree protection measures." In addition, the Supplemental Opposition Statement states, with respect to the proposed construction being "entirely within steep slopes," that the proposal does not attempt to "minimize impacts to existing large trees," and fails to account for the loss of "ten mature pine and holly trees" on Mr. Zhang's property that are "sizable and approximately 3 stories tall" despite not having a 24 inch diameter. The Supplemental Opposition Submission urges denial of the variance unless these impacts are mitigated, either by redesigning the proposed retaining wall or by

including adequate conditions of approval to address these impacts through site restoration and tree re-planting. See Exhibit 26.

With respect to the original assertion that the special circumstances or conditions are due to actions taken by the Petitioner when it built the original wall, and thus cannot be grounds for the grant of a variance, the Supplemental Opposition Submission states that the Petitioner's property should "share in the burden to remedy the current conditions by moving the proposed wall more distant from the shared property line to relieve the adverse impacts of construction and grading" on the abutting properties. See Exhibit 26.

The Supplemental Opposition Submission asserts that the requested variance is not the minimum necessary "in the design of the wall, its location, the proposed replacement slope, or the design and location of a replacement retaining wall on Mr. Zhang's property...." to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose. See Exhibit 26.

The Supplemental Opposition Submission elaborates on the reasons that the abutting driveway should be incorporated into the design of the proposed replacement wall. The Supplemental Opposition Submission states that the driveway that abuts the existing wall "is not recognized by the County's Fire Marshall as a required fire access lane" and thus asserts that this driveway "should be used in part for wall reconstruction." In addition to the alternatives set forth in the original Opposition Submission, the Supplemental Opposition Submission states that there are ways to redesign the wall using this driveway space that would potentially save some or all of the trees at issue, would "reduce the proposed depth of grading" on abutting properties, and would "allow for a replacement wall on Mr. Zhang's property that would preserve significantly more of his current useable back yard than is shown" in the attachments to the Petitioner's Prehearing Submission. See Exhibits 26 and 26(k).

Finally, the Supplemental Opposition Submission elaborates on the reasons included in the Opposition Submission that the requested variance will adversely impact the abutting properties, stating that it will require "removal of substantial trees and vegetation that provide an environmental and aesthetic and property value benefits." The Supplemental Opposition Statement further states that the proposed removal and replacement of the "upper" retaining wall on Mr. Zhang's property "will significantly and adversely impact the useable portion of his property by reducing its size to the point of being useless." See Exhibit 26.

The Supplemental Opposition Submission indicates that Ms. Rosenfeld intends to have her clients testify at the hearing, along with the following expert witnesses: Douglas G. Tilley, P.E., R.P.L.S., Timothy Zastrow (ASCA Registered Consulting Arborist), and Ryan Grubb (Bartlett Tree Experts). See Exhibit 26. Her submission includes twelve attachments, including CVs for the expert witnesses (Exhibits 26(b) and (e)), various email correspondence (Exhibits 26(g), (h), (k), and (l)), a COMAR excerpt regarding slope ratios (Exhibit 26(f)), redacted SDAT information for the Zhang property (Exhibit 26(i)), a Limits of Disturbance exhibit (Exhibit 26(a)), photographs of the retaining wall at

5518 Massachusetts Avenue (Exhibit 26(j)), and finally, a Tree Risk Report and a Tree Protection Report (Exhibits 26(c) and (d)), both prepared by Mr. Zastrow. See Exhibits 26 and 26(a)-(l).

The Tree Risk Report assessed a total of five trees on the Anderson and Zhang properties with respect to the risk that their failure would pose to the Church property. See Exhibit 26(c). The Tree Risk Report includes the following conclusions:

> • Tree # 5, Royal Paulownia, posed a **moderate** risk due to the possibility of dead branches falling and a **low** of whole tree failure due to root or soil failure. Risk could be reduced by pruning, Risk would be reduced to **low**.
> • Tree #6, White Oak, posed a **low** risk due to people and property at 5500.
> • Tree #7, Tulip Poplar, posed a **moderate** risk due to the possibility of the primary stem union splitting. Risk could be reduced by installing a new cable between the two main stems, and pruning to reduce canopy height, and canopy spread on 5500 side, by 10-15%. Risk would be reduced to **low**.
> • Tree #12, Red(?) Oak, posed a **moderate** risk due to a hanging dead branch over the property at 5500. This branch, when it falls, will likely land in an area used by the pre-school staff, students, and visitors. Risk could be reduced by removing the hanging branch. Risk would be reduced to **low**.
> • Tree #13, Green Ash, (3-year time frame) posed a **low** risk to people and property at 5500.
>
> The most urgent risk reduction step to take is to remove the hanging branch in Tree #12. The other recommendations should be carried out as soon as practical.

The Tree Protection Report provides specific comments regarding five of the trees on abutting properties (Tree #5 – Royal Paulownia, Tree #6 – White Oak, Tree #7 – Tulip Poplar, Tree #12 – Red Oak, and Tree #13 – Green Ash). The Report observes that "[i]f the tree owners do not agree to have their trees removed, the project cannot be built in accordance with the current plans." It states that without the recommended mitigation, the risk rating for trees 5, 7, and 12 would remain moderate while the risk rating for trees 6 and 13 would be low. The Report reviews a number of construction scenarios regarding the placement of the wall and the presence or absence of regrading/overfill, and the impacts of those scenarios on the trees. The Report concludes that if the construction plans were modified as recommended in the Report, the risk assessment for all five trees would be low. See Exhibit 26(d).

16. On February 13, 2026, Ms. Lee-Cho submitted a Further Amended Prehearing Submission ("FAPS"), with two attachments. See Exhibit 27. The first attachment is email correspondence from County Fire Marshal, Dr. Marie LaBaw, regarding the need for the Petitioner to maintain the existing fire access lane. See Exhibit 27(a). The second attachment is the resume of Aziz Paracha, P.E., who will testify See Exhibit 27(b). The FAPS indicates that Mr. Paracha will testify as an expert in the field of Structural Engineering "to address questions related to the structural design of the proposed retaining wall and to rebut unsubstantiated assertions made in Ms. Rosenfeld's

Supplemental Pre-Hearing Submission that a retaining wall located in the middle of the Church's drive aisle is a feasible alternative that would adequately address the embankment failure." See Exhibit 27.

