



**Staff Report: Site Plan 820080190, Batchellors Forest**

**ITEM #:** \_\_\_\_\_

**MCPB HEARING DATE:** July 30, 2009

**REPORT DATE:** July 16, 2009

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief  
 Robert Kronenberg, Supervisor  
 Development Review Division

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**APPLICATION DESCRIPTION:**

32 one-family detached dwelling units, and 5 one-family attached MPDUs (total number of units is 37); 93.64 acres; RNC Zone; located on the north and south side of Old Baltimore Road, approximately 3,000 feet south of the intersection with Doctor Bird Road; 2005 Olney Master Plan

**APPLICANT:** Oxbridge Development at Batchellors Forest, LC

**FILING DATE:** February 7, 2008

**RECOMMENDATION:** Approval with conditions

**EXECUTIVE SUMMARY:**

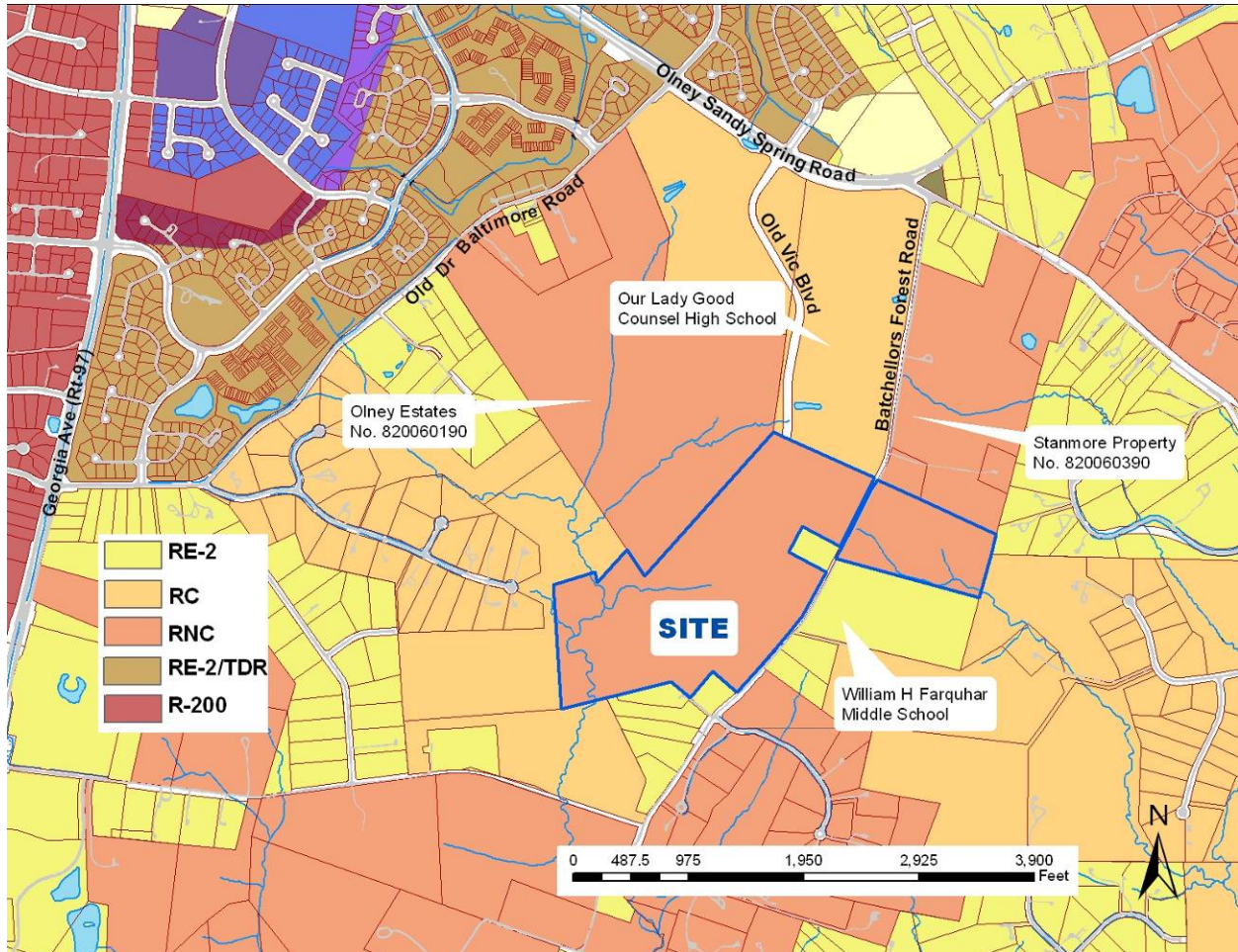
The proposed development will create 37 lots including 32 one-family detached dwelling units and 5 one-family attached MPDUs using the optional method of development. The Applicant is providing 15 percent MPDUs onsite, which allows for a maximum 22 percent density bonus. The layout proposes two residential clusters which are located away from Batchellors Forest Road in order to maintain broad vistas of open space and preserve the rustic character of this road. The rural open space is approximately 69 percent of the tract area, including approximately 17.2 acres on the east side of Batchellors Forest Road, which will be dedicated to M-NCPPC for use as a local park.