In addition to conveying the afore-described attachments, the FAPS also responds to Ms. Rosenfeld's Supplemental Opposition Submission (Exhibit 26) and to the supplemental email statement submitted by Ms. Wijetunga (Exhibit 24). The FAPS asserts that the Supplemental Opposition Submission "ignores expert testimony introduced at the December 3, 2025, hearing in this matter, misstates applicable variance standards, and is comprised of conclusory opinions without supporting evidence," and that the Wijetunga statement "is based on the lay opinion of the property owner, does not offer any expert analysis of the situation and lacks probative value as to the relevant factors for deciding a variance case." The FAPS then purports to "untangle mere opinions from facts supported by expert analysis while outlining the Petitioner's compliance with the necessary findings of Section 7.3.2.E." The FAPS states that the Supplemental Opposition Submission addresses the variance test in Section 59.7.3.2.E.1, but that the Petitioner is pursuing the requested variance relief under Section 59.7.3.2.E.2 of the Zoning Ordinance "based on the significant topographic disparity that exists between the Church's property and the neighboring properties." The FAPS states that the Supplemental Opposition Submission "does not dispute the existence of the unusual topographic condition, and furthermore, in paragraph (b), admits that the same embankment that is the subject of the topographic disparity is also an environmentally sensitive feature, which is an alternative justification for approval of a variance pursuant to Section 7.3.2.E.2.a.iii" of the Zoning Ordinance. Thus, the FAPS asserts that the Supplemental Opposition Submission "concedes that the variance requested in this case unequivocally fulfills the requirements of 7.3.2.E.2.a" of the Zoning Ordinance.

The FAPS states that as explained in the Statement, the Petitioner's existing retaining wall was built in 1957, before the homes on the abutting properties at 5501, 5503, and 5505 Namakagan Road were constructed. The FAPS states that "grading during construction of a new 5501 home in 1983, and the previous 5503 home, prior to the 2002-2003 redevelopment of 5503 Namakagan to flatten and extend the rear yard in the direction of the embankment, placed a great deal of stress on the utility pole wall that was not present when it was built." The FAPS states that "[t]he issue was further exacerbated by the 5503 Namakagan owner's construction of an unpermitted cylinder wall above the Church's utility pole wall, which placed additional pressure contributing to destabilization of the embankment at no fault and beyond the control of the Church." In addition, referring to the December 3, 2026, testimony of Stephen Crum, the FAPS asserts that "the erosion of the embankment has been accelerated by unmitigated stormwater runoff from the roof downspouts of all three neighboring properties, which has further contributed to the need for a new retaining wall with proper stormwater management measures to provide stability to the embankment." See Transcript from December 3, 2025 ("Transcript 1") at 102:13-15). After reciting case law for the proposition that the owner of an "upper" property has a right to have water flow naturally across a lower property, the FAPS asserts that case law also indicates that the upper owner is liable to the lower owner for damage caused to the lower property under certain

circumstances, including when water is discharged "into an artificial channel or in a different manner than the usual and ordinary natural course of drainage" or in a manner that "artificially concentrate[s] water flow in a way that causes damage to a lower owner." The FAPS thus states that because "[t]he subsequent grading, improvements, and stormwater conditions on the neighboring properties all contributed to the need for this variance, and none were caused by actions of the Church," the "special circumstances necessitating approval of a variance are not the result of actions by the Petitioner," as required by Section 7.3.2.E.2.b of the Zoning Ordinance.

The FAPS states that the requested variance is the minimum needed to overcome the practical difficulties associated with full compliance with the rear setback imposed by the Zoning Ordinance. The FAPS states that Ms. Rosenfeld inaccurately assumes that the wall can be relocated to an area closer to the Church, in the existing driveway. The FAPS clarifies that the email correspondence provided by Ms. Rosenfeld with Fire Marshall Marie LaBaw does not say that the width of the driveway can be reduced because it does not meet Fire Lane standards, but rather states that while the driveway may not be used by a fire truck, firefighters would still use this driveway in the event of an emergency. See Exhibit 26(k). The FAPS describes subsequent correspondence with Ms. LaBaw in which she confirms that Chapter 22 of the Montgomery County Code requires the maintenance of existing fire protection systems and prohibits reduction of the efficiency of existing systems. The FAPS states that per Ms. LaBaw, "the current code requires that new buildings provide 15 feet of clear and walkable grade along all exterior walls, so while the Church site predates the 15-foot requirement, the County will not permit a reduction of the drive aisle width that would further restrict access to fire department personnel...." See Exhibits 27 and 27(a). In addition, the FAPS states that contrary to the representations of Ms. Rosenfeld, the "the handicap access ramp to the sanctuary runs along the drive aisle and is used every Sunday by mobility impaired Church members, throughout the week for kitchen deliveries, and by workers such as electricians who recently installed new light fixtures in the Church sanctuary." See Exhibit 27.

The FAPS states that in addition to recognizing a right to lateral support, *Mullan v. Hacker* (187 Md. 261, 265-266 (1946)) also makes clear that the "right of lateral support applies only to the soil in its natural condition," and thus if the owner of a property "is not content to enjoy his land in its natural condition, but wishes to build upon or improve it, he must either make an agreement with his neighbor, or dig his foundations so deep, or take such other precautions, as to ensure the stability of his buildings or improvements, whatever excavations the neighbor may afterward make upon his own land." See Exhibit 27.

The FAPS states that that proposed retaining wall "does not encroach" on abutting properties and will be located at least two feet from the shared rear property line. The FAPS states that "[w]hile access to the neighboring properties to construct the proposed wall will be required, the wall itself is not in any way an encroachment," and notes that "[t]o the extent that grading will impact adjacent properties, it will absolutely be necessary to provide the very lateral support Ms. Rosenfeld demands in conjunction with

construction implementation." The FAPS states that the Church's expert in geotechnical engineering, Mr. Niber, "will explain the reasons why the specifications for the proposed wall and the required variance are the minimum necessary to ensure future embankment stability," and that "the removal of trees, including those on the Wijetunga property, can be achieved without negatively impacting the stability of the slope and without the need to extend the wall the entire length of the Wijetunga property." See Exhibit 27.

The FAPS states that the Church "disputes that tree removal incidental to construction of the wall constitutes an adverse impact on the neighboring property owners." The FAPS notes that the Church's expert arborist, Mr. Galvin, had concluded in his Tree Risk Assessment Report that "the trees to be removed would pose a risk level after construction ranging from moderate to extreme." See Exhibits 23(a) and 27. The FAPS states that because the failing utility pole wall needs to be replaced in the location proposed, "removing these trees is actually in the best interest of the neighboring property owners." The FAPS then proceeds to explain why it believes the Tree Risk Assessment Report and Tree Protection Report prepared by Mr. Zastrow are flawed, including his failure to "account for the risk of embankment failure in his analysis." The FAPS states the Mr. Niber will testify that failure is imminent. The FAPS notes that Ms. Wijetunga's lay assessment of the health of the trees on her property (Tree #3 and Tree #4) is contradicted by Mr. Galvin's expert assessment. See Exhibit 27.

The FAPS concludes that "[t]he Church's proposed wall and accompanying tree removal does not represent an adverse impact on the neighboring properties," but rather "represents an opportunity for the neighbors to address dangerous conditions on their properties." The FAPS notes that as represented at the December 3, 2025, hearing, even if the variance is granted, the Church cannot move forward with the proposed construction without the consent of Ms. Rosenfeld's clients and Ms. Wijetunga. The FAPS explains that "[t]he Church needs the requested variance approval at this time despite not having the neighbors' consent, in order to further its efforts to determine whether the proposed wall in fact meets the County's structural design requirements and is therefore 'buildable.'" It states that "DPS will not be able to issue a permit to construct the wall in this case until/unless the Church provides documentation evidencing the Church's possession of access and construction easements from the neighbors." See Exhibit 27.

17. At the beginning of the December 3, 2025, hearing, the Board heard argument on Ms. Rosenfeld's Motion to Postpone the hearing and Ms. Lee-Cho's Response opposing that Motion. Ms. Rosenfeld argued that she needed additional time to respond to material that had been filed by the Petitioner ten days before the hearing, over the Thanksgiving holiday. She argued that implementation of the requested variance would involve clearing and grading within her clients' properties, and that the impact to her clients was therefore significant. Ms. Rosenfeld also argued that to the extent that the new material suggested than runoff from her clients' properties had contributed to the demise of the existing wall, and that the new wall would remediate this, her clients should be allowed time to investigate and address this. Ms. Rosenfeld argued that the Forest Conservation Plan shows extensive clearing and grading on her clients' properties. Pursuant to a Board question, she acknowledged that as a matter of law, the Petitioner would need her clients'

consent to undertake any clearing or grading on their properties. Ms. Rosenfeld stated that her clients would show that the requested variance does not meet the standards set forth in the Zoning Ordinance.

Ms. Lee-Cho asserted that the material filed before Thanksgiving contains no new information with respect to the proposed wall or the actual variance request. She stated that the Petitioner objected to the requested postponement, and she asked that the case be allowed to go forward, noting that this would be the fourth postponement of this matter. Ms. Lee-Cho argued that there was no due process problem with respect to the neighbors' ability to respond to this information, and offered that if Ms. Rosenfeld wanted to present an opposition or another expert, that could be done in a subsequent hearing. Ms. Lee-Cho stated that her witnesses were present and prepared to proceed, and she asked that she be permitted to present her case in chief. She stated that she could bring her experts back on another day if needed for Ms. Rosenfeld's cross-examination.

Ms. Lee-Cho argued that the variance is for a retaining wall, and does not involve the adjacent properties, although she acknowledged that the construction of the retaining wall, which will be wholly located on the Petitioner's property, would impact some trees on neighboring properties. Ms. Lee-Cho argued, among other things, that Ms. Rosenfeld and her clients are focused on the implementation of the variance (i.e. the construction of the retaining wall), but that the Petitioner cannot take steps towards implementation, such as obtaining a building permit, unless and until the requested variance is granted. She argued that it was the impact of the wall, if it is built, that concerned the neighbors. Ms. Lee-Cho stated that the variance cannot be implemented without the consent of the neighbors represented by Ms. Rosenfeld. In explaining this, Ms. Lee-Cho stated that building the proposed retaining wall would require construction and access easements from the very neighbors who oppose the grant of the variance, and that the wall cannot be built without those easements and the cooperation of these neighbors. Ms. Lee-Cho later stated that some trees would have to be removed before the wall could be constructed, and that drainage would have to be incorporated behind the wall. Ms. Lee-Cho argue that in order to fully understand the scope of the work, construction phasing, and implementation requirements, the variance needs to be approved so that the proposed retaining wall can be structurally reviewed by DPS. She asserted that this retaining wall needs to be replaced for the protection of the Church property and the neighboring residential properties. Ms. Lee-Cho stated that the retaining wall is holding up an embankment that is failing, and that by designing a new retaining wall, the Petitioner has proactively taken the first step needed to address the problem. Ms. Lee-Cho emphasized that the Petitioner and the neighbors will have to work together to address this issue.

After considering the Motion and Response, and arguments put forth by counsel, on a motion by Alan Sternstein, seconded by Richard Melnick, Vice Chair, Caryn L. Hines, Chair, and Donald Silverstein in agreement, the Board voted to deny the Motion to Postpone and proceed with the hearing.

18. At the December 3, 2025, hearing, Ms. Lee-Cho stated that the Church's property is approximately 1.2 acres in size, and that it is located in the R-60 Zone. She stated that the subdivision plat for the property was recorded in 1951, and that the Church was built in 1957. Ms. Lee-Cho stated that the Church is seeking to reconstruct a retaining wall that was built when the Church was built and that is holding up an embankment along the Church's rear property line. Referring to the Updated Site Plan at Exhibit 17, Ms. Lee-Cho stated that the area shaded in blue is the Church building, and that the red line is the proposed replacement retaining wall. She noted that a retaining wall up to 6.5 feet tall could be built without having to meet a setback requirement, but that because the proposed retaining wall will be up to eight (8) feet tall, it is required to meet the five (5) foot accessory structure setback from the rear lot line. In addition, Ms. Lee-Cho stated that because the proposed retaining wall is 240 feet long, it requires an additional 216 feet of setback. She stated that the proposed retaining wall would sit about two (2) feet off the property line.

Ms. Lee-Cho stated that the embankment behind the Church is an existing topographical feature that her civil engineer will address. Ms. Lee-Cho stated that the home construction on surrounding properties came after the construction of the Church. She stated that there are a number of factors that are contributing to the failure of the embankment behind the Church. She noted that the existing utility pole wall was constructed when setbacks and separate building permits were not needed for retaining walls, and argued that in that sense, the existing structure is a legal nonconforming structure.

19. Mr. Stephen Crum, P.E., testified as an expert in civil engineering. See Exhibit 16(e). Mr. Crum testified regarding the topographical disparity between the Church property and the abutting properties along Namakagan Road that while Massachusetts Avenue and Namakagan Road are roughly parallel to one another, Namakagan sits at a much higher elevation than Massachusetts Avenue. Mr. Crum testified that the slope between the two roads varies along the block between Brookeway Drive and Fort Sumner Drive, from about 14 feet at Brookeway Drive to about 32 feet at Fort Sumner Drive. Mr. Crum testified that the 14 foot difference in elevation is fairly constant along the block until you get to the Church, and that behind the Church, the elevation difference is the greatest (up to 32 feet). Mr. Crum testified that this distinguishes the Church property from other properties on the block, and makes it unique for variance purposes.

Mr. Crum used the Updated Site Plan to show the Board where the abutting Anderson (5501 Namakagan), Zhang (5503 Namakagan), and Wijetunga (5505 Namakagan) properties are located. He testified that according to SDAT records, the Church was built in 1957, the Anderson house was built in 1983, the Zhang house was built in 2003, and the Wijetunga house was built in 2005. Mr. Crum testified that all of the neighbors' houses were thus built after the Church.