<b>TABLE OF CONTENTS</b>	
<b>SITE DESCRIPTION</b>	<b>3</b>
Vicinity	3
Site Analysis	4
<b>PROJECT DESCRIPTION</b>	<b>5</b>
Previous Approvals	5
Proposal	5
<b>PROJECT ANALYSIS</b>	<b>6</b>
Master Plan	6
Transportation	9
Environment	10
Development Standards	11
Community Outreach	12
<b>FINDINGS</b>	<b>13</b>
<b>RECOMMENDATION &amp; CONDITIONS</b>	<b>16</b>
<b>APPENDICES</b>	<b>19</b>
<b>ILLUSTRATIONS &amp; TABLES</b>	
<i>Vicinity Map</i>	3
<i>Aerial Photograph</i>	4
<i>Illustrative Landscape Plan</i>	5
<i>Section A</i>	8
<i>Sections B &amp; C</i>	9
<i>Project Data Table</i>	11

## SITE DESCRIPTION

### Vicinity

The 93.64-acre property is zoned RNC and is located on both sides of Batchellors Forest Road in the Olney Master Plan area. A 17.2-acre portion is located adjacent to William H. Farquhar Middle School on the east side of Batchellors Forest Road. The remaining 75.4 acres are located on the west side of Batchellors Forest Road adjacent to the Our Lady of Good Council High School. The future Old Vic Boulevard will bisect the western portion of the property and terminate at Batchellors Forest Road opposite one of the Farquhar Middle School entrances.