Mr. Crum testified that the existing wall is a timber wall that varies in height from seven (7) feet to eleven (11) feet. He testified that the proposed replacement wall would

be made of reinforced concrete. Mr. Crum testified that the proposed wall has been designed with an asymmetrical ("L-shaped") footing that will extend towards the Church building instead of the more standard "inverted T-shaped" footing, in order to keep the structural elements of the wall on the Church property. Mr. Crum testified that the photographs in the Statement show what the timber wall currently looks like, and show an access road for Fire Department access behind the Church. Mr. Crum testified that the cylinder wall shown in the photographs is on the Zhang property, and is within two to three feet of the property line shared with the Church. See Exhibit 16.

Mr. Crum testified that timber walls were very common until about 1980, when modular block walls were introduced. He testified that timber walls are still considered viable. Mr. Crum testified that the Church's timber wall has reached the end of its service life, noting that the typical life expectancy of a timber wall is 15-20 years. Mr. Crum testified that vegetation growth and surface runoff from uphill properties have contributed to the demise of the Church's timber wall.

In response to a question from Ms. Lee-Cho asking if the existing embankment was unstable, Mr. Crum testified that based on best practices, any slope greater that 2:1 (horizontal to vertical ratio) is not considered stable without a detailed geotechnical study. In response to a question asking if the cylinder wall contributed to the demise of the timber wall, Mr. Crum testified that because the timber wall is older than the cylinder wall, any additional load would increase the stress on the timber wall and impact its structural stability. He testified that he was not able to find any permitting information regarding the cylinder wall, and thus he did not know if an engineer was involved or if the design of the cylinder wall took into account the load it would place on the timber wall below. In response to a question regarding the impact of stormwater runoff on the existing timber wall, Mr. Crum testified that he had visited the property several times, and that it was apparent from the Church side of the property line that all runoff from upstream properties, including their downspouts, runs uncontrolled into the Church's property.

Mr. Crum testified that the proposed retaining wall is 240 feet long and has a maximum height of eight (8) feet. He testified that the edge of the wall would be two (2) feet from the shared property line at the closest. Mr. Crum testified that in order to avoid the buildup of hydrostatic pressure behind the proposed wall, which would increase the load on the new wall, a drainage system would be installed in the gap between the proposed wall and the property line to catch runoff and safely convey it around the wall to a discharge point on the Church's property. He testified that there will also be weepholes in the wall. Mr. Crum confirmed in response to questioning that the drainage system would be located on the Church's property.

In response to a question from Ms. Lee-Cho asking why the proposed retaining wall could not be a maximum of 6.5 feet tall, Mr. Crum testified that the proposed design takes into account the property's elevations at the rear property line and its elevations at the drive aisle, and then calculated the height needed to restore a stable slope of three horizontal to one vertical until the construction can be tied into the abutting neighbors'

properties, explaining that 3:1 is the criteria for a stable slope on residential properties. Mr. Crum testified that at worst, the proposed wall would be eight (8) feet tall.

In response to a Board question asking if construction of the wall would require any disturbance or use of the abutting properties to the rear, Mr. Crum testified that the construction would impact the properties behind the Church property because of a need to excavate and to restore a stable slope. He testified that the proposed construction will require the consent of the neighbors to allow disturbance on their properties.

In response to a Board question asking how wide the existing drive aisle is, Mr. Crum testified that it varies between eight (8) and twelve (12) feet in width, and that if/when the new wall is built, the drive aisle will be eleven feet, nine inches (11'-9") wide. Mr. Crum testified that the drive aisle provides fire access, and that while the County's current requirement for fire access is twenty feet (20'), the County will accept one-way access of ten feet (10'). Mr. Crum testified that if the retaining wall were moved to the middle of the drive aisle, the Church would lose vehicular fire access. He testified that placement of the wall in the middle of the drive aisle would also result in a need for significant fill behind the wall, which would impact the tree roots in the slope. Mr. Crum testified that the Church also has footings that extend under the drive aisle and that a structural engineer would have to be taken into consideration in designing a wall to be located on the drive aisle. Finally, Mr. Crum testified that the proposed wall is replacing an existing wall that is located closer to the rear lot line. He testified that for these reasons, he would not recommend locating the wall on the drive aisle.

In response to a question from Ms. Lee-Cho asking if the Church had done anything to contribute to the instability of the existing timber wall, Mr. Crum testified that in his opinion, the Church has not done anything to cause this. He testified that the existing wall is beyond its service life, is deteriorated, and needs to be replaced.

Finally, in response to questions from Ms. Lee-Cho regarding satisfaction of the various elements of the variance test, Mr. Crum testified that the Church's property contains exceptional topographical conditions, notably the increased elevation difference between the Church properties and the properties behind it relative to the elevation difference between other properties on the block. Mr. Crum testified that the proposed development uses an existing nonconforming property or structure because the existing timber wall, with a height that exceeds eight feet and a setback of less than 219 feet. Mr. Crum further testified that when the timber wall was built, it is his understanding that building permits were not issued for retaining walls. Rather, he testified that retaining walls were approved in connection with the building permit issued for the building. Mr. Crum testified that in his opinion, the special circumstances necessitating the variance are not due to any actions by the Church, testifying that the existing topographical conditions, the location of improvements, and the expected service life of the timber wall are not due to actions by the Church. Mr. Crum testified that in his opinion, the requested variance is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail due to the unusual conditions pertaining to this property. He testified that the Church has undertaken careful

consideration of many factors in coming up with the design of the proposed replacement wall, and that the requested variance is the minimum needed to overcome the practical difficulties associated with full compliance with the Zoning Ordinance. Mr. Crum testified that in his opinion, granting the requested variance would not substantially impair the intent and integrity of the general plan or of the Bethesda-Chevy Chase Master Plan. Finally, Mr. Crum testified that in his opinion, granting the requested variance will not adversely affect the long-term use of abutting and confronting properties. In response to a question from Ms. Lee-Cho asking about the neighbors' concerns that granting the variance would adversely affect their trees or other improvements, Mr. Crum testified that in his opinion, the catastrophic failure of the existing timber wall would have a greater impact on their properties.

Mr. Crum testified that granting the variance would allow the structural engineer to finalize the preliminary design for the wall, and would allow the Church to work with its neighbors to obtain the necessary access or construction easements. He testified that with the grant of the variance, the plans could move past zoning review, and the design of the wall could be reviewed by the structural engineers at DPS. Mr. Crum testified that DPS could not issue a building permit for the proposed retaining wall without the necessary written approvals from the neighbors because the limits of disturbance for the proposed construction would extend beyond the Church's property.