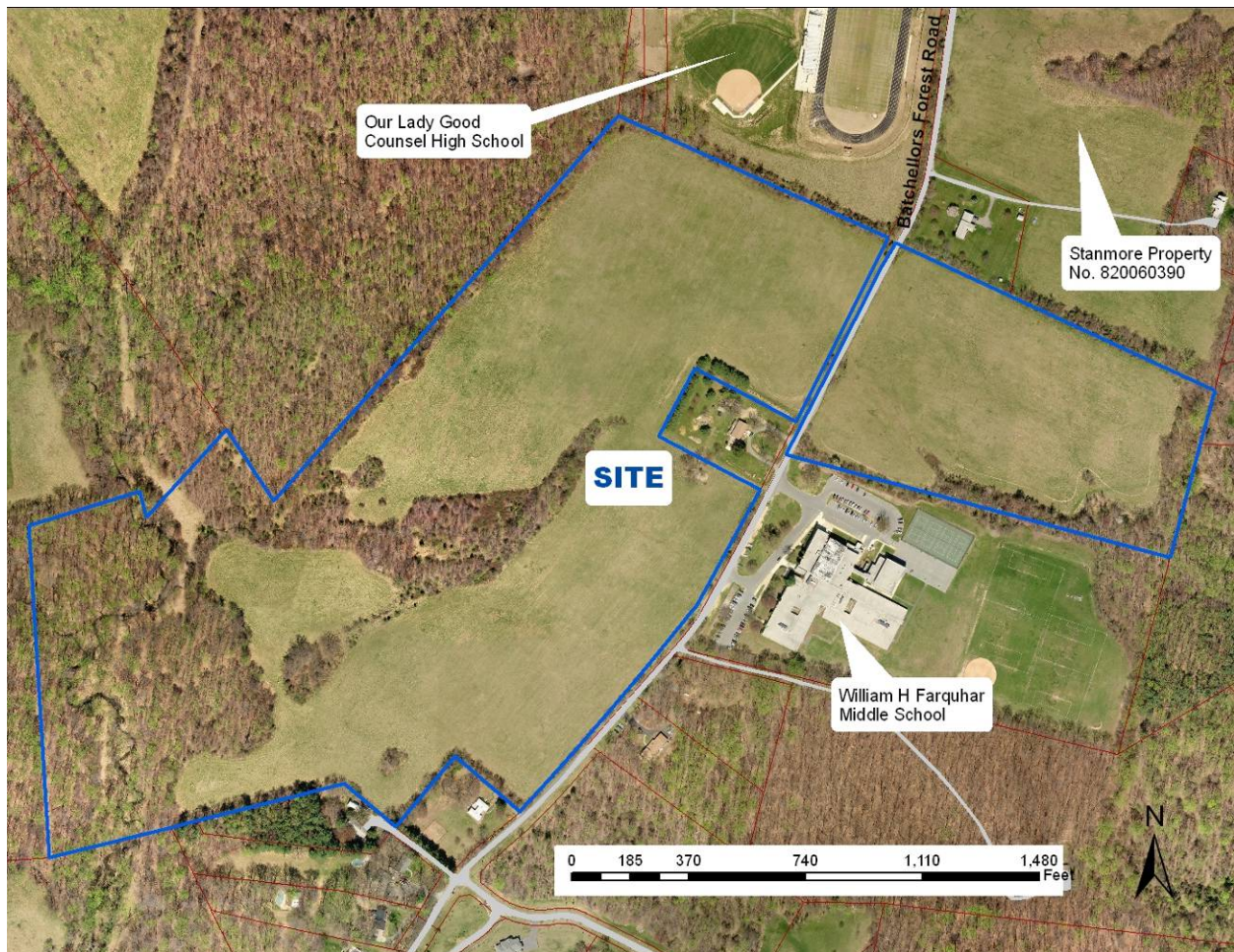
*Vicinity Map*

Nearby recently approved preliminary plan applications include the Stanmore Property No. 120061100 (formerly Hyde Property) with the concurrently filed Site Plan No. 820060390, and Olney Estates No. 120050920 with the Site Plan No. 820060190. The general character in the Southeast Quadrant of Olney is fairly low-density in nature and has significant environmental resources. Batchellors Forest Road, the only through road in this quadrant, has been designated as a rustic road due to its visual attributes.

## Site Analysis

The property is for the most part open field with forested stream valleys. The site is located in the Northwest Branch watershed (Use IV streams). The property contains two streams; an intermittent tributary to Northwest Branch, and an actual mainstem of Northwest Branch. A 100-year floodplain and about 1.75 acres of wetlands are associated within the two streams. Another small stream originates on the portion of the property that lies to the east of Batchellors Forest Road.

The property includes approximately 21 acres of existing forest and 23 acres of environmental buffers. The remainder of the site is an open field. The majority of the site lies on the west side of Batchellors Forest Road and generally slopes westward towards the forested stream valley and floodplain. The portion of the property that lies to the east of Batchellors Forest Road slopes southeastward towards the partially forested stream valley that flows along the southern property boundary.



*Aerial Photo*

## PROJECT DESCRIPTION

### Previous Approvals

The **Preliminary Plan** No. 120060850 for Batchellors Forest was approved with conditions by the Planning Board on July 26, 2007 (Planning Board Resolution dated January 11, 2008 [Appendix A] and Corrected Resolution dated July 30, 2009) to create 37 lots on 94 acres of land.

### Proposal

The proposed development will create 37 lots for 32 one-family detached dwelling units, and 5 one-family attached MPDU using the optional method of development. Pursuant to Chapter 25A of the Montgomery County Code, the Applicant is required to provide at least 12.5 percent of units as MPDUs. However, the Applicant chose to provide 15 percent instead, which allows them to achieve a maximum 22 percent density bonus. The base density for the subject property is 31 units. The 22% density bonus provides an additional 6 units for a total of 37. The necessary number of MPDUs would, therefore, appear to be 6 ( $.15 \text{ of } 37 = 5.55$  or 6, since MPDUs are always rounded up). However, the Applicant argued that they should only be required to provide 5 MPDU's, citing Section 25-A-5(d)(2), which states:

If the Planning Board approves a density bonus of at least 20 percent for a development which consist of 20 or more but fewer than 50 units at one location, the number of MPDUs required must be governed by subsection © unless the formula in subsection© would not allow the development to have one bonus market rate unit. In that case, the Planning Board must reduce the required number of MPDUs by on unit and approve an additional market rate unit.

Although the Board disagreed with this rationale, the matter went to court, which ruled in favor of the Applicant. MNCPPC is appealing this ruling, but, in the meantime, the Applicant has chosen to move forward with the current site plan, which shows 37 units and only 5 MPDUs.

The layout proposes two residential clusters which are located outside the stream buffers and away from Batchellors Forest Road in order to preserve the open fields viewsheds and maintain the rustic character of the road. Consistent with the recommendations of the zone, the rural open space will be approximately 69 percent of the tract area. A natural surface trail will connect the two clusters.

The development proposes use of two public streets: an extension of Old Vic Boulevard and a new tertiary street (cul-de-sac). Old Vic Boulevard will provide a future connection from Batchellors Forest Road to Olney/Sandy Spring Road (MD 108) through the site. Sidewalk connections will be provided along all public roads, except Batchellors Forest Road which is a rustic road and therefore is precluded from any changes or improvements that may alter its character.