Mr. Crum testified that the Church needs to get the variance first, before getting the neighbors' consent to access their properties, because the structural engineer needs to know the location of the wall before he can assess the work that will be needed on neighboring properties, such as grading and clearing. Mr. Crum testified that after evaluating multiple retaining wall systems, the Church arrived at what they believe is the most efficient wall, both in terms of cost and in terms of impact to neighboring properties. He testified that the height and location of the proposed wall are critical to determining its impacts. Mr. Crum testified with respect to trees that some would have to be removed before beginning construction of the retaining wall because the necessary excavation might inadvertently undermine these trees and cause them to fall.

On cross-examination, Mr. Crum testified in response to a question asking where the limits of disturbance were shown on the Forest Conservation Plan that they were marked with a heavy grey line marked "LOD," and he proceeded to describe where this line was shown behind the Anderson and Zhang homes. See Exhibit 13(b). Mr. Crum testified in response to a question from Ms. Rosenfeld asking what happens physically on a property within the limit of disturbance that it could be anything from changing the grade to removing vegetation. He testified that on the Anderson property, it would entail removing vegetation and modifying the existing grade to provide a 3:1 slope. Mr. Crum testified that on the Zhang property, there was discussion about the stability of the cylinder wall, and that the maximum limit of disturbance is shown in case the cylinder wall needs to be replaced. Mr. Crum testified that the red Xs and associated numbers on the Forest Conservation Plan indicate trees that potentially may have to be removed based on impacts to their critical root zones. He testified that the Church has yet to reach

agreement with the owners of these properties about the current wall design and tree removal.

In response to questions from Ms. Rosenfeld about the existing timber wall, Mr. Crum testified that it was built in 1957. He testified that timber walls usually have a useful life of 15 to 20 years. In response to a question asking if it would have been reasonable for the Church to have replaced this wall, Mr. Crum testified that the lifespan of the wall depends on the type of wood used, how it was originally treated, and environmental conditions. He testified that this wall was made of utility poles, which have a longer lifespan and are designed to be in the soil for 50 to 100 years. Mr. Crum testified that it is his opinion that this has allowed the existing timber wall to last as long as it has. Mr. Crum testified that in his opinion, the wall has now deteriorated to a point that it should be replaced.

In response to a question from Ms. Rosenfeld asking if using a 2:1 slope behind the wall would minimize the grading necessary, Mr. Crum testified that the Church is eligible for a 2:1 slope, but that since there is only two feet of Church property behind the wall, the difference between a 2:1 slope over that distance and the 3:1 residential slope would not have less impact on the neighboring properties.

In response to a question from Ms. Rosenfeld asking if the County would have alternate ways to address fire access if the drive aisle were reduced to less than ten (10) feet, Mr. Crum testified that there are alternate ways to address fire access, but that those had not been explored with the Fire Marshall. He testified in response to additional questioning that he assumed that the impact to trees on neighboring properties would be similar to what the Church is proposing if the wall were moved into the drive aisle, but acknowledged that he had not done that analysis.

In response to a question from Ms. Rosenfeld asking if construction of a retaining wall with inverted "T" footers instead of the proposed asymmetrical "L-shaped" footers would reduce the impact of the wall on her clients' properties, Mr. Crum testified that the impact to her clients' properties would be worse. In response to a question asking if the existing timber wall was constructed to create a larger building pad for the Church, Mr. Crum testified that it was built to create a flat enough pad to build the Church building. In response to Ms. Rosenfeld's final question, Mr. Crum testified that he had not had any discussions with the Church's neighbors.

20. Michael Galvin testified that he is a Certified Arborist, a Registered Consulting Arborist, and a Forest Conservation qualified professional, and was accepted as an expert. See Exhibit 16(e). Referring to the Forest Conservation Plan on the first page of Exhibit 16(d), Mr. Galvin explained that the trees with the red Xs on them have circles around them that show the critical root zones of these trees. Mr. Galvin testified that the Montgomery County Code dictates that the critical root zone of a tree has a radial distance of one and a half feet for every one inch of trunk diameter. He testified that the critical root zone is considered critical to a tree's health and stability. Mr. Galvin testified that pursuant to the Forest Conservation Act, only trees with a diameter of 24 inches or more

need to be shown on the Forest Conservation Plan, and that there are other trees on the neighbors' properties. He testified that some of the trees on the Forest Conservation Plan have red Xs and some do not. Mr. Galvin testified that some of these trees have significant issues irrespective of the proposed construction.

Mr. Galvin testified that "fill" and "cut" are both bad for trees. He testified that "fill" is bad for tree roots, and that if a tree experiences a lot of fill in its root zone, it takes three to ten years for the tree to decline and likely fail. Mr. Galvin testified that if you cut into the roots of a tree, that tree is more likely to fall over than to decline over time.

Mr. Galvin testified that there is a national industry standard for tree risk assessment that consists of a two-way matrix plotting probability of failure against consequences of failure. He testified that the consequences of failure for the trees on the properties abutting the Church property would be severe because any direction a tree were to fall would have severe impacts to people and property. Mr. Galvin testified that the probability of failure increases with filling of the root zones or significant cutting. He testified that there are three levels of tree risk assessment, 1, 2, and 3, and that are increasingly investigative and expensive. Mr. Galvin testified that he performed what he called a level 1.5 assessment for the Church, which is a visual basic risk tree assessment. Mr. Galvin then proceeded to review his individual assessments for Trees 3, 4, 5, 6, 7, 12, and 13 on the abutting properties, all of which are proposed for removal, referring to the photographs of each tree on the PowerPoint slides at Exhibit 16(d) to explain his assessment. Mr. Galvin testified in great detail about the health of each of these trees and their potential for failure.

In response to a question from Ms. Rosenfeld on cross-examination asking if he had done a tree risk assessment on each of these trees, Mr. Galvin testified that he had not.

21. Gene Kreider of Scott-Long Construction testified that he has been in the construction business for over 35 years and has a wide range of experience. Mr. Kreider testified that he has seen a lot of water in his day and knows the damage it can cause. Mr. Kreider testified that he was retained by the Church to evaluate the embankment and give the Church an opinion on viable solutions for a new sustainable retaining wall. Mr. Kreider testified that the failure of the existing wall seems imminent, indicating that he would expect it to fail in the next one to three years, depending on what kind of weather events the area sees.

Mr. Kreider testified that he has been to the property multiple times. In response to a question from Ms. Lee-Cho asking about his observations of the cylinder wall, Mr. Kreider testified that this is one of the first times he has seen a wall constructed out of this material, and that it is not something he has seen in Maryland, Virginia, or the District of Columbia. He testified that he is not an engineer or an architect, but that based on his experience, he believes the weight of the cylinder wall is creating downward pressure that in turn is creating lateral pressure on the timber wall. Mr. Kreider testified

that the cylinder wall did not look like anything that would ever have been given building permits.