*Illustrative Landscape Plan*

## PROJECT ANALYSIS

### Master Plan

The subject site is located within the boundaries of the 2005 Olney Master Plan, which has general recommendations about properties in the southeast quadrant as well as specific recommendations for the subject property.

The general recommendations of the Master Plan for the southeast quadrant (p.23) that are relevant to this site, include:

- Preserve open space, streams, significant forests, and the low-density character of the Southeast Quadrant through cluster development, on community sewer where appropriate.
- Protect the rustic road character of Batchellors Forest Road by using topography, clustering of houses away from the road, and landscaping to preclude, or minimize, the visibility of new developments from Batchellors Forest Road.

The Master Plan has the following design guidelines for all properties recommended for the RNC Zone in the Southeast Quadrant (p.25) (including the subject property):

1. Cluster new houses away from sensitive areas.
2. Minimize the fragmentation of forest by preserving contiguous forest areas covering more than one property.

3. Minimize new driveway entrances on Batchellors Forest Road to preserve its rustic character.
4. Design connections of new access roads to Batchellors Forest Road to be respectful of the rustic character of the road.
5. For properties along Georgia Avenue, provide a green buffer of at least 100 feet, outside the master plan right-of-way, to screen views of houses from the road.
6. Preserve exceptional vistas of open fields on larger properties from Batchellors Forest Road, especially on the Casey, Hyde and Polinger properties by clustering homes in such a way that they are not visible from the road. If that is not feasible, use landscaping techniques to screen houses from the road.



*Looking south on Batchellors Forest Road from the entrance of the William H. Farquhar Middle School*

The property is designated as #3 Casey Property in the Land Use Section of the Master Plan and has the following specific recommendations on page 28:

“The 17.4-acre portion of the property [located on the east side of Batchellors Forest Road] is appropriate for ballfields and possibly other active recreation [...].”

“Permitted density from the 17.4-acre portion should be located on the larger portion of the property on the west side of Batchellors Forest Road and the 17.4-acre portion should be designated as rural open space under RNC Zone and dedicated as parkland for active recreation purposes. Houses should be clustered away from Batchellors Forest Road to preserve the views of open fields along the existing road. Preservation of the rustic character of Batchellors Forest Road and the existing vistas from this road should be explored at the time of subdivision through careful placement of housing clusters in appropriate locations to minimize their visibility from Batchellors Forest Road and other techniques.

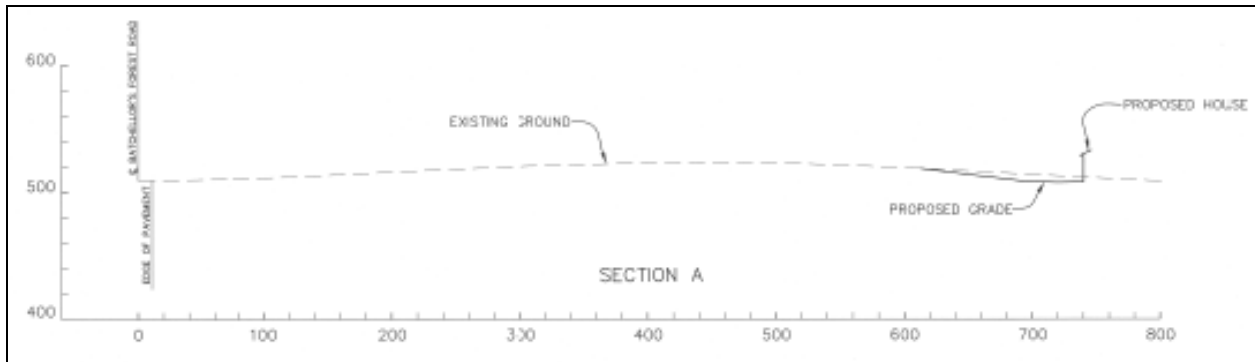
The western portion of the site is recommended to contain a realigned Old Vic Boulevard Extended [...] so that the new road will terminate at Batchellors Forest Road opposite one of the Farquhar Middle School entrances. The right-of-way of the proposed alignment should be dedicated at the time of the subdivision.”

The proposed development addresses these recommendations in a number of ways. It proposes to protect the environmentally sensitive portions of the property by minimizing impacts to the

stream valley buffers and placing them in a Category I easement. Contiguous forest is protected within the stream buffers. The plan responds to the need to protect the rustic character of Batchellors Forest Road by minimizing curb cuts and striving to preserve the vistas of open fields through setting aside rural open space. The 17.4 acre portion of the property is to be dedicated to MNCPPC for use as a local park. Staff believes that the proposed project accomplishes all of the Master Plan's goals and recommendations for this property.

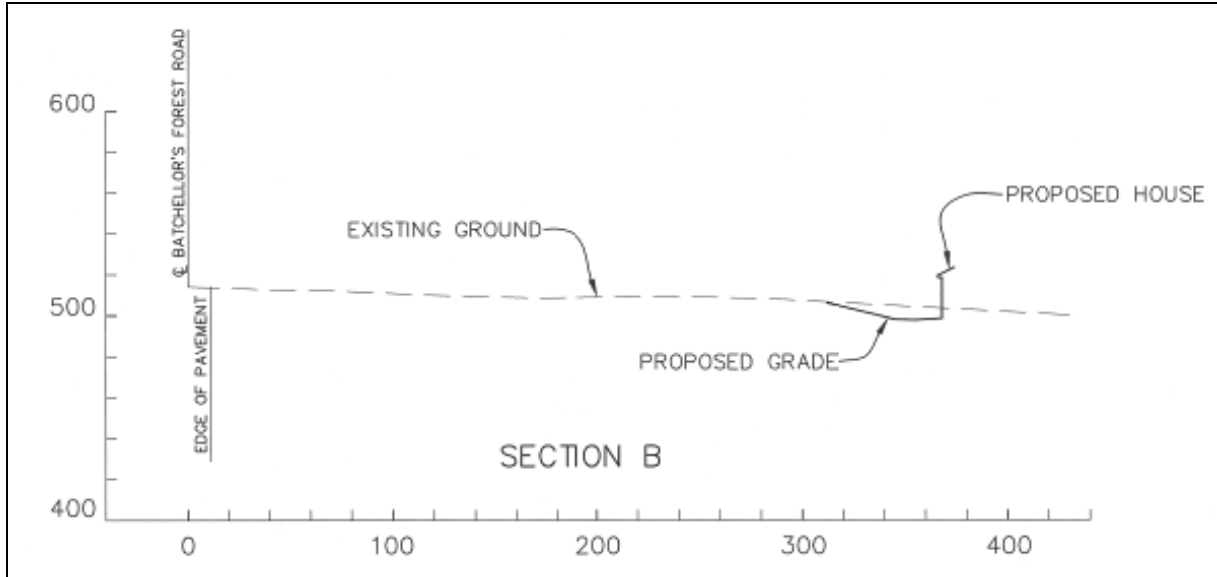


*Sections illustrating visibility of the proposed houses from Batchellors Forest Road*