Mr. Kreider testified that in his opinion, the Church's proposed retaining wall is a viable solution. He testified that part of his job is to take control of a project once the permits are approved. Mr. Kreider testified that the Church is still in the preliminary process of seeing if they can get a building permit application submitted to the County. He testified that it is during this time that the engineers, arborists, and architects work to develop a plan that meets all applicable codes. Mr. Kreider testified that once the Church gets past the variance process, they can have discussions with the owners of the neighboring properties to see how the impacts of the proposed construction on those properties can be minimized. He testified that once the proposed wall gets approved, there are very specific means, methods, and procedures that will have to be adhered to in order to maintain the stability of the slope, and that this will be a highly regulated project. Mr. Kreider testified that his company's job as project manager is to make sure that the means, methods, and procedures are followed, and that the County has indicated that they will also be monitoring to make sure this happens.

Mr. Kreider testified that once the new retaining wall is in place, the Church and its neighbors will be better off because water management will increase 120 percent, and there will be less soil erosion from the embankment. He testified that if trees are being removed, they will put some trees back, and that the health of some of the smaller trees on the neighbors' properties may increase since they will not be competing for sunlight.

22. Darrel Regier testified that he is the President of the Pilgrim Lutheran Church, and that he has been a member since 1975. He testified that the Church has a school tenant in their lower level for years, and that the most recent school has been there since 2020. Mr. Regier testified that the administrative manager for the school kept telling him that the soil was eroding next to the playground after every rainfall. He testified that the timber wall was also eroding, such that the poles were breaking apart and falling into the driveway. Mr. Regier testified that the Church started to look into this, and saw that rainwater has undermined the entirety of the timber wall, going over and under the wall, and pushing soil through. He testified that he had a geotechnical engineer look at the wall. Mr. Regier testified that the engineer told him the wall was unstable and needed to be fixed. He testified that the Church brought in the Chesapeake Bay Trust and the Department of Environmental Protection to help address their rainwater issues, and that the Church applied for some grants to address the problem. Mr. Regier testified that in connection with this, the Church was asked to quantify the amount of water coming down the embankment onto their property, and their plans for disbursing this water. He testified that the Church then reached back out to the geotechnical engineer and to a structural engineer. Mr. Regier testified that the first structural engineer proposed a 20 foot tall retaining wall with an enormous amount of fill. He testified that construction would involve driving "soldier piles" (i.e. I-beams) into the ground, and putting wood lagging behind them. Mr. Regier testified that the cost and access issues caused by the need to bring large equipment in using the existing drive aisle behind the Church made this proposal unworkable. He testified that the Church had to discard this proposal and six months of

work, and started over with the Scott-Long Construction Company to help them find a contractor that could help the Church resolve this problem. Mr. Regier testified that Scott-Long had some of their construction subcontractors reach out to the Church to see if they would be able to perform the work needed in the confined area available. Mr. Regier testified that Scott-Long eventually brought in Mr. Kreider, who is their problem solver. Mr. Regier testified in summary that the Church explored a variety of options for the reconstruction of its retaining wall before arriving at the proposed solution. He testified that the Church's plan was to have a design that they could go over with their neighbors and then to negotiate the necessary access easements with them.

Mr. Regier testified that since that time, the Church has notified its neighbors about surveys that it needed to have done, and has received written permission to enter the neighbors' properties in connection with that work. He testified that the Church has kept in constant communication with four of its neighbors, including the owners of 5501, 5503, 5505, and 5507 Namakagan Road. Mr. Regier testified that the house at 5507 Namakagan was built in 1952 and is the only house that was built before the Church. He testified that the property at 5507 Namakagan is not really affected by the proposed retaining wall, but is kept informed anyway because the property is in the Church's backyard. Mr. Regier testified that the proposed replacement wall should not cause major issues with the properties at 5505 Namakagan and 5501 Namakagan other than the loss of trees. He testified that the real issue is with the property at 5503 Namakagan. Mr. Regier testified that the property at 5503 Namakagan contains a wall constructed of concrete test cylinders that were used to push back and raise the grade of that property. He testified that this was done by a previous owner of the property, not by the Zhangs. Mr. Regier testified that the test cylinders are not engineered or interconnected, and that there is a Paulownia tree pushing them out. He testified that the test cylinder wall is leaning towards the Church and could fail. Mr. Regier testified that with a good hurricane and a lot of water, the backyard of 5503 Namakagan could collapse into the Church. He testified that Trees 3, 4, 5, 6, and 7 are also all tilting towards the Church. Mr. Regier testified that he is concerned for the safety of the school children, the safety of his neighbors, and the safety of the Church, and that the wall needs to be replaced.

23. At the outset of the February 18, 2026, hearing, Ms. Rosenfeld stipulated that tree #5 (24-inch diameter paulownia) and Tree #6 (30-inch diameter white oak) need to be removed, and stated that there is no need to discuss these trees at the hearing. When asked by Ms. Lee-Cho if she would stipulate to the risk assessment regarding those trees set forth in Exhibit 23(a), Ms. Rosenfeld emphatically stated that she would not. Ms. Rosenfeld questioned the need for including the Notice of Liability letters in the record (Exhibits 23(c), (d), and (e)), and asserted that these letters have no evidentiary purpose.

24. At the February 18, 2026, hearing, Robert J. Niber, P.E., of WDP & Associates Consulting Engineers, Inc., appeared and was accepted as an expert in geotechnical engineering. See Exhibit 25(a). Mr. Niber testified that he had visited the subject property on February 4, 2026, and that he had prepared the PowerPoint at Exhibit 25(b). He testified that while the proposed retaining wall does not encroach on neighboring properties, as shown on page 3 of the PowerPoint, the Petitioner would need to work

cooperatively with the owners of these properties to construct the wall. Referring to the photograph of existing conditions, Mr. Niber testified that a situation of imminent failure exists, and that failure is already occurring, as evidenced by the trees and fence leaning towards the Zhang property and the "bulging" cylinder wall on the Zhang property. He described the cylinder wall as unpermitted and "illegal." Mr. Niber testified that the deteriorating timber wall is also contributing to this situation, and that a solution and variance approval are needed.

In response to a question from Ms. Lee-Cho asking if he had observed any evidence of stormwater contributing to the demise of the wall, Mr. Niber testified that the photograph of existing conditions shows a black perforated pipe that he understood was previously connected to a downspout at 5505 Namakagan Road, but that had since been disconnected, allowing for uncontrolled runoff. He testified that left uncorrected, this will weaken the soil, cause movement, and exacerbate and accelerate the failure of the slope, including failure of the 70-year old timber wall.