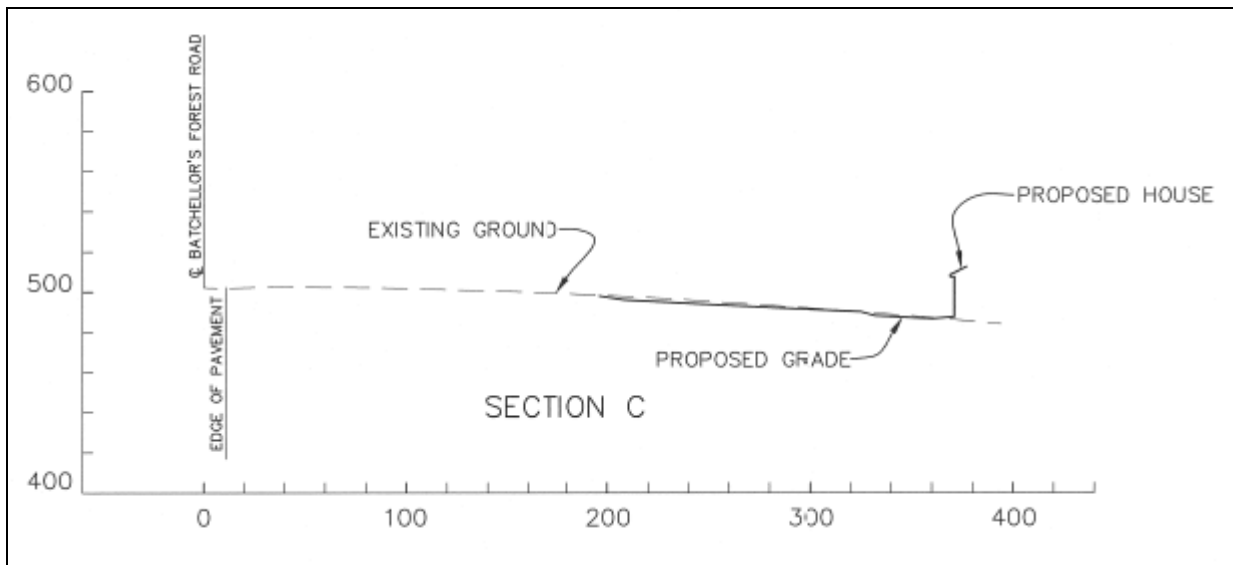


*Section A*





*Section B*



*Section C*

**Transportation**

A Local Area Transportation Review (LATR) was completed as part of the preliminary plan review. According to the LATR, since the proposed development will have minimal impact at the affected intersections (less than 5 CLV), and one of the intersections (Georgia Avenue and Emory Lane) already has a planned privately funded mitigation improvement, the Applicant will make additional payments equal to 50 percent of the applicable transportation impact tax before any building permit is released. This application was not subject to a Policy Area Mobility Review (PAMR) because the preliminary plan application was submitted before January 1, 2007.

## **Environment**

A Natural Resources Inventory/Forest Conservation Plan (NRI/FSD), #420043350, was approved in December 2008. There are 21.63 acres of forest onsite. A Preliminary Forest Conservation Plan was approved with conditions by the Planning Board as part of the approval of the preliminary plan on July 26, 2007.

The Final Forest Conservation Plan (FFCP) proposes to clear 1.57 acres of forest, preserve 19.53 acres<sup>1</sup>, and plant 6.84 acres of forest. Where forest retention or planting occurs on HOA land, a Category I conservation easement is placed over the area to provide permanent protection. Forest preservation or planting on land that will be dedicated as M-NCPPC parkland will not have a conservation easement.

The Final FCP is consistent with the Preliminary FCP as indicated by the following:

- Forest preservation and planting areas are within or immediately adjacent to environmental buffers.
- The total amount of on-site forest retention and planting (26.37 acres) is larger than 25 percent of the net tract area (22.57 acres) as required under Section 22A-12(f) of the County Forest Conservation Law. The Preliminary FCP conditionally approved with the preliminary subdivision plan also provided for on-site forest retention and planting which exceeded 25 percent of the net tract area.
- Split rail fencing is shown along the segments of conservation easements that are adjacent or close to proposed boundaries of private residential lots. Permanent signs are proposed along the boundaries of forest retention, forest planting, and environmental buffer areas on both private open space and park dedication areas.

Forest clearing will occur within environmental buffers for unavoidable outfalls for stormwater management facilities and connections of new sewer lines in the subdivision to existing sewer lines within the floodplain of Batchellors Run Tributary that flows along the western edge of the subject site.

There are two sewer line outfalls serving the subdivision that will require forest clearing within the environmental buffer in order to connect to an existing sewer trunk line within the stream valley of the Batchellors Forest Tributary. One of the proposed sewer line connections through the forested environmental buffer will require the removal of some specimen-size trees. Staff believes that there are alternative alignments and/or consolidation of these two sewer line outfalls which would result in less forest loss and wetland impacts than the alignments shown in the site plan. The alternative for one of the sewer lines may also allow two of the proposed lots to be served by gravity sewer rather than by grinder pumps. Staff recommends that prior to the submission of the certified site plan, the Applicant evaluate alternative sewer alignments through the stream valley, in coordination with WSSC and Environmental Planning Division to determine alignments that will minimize forest loss and impacts to wetlands within the environmental buffers.

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<sup>1</sup> The total amount of forest retention does not include 0.53 acre of existing forest within existing WSSC sewer line rights-of-way.

The Final Forest Conservation Plan, as amended by Staff's conditions of approval, will comply with the County Forest Conservation Law (Section 22A of the Montgomery County Code).

**Development Standards**

The subject site is zoned RNC, which allows the residential use. The intent of the RNC Zone is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large-lot development. The proposed development meets the purpose and requirements of the zone as detailed in the Findings section of this report.

The following data table indicates the proposed development's compliance with the Zoning Ordinance.

*Project Data Table for the RNC Zone, Optional Method of Development*

<b>Development Standard</b>	<b>Permitted/Required</b>	<b>Proposed for Approval &amp; Binding on the Applicant</b>
<b>Min. Area of Development</b> (acres) 59-C-9.575(a)	10	93.64
<b>Density</b> (du/ac) Per Olney Master Plan (p.28)	0.33 <sup>(a)</sup>	0.39 <sup>(b)</sup>
<b>MPDUs</b>	12.5%	15%
<b>Max. No. of Dwelling Units</b>		37
One-family detached units		32
One-family attached units (MPDUs)		5
<b>Min. Lot Area (sq. ft.)</b>		
One-family detached units	4,000	10,700
MPDUs	n/a	3,500
<b>Min. Setback from Street</b> (feet)	15	20
<b>Min. Yard Setback</b> (feet)		
Side yard	8	8
Side yard, abuts lot not developed under the optional method	17 <sup>(c)</sup>	20
Rear yard	30	30
Rear yard, abuts lot not developed under the optional method	35 <sup>(d)</sup>	35
<b>Min. Lot width</b> (feet)		

One-family detached unit	25	25
One-family attached units (MPDUs)	n/a	20
<b>Max. Building Height (feet)</b>	35	35
<b>Max. Lot Coverage (%)</b>		
One-family detached unit	35	35
<b>Accessory Structures Setbacks (feet)</b>		
Rear	5	5
Side	5	5
Street	60	60
<b>Rural Open Space</b>	65-85%	69.8%
<b>Common Open Space (sq. ft.)</b>	n/a	82,023

- (a) Pursuant to section 59-C9.571, the maximum development unit density allowed may be increased to accommodate the construction of MPDUs under the optional method of development.
- (b) The proposed density reflects a density bonus for providing 15 percent MPDUs on-site.
- (c) Lot 1, Blk B adjacent to RC Zone; Lot 27, Blk A adjacent to RE-2
- (d) Lots 24-27, Blk A adjacent to RE-2

## COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and submission meeting requirements. Staff has not received correspondence on this matter.

## FINDINGS

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

Neither a development plan, diagrammatic plan, schematic development plan, nor a project plan were required for the subject site.

2. *The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The proposed use is allowed in the RNC Zone and the site plan fulfills the purposes of the zone by preserving open land, environmentally sensitive natural resources, and rural community character. This is accomplished by providing residential development in clusters and maintaining broad vistas of open space.

As the project data table on page 11 indicates, the site plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the proposed development is under all the maximum standards allowed. With respect to open space the proposed development provides approximately 82,000 square feet of common open space and approximately 69.8 percent of the tract area in rural open space allowing a greater amount of rural features and character to be protected.

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

a) Locations of Buildings and Structures

The buildings and structures in the proposed development are located in two clusters at a lower elevation away from Batchellors Forest Road. The elevation and location of the houses have been sited appropriately to maintain broad vistas of open space and to preserve the rustic character of the Batchellors Forest Road as envisioned by the Master Plan. The proposal also responds to the natural resources onsite and takes advantage of the existing forest line to screen some units from the road. The dwellings in the cluster with 19 one-family detached houses and 3 one-family attached houses are located along the proposed extension of Old Vic Boulevard. Some of the houses face an area of common open space, which strengthens it as a gathering place for the residents of the neighborhood. The other cluster with 11 one-family detached houses and 2 one-family attached houses is located close to the southern property edge and is accessed via an over-length cul-de-sac off Batchellors Forest Road. Two additional one-family detached houses are located along Batchellors Forest Road with setbacks from the road that are similar to those of the existing houses. The locations of the buildings and structures are adequate, safe and efficient, while maintaining the rural character of the area and preserving environmentally sensitive natural resources.

b) Open Space

The open space provided is divided into Common Open Space, intended for common use by the residents of the neighborhood, and Rural Open Space, intended to protect rural features and other sensitive areas and to maximize common boundaries with rural open space on adjacent tracts. The most significant common open space is centrally located, bordered by a loop road with houses, and has amenity features, making it a true gathering point for the neighborhood residents. The other areas of common open space contain surface features, such as storm water management facilities, which are allowed by the Zoning Ordinance, but make them less usable for the community.

The approximate 65 acres of Rural Open Space are located primarily along Batchellors Forest Road, in order to maintain the existing broad vistas of open space and to preserve the rural character of this road. Additional areas include the stream valley and existing forest which protect these environmentally sensitive natural resources. The approximate 17.1 acres of Rural Open Space on the east side of Batchellors Forest Road will be conveyed to M-NCPPC for use as a local park for active recreation purposes per the Olney Master Plan recommendations (p.28). The open space provided satisfies the provisions of the zoning and is safe, adequate and efficient in addressing the needs of the proposed use and the recommendations of the Master Plan.

c) Landscaping and Lighting

The landscaping on individual lots consists of a traditional foundation planting area for the house with shade trees that provide scale to the houses proposed. The remaining landscaping screens the storm water management facilities and defines the areas where the public amenities are located. The areas of rural open space adjacent to Batchellors Forest Road are integral to the character of the road and will remain open without plantings. Street trees and lighting within the public roadway are provided along the two streets to enhance the pedestrian environment. The lighting proposed will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. The landscaping and lighting are adequate, safe, and efficient.