Mr. Niber testified that the timber wall was adequate when it was built, but that uphill development had changed the conditions and surcharge load that the wall was constructed to address, stating that the slope was flatter before development and fill on abutting properties. Mr. Niber testified that as shown in the photographs of existing conditions in his PowerPoint, trees on the Zhang property are leaning toward the Zhang house. Mr. Niber testified that this is indicative of slope failure. He testified that the closeup photos of the timber wall show a deteriorating wall with rotting timbers and holes that allow for uncontrolled drainage. Mr. Niber testified that the photograph of the wall looking north shows the steepness of the slope that it is holding back, and testified that this slope was flatter before the development, fill, and backyard expansion of the properties behind the Church property. Mr. Niber testified that several trees in this photograph indicate the surcharge on the wall, and that the photographs of the fence and trees leaning towards the Zhang residence and the bulging wall also show this. He testified that the leaning trees show that the soil mass is sliding downward in response to weakened soil strength and the additional surcharge load. Mr. Niber testified that the slope is less steep towards the Anderson property.

In response to a question from Ms. Lee-Cho asking him to explain why he described the test cylinder wall as unpermitted and illegal, Mr. Niber testified with respect to the wall being unpermitted that he was not aware of any permit for this wall. With respect to the wall being illegal, Mr. Niber testified that based on his observations, this wall is a stack of concrete test cylinders. He testified that he owns and manages a testing agency and a lab that uses concrete test cylinders on a regular basis to test the compressive strength of the concrete. Mr. Niber testified that the wall would not meet the current design and construction codes that would allow it to be permitted in Montgomery County, and that based on his 40 years of practicing geotechnical engineering as a consultant dealing with retaining walls, it would not have met the design and construction codes when it was built.[2] Mr. Niber testified that the presence and condition of the cylinder

[2] Mr. Niber testified that he is on a retaining wall committee of a forensic committee of the American Society of Civil Engineers, and that his committee is committed to improving practices to reduce failure.

wall are having an adverse effect on the slope. In response to further questioning from Ms. Lee-Cho, Mr. Niber testified based on the pre-hearing submission materials, he believes the cylinder wall was built in the 1980s, but that even if it had been built in the 2000s, it would not have been approved and permitted in Montgomery County. He observed that fill was added to the Zhang property when it was developed to increase the size of its back yard, and that if the Zhang wall were proposed to be built today, proper design and construction would require an analysis of numerous factors, including internal stability, proper foundation bearing, soil strength, and the influence of this additional fill soil on the surcharge placed on the existing timber wall to make sure that it would not adversely affect that wall. In response to a Board question asking if the proposed wall would withstand these pressures, Mr. Niber testified that it would, later clarifying that the new wall is designed to withstand the static force exerted by uphill properties, but not to withstand the dynamic force of the moving and unstable slope that currently exists behind the Zhang property. He testified that the proposed retaining wall is designed for static equilibrium and not dynamic equilibrium, and that the proposed wall would not keep the slope from moving towards the Church without mitigation of the factors causing the dynamic forces. Mr. Niber testified that unlike the cylinder wall, the proposed retaining wall, which he indicated would replace the failing timber wall, and which described as a reinforced concrete, reverse cantilever wall, is designed to accommodate lateral forces from the uphill properties.

Mr. Niber testified that the proposed retaining wall, with its maximum height of eight (8) feet, is the minimum needed to create a more stable, flatter, 2:1 horizontal ratio sloping condition. He testified that the proposed 2:1 backfill of the wall is what Montgomery County requires absent extensive evaluation and analysis. Mr. Niber testified that the Zhang's cylinder wall could be replaced with a code-compliant solution that would preserve their yard, clarifying that replacement of the cylinder wall was not part of the Church's proposal, and that the Church would not be installing a replacement for that wall. He testified that the proposed wall was constructable, durable, efficient, and something that could be given permits by the County, and that its construction would avoid excess noise, vibration, and disturbance to neighboring properties.

25. Following the conclusion of Mr. Niber's testimony, Ms. Rosenfeld withdrew her clients' opposition to the design and location of the proposed wall, and stated that her clients consent to the approval of the requested variances needed for construction of the wall as shown on page 15 of Exhibit 25(b), the length of the wall being shown elsewhere in the Petitioner's materials, with respect to those elements of the proposed wall that are located on the Church property.[3] Ms. Rosenfeld stated that her clients do not provide consent for the Church to access her clients' properties to construct the wall, and noted that that such consent was beyond the scope of the variance proceedings. She stated that she was not prepared to concede that any work on her clients' properties associated with the construction of the Church's proposed retaining wall is the minimum necessary, and that the findings made by the Board should not extend to her clients' properties.

[3] Ms. Lee-Cho later clarified in response to a Board question that the cross-section shown on this page is a conceptual drawing. She referred the Board to Exhibit 5, which she stated is representative of the replacement wall being proposed by the Church.

26. Ms. Lee-Cho called Aziz Paracha, P.E., and Stephen E. Crum, P.E., as experts in the fields of structural engineering and civil engineering, respectively, to make the remainder of her case. See Exhibits 16(e) and 27(b).

Mr. Paracha testified, in explaining why the proposed retaining wall is the minimum needed to address the stability of the embankment, that the existing timber wall is in very bad condition, and that the proposed retaining wall is the minimum needed to protect the Church and its neighbors. He testified that the cylinder wall is bulging and in bad condition, and that the soil underneath is moving. Mr. Paracha testified that given the deteriorated condition of the timber wall, if the cylinder wall were to collapse, it could create a lot of damage. He testified that the proposed wall is 240 feet long and a maximum of eight (8) feet tall. In response to a question from Ms. Lee-Cho asking what went into the considerations for the height and length of the wall, Mr. Paracha testified that there is only 15 feet of space between the Church building and the rear property line, and that this space includes a fire lane. Mr. Paracha then explained why various other types of retaining walls could not be installed under these circumstances, ultimately testifying that because of the limited amount of space in which to construct the wall and because of vibrations, the proposed retaining wall is the only solution.

Mr. Crum testified that from a Zoning standpoint, accessory structures have setbacks, and that the proposed retaining wall is considered to be an accessory structure because it is taller than 6.5 feet. He testified that if the wall were 6.5 feet tall (or less), it would not be considered an accessory structure and would not be subject to setbacks. Mr. Crum testified that the existing timber wall is 240 feet long, and that in his professional opinion, the length of the proposed wall cannot be reduced to less than 240 feet. Mr. Crum testified that because of the proposed wall's length, it is subject to additional setbacks.

Mr. Crum testified that the proposed wall cannot be less than eight (8) feet tall in order to achieve a stable slope on neighboring properties, explaining that the maximum slope allowed by Montgomery County without additional engineering and analysis is two horizontal feet for every one vertical foot (2:1 slope). Mr. Crum testified that the minimum wall height was determined by working from the neighbor's property back towards the Church's property to establish what the minimum height of the wall needed to be at a distance of two feet from the shared property line. He testified that the minimum height of the wall at two feet from the shared property line is eight (8) feet. Mr. Crum testified in response to a Board question that this is needed to achieve a 2:1 slope. In response to a question from Ms. Lee-Cho, Mr. Crum testified that the slope behind the existing wall approaches a 1:1 slope at its steepest, and that this steep of a slope could not be approved by the County without a slope stability analysis from a geotechnical engineer. Mr. Crum testified that pursuant to conventional civil engineering design, a 2:1 slope is the steepest grade you are permitted to pursue, and that that the 2:1 slope is the County standard for the maximum slope without additional analysis.

In response to a question from Ms. Lee-Cho asking why the proposed height of the wall was both buildable and sustainable, and preserved the neighbors' rights as much as possible, Mr. Crum testified that the footing for the proposed eight (8) foot retaining wall is asymmetrical, and that any increase to the wall's height would require an increase to the width of its footing, eventually putting the footing under the Church building. Mr. Crum testified that the footing would already extend under the driveway/fire lane, and that although the "fire lane" does not meet the County Code, it is the County's policy that existing access for emergency personnel and vehicles cannot be reduced by new construction. Thus Mr. Crum testified that moving the proposed retaining wall into the driveway/fire lane space and farther from the shared property lines so as to reduce its height would not be acceptable from a fire and rescue standpoint. Thus Mr. Crum testified that he agreed with the position taken by County Fire Marshall Marie LaBaw in her February 10, 2026, email. See Exhibit 27(a).

In response to additional questioning from Ms. Lee-Cho, Mr. Crum testified that the shared property line shown on Exhibit 5 is two feet away from the face of the proposed wall. He testified that additional elements to address stormwater runoff have been incorporated into the design of the wall since this drawing was prepared. Mr. Crum testified that there will be a depression or swale before you reach the top of the wall that will capture stormwater runoff from the adjoining properties, and will convey it underground into an inlet and pipe system, through which it will be conveyed safely to the downhill side of the wall. He testified that this infrastructure will be on the Church's property and that it will fit in the two foot space between the wall and the property line.

CONCLUSIONS OF LAW

Based on the testimony and evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, as follows:

1. Section 59.7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:

Section 59.7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on the Statement and photographs included therein, and other photographs included in the record, and notably on the testimony of Mr. Crum, that the rear of the subject property is encumbered with an unusually steep slope, particularly behind the Church where the slope is considerably greater than elsewhere on the block, such that "[t]he Church building sits as much as 20 feet lower in elevation than the neighboring residential homes." See Exhibits 13(d), 16, and 25(b). The Board finds that this steep slope constitutes an exceptional topographical condition peculiar to the subject property, in satisfaction of this element of the variance test. In addition, the Board finds, based on Exhibit 27(a) and the testimony of Mr. Crum, that the existing drive aisle behind the Church needs to be retained for fire access, further limiting the area available for the construction of the proposed retaining wall and for accommodating equipment necessary

to build the proposed wall, and that this constitutes an extraordinary condition peculiar to the property for the purposes of satisfying this element of the variance test.

2. Section 59.7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;

The Board finds, based on the testimony of Mr. Crum, that the special circumstances necessitating the variance, including the existing topographical conditions, the location of existing improvements, and the service life of the timber wall, are not due to any actions by the Church. Accordingly, the Board finds that the Petitioner is not responsible for the special circumstances peculiar to the subject property, in satisfaction of this element of the variance test.

3. Section 59.7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;

The Board finds, based on the Statement and the testimony of Mr. Crum and Mr. Niber, that the steep slope along the rear of the subject property is currently supported by a timber wall, and that the Church is seeking to replace this existing structure with a more stable concrete retaining wall that the Statement indicates is "necessary to maintain stability of the hill." See Exhibit 16. The Board further finds, based on the Updated Site Plan, Detail Sections, and Building Permit Denial, that the proposed replacement wall will be up to eight (8) feet tall, rendering it an "accessory structure" and subjecting it to a setback of 221 feet from the rear lot line on account of its length.[4] See Exhibits 5, 14, and 17. The Board finds that the required setback exceeds the 125 foot depth of the Church property, causing the Church a practical difficulty. In addition, the Board finds, based on the testimony of Mr. Crum, that the proposed retaining wall is the same length as the existing timber wall. The Board finds, based on the Statement and the testimony of Mr. Crum and Mr. Regier, that if the requested variance were denied, the Petitioner could not construct a replacement wall to support the existing embankment on account of the limited area between the Church, the embankment, and the rear property line, and the need to maintain the existing drive aisle for fire access, and that this also causes the Petitioner a practical difficulty. See Exhibit 27(a). The Board further finds that the requested variance, needed to allow construction of a replacement wall to maintain the stability of the existing topography, is the minimum needed to overcome this practical difficulty and to allow the proposed construction to proceed. In support of this, the Board notes that the Retaining Wall Details drawing shows a wall with a maximum height of eight (8) feet, and that the proposed retaining wall thus exceeds the height for which no variance would have been needed by a maximum of 18 inches. See Exhibit 5. The Board also notes the testimony of Mr. Regier that the Church explored many options for replacing the failing timber wall before arriving at the proposed viable solution. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

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[4] Again, the Board notes that if the proposed retaining wall had been up to 6.5 feet tall, no variance would have been needed.

4. Section 59.7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and

The Board finds, based on the testimony of Mr. Crum, that granting a variance to allow the Petitioner to proceed with construction of the proposed retaining wall, needed to stabilize the slope at the rear of the subject property, will not substantially impair the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan because it will allow the current use of the property to continue. Accordingly, the Board finds that this element of the variance test is satisfied.

5. Section 59.7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The Board finds, based on the Statement, that "granting of the variances will not be adverse to the use and enjoyment of abutting or confronting properties, as it will facilitate replacement of a structurally compromised timber wall located at the toe of an existing embankment that is in danger of collapse with a new concrete retaining wall necessary to maintain stability of a pre-existing topographical condition." See Exhibit 16. The Board further finds, based on the testimony of Mr. Crum, that granting the requested variance will not adversely affect the long-term use of abutting and confronting properties, and will avoid a catastrophic failure that would be detrimental to neighboring properties. In addition, the Board finds that Ms. Rosenfeld has withdrawn her clients' opposition to the proposed retaining wall with respect to those elements of the proposed wall that are located on the Church property. Finally, the Board finds, based on the testimony of Mr. Crum and the representations of Ms. Lee-Cho, that the proposed wall cannot be built without written permission from the Church's affected neighbors, allowing access to their properties. Accordingly, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5 and 17.

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Donald Silverstein, and Amit Sharma in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of March, 2026.

Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59.7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.