d) Recreation facilities

The recreation facilities provided include two picnic/sitting areas, an open play area II, a pedestrian system, nature trails, and natural areas. This development meets all the recreation requirements onsite through these facilities, which satisfy the 1992 MNCPPC Recreation Guidelines. The facilities being provided adequately and efficiently meet the recreation requirements of this development, while providing safe and accessible opportunities for recreation.

e) Pedestrian and Vehicular circulation systems

The site is accessed from the realigned Old Vic Boulevard Extended, a through road that terminates at Batchellors Forest Road opposite one of the William H. Farquhar Middle School entrances, as recommended by the Master Plan; and via an overlength cul-de-sac from Batchellors Forest Road. The layout of the two proposed public streets provides

safe, adequate and efficient access to the developable portions of the property, while allowing for the preservation of forest, environmentally sensitive areas, and open space.

The pedestrian circulation system consists of 5-foot concrete sidewalks along the two public streets, an 8-foot asphalt path along the Old Vic Boulevard Extended, and a natural surface pedestrian path connecting the two residential clusters. Because Batchellors Forest Road is a designated rustic road, it is precluded from any changes or improvement that may alter the character of the road, including the construction of sidewalks. The pedestrian circulation system provides safe, adequate and efficient pedestrian access within the site and to the surrounding area, including to the William H. Farquhar Middle School and Our Lady of Good Counsel High School, which are both within walking distance of the site. Intersection improvements at Old Vic Boulevard Extended and Batchellors Forest Road, including crosswalks, will improve pedestrian safety in accessing the Farquhar Middle School.

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

The proposed residential use is compatible with the adjacent and confronting residential and institutional uses. This development proposes grouping the units into two residential clusters, which minimizes the fragmentation of forest, the impacts on environmentally sensitive areas, and the access points onto Batchellors Forest Road. The two clusters are located away from this road so as to be only partially visible in order to preserve exceptional vistas of open fields, which is a central element to the rustic character of Batchellors Forest Road.

The development proposes a diversity of lot sizes ranging from 3,599 square feet for a townhouse MPDU to 426,250 square feet on Lot 15, a conservation lot which includes a significant portion of rural open space. The majority of the lots fall within the 19,000-23,999 square feet range. In addition, the development also proposes diversity in house sizes ranging from a minimum of 888 square feet ground coverage to a maximum of 4472 square feet ground coverage. The diversity in lot and house sizes is compatible with the surrounding development and rustic character of this area, and is consistent with the purpose and intent of the zone.

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

The Final Forest Conservation Plan (FFCP) proposes to clear 1.57 acres of forest, preserve 19.53 acres, and plant 6.84 acres of forest. Where forest retention or planting occurs HOA land, a Category I conservation easement will be placed over the area to provide permanent protection. Forest preservation or planting on land that will be dedicated as M-NCPPC parkland will not have a conservation easement. The plan, as amended by Staff's conditions of approval, will comply with the County Forest Conservation Law.

The stormwater management concept consists of on-site channel protection measures via construction of three detention facilities; on-site water quality control via construction of six Montgomery County Sand Filters (MCSF's); and onsite recharge via open section roadway swales and other nonstructural measures such as rooftop disconnection.

## **RECOMMENDATION AND CONDITIONS**

Staff recommends approval of site plan 820080190, Batchellors Forest, for 32 one-family detached dwelling units, and 5 one-family attached MPDU, on 93.64 gross acres. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on May 15, 2009 are required except as modified by the following conditions:

### **Conformance with Previous Approvals**

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan No. 120060850 as listed in the Planning Board Resolution dated January 11, 2008 [Appendix A] and the Corrected Resolution dated July 30, 2009. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DPWT [now DOT] conditions, and DPS stormwater conditions.

### **Environment**

2. Forest Conservation & Tree Save

The proposed development must comply with the conditions of approval of the Final Forest Conservation Plan. The Applicant must comply with the conditions of approval from M-NCPPC Environmental Planning in the memorandum dated July 15, 2009 [Appendix C].

3. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated July 2, 2007 unless amended and approved by the Montgomery County Department of Permitting Services [Appendix C].

### **Parks, Open Space, & Recreation**

4. M-NCPPC Department of Parks

a) Applicant to convey to M-NCPPC the approximately 17.1 acre portion of subject property designated as Parcel A that lies east of Batchellors Forest Road, for use as a local park consistent with the Olney Master Plan. Land to be conveyed to M-NCPPC in fee simple by deed acceptable to M-NCPPC staff, by time of record plat. Property to be marked with boundary posts in locations acceptable to Department of Parks staff, and to be conveyed free of any trash and unnatural debris.



- b) Applicant to place a sign on the dedicated parkland, acceptable to M-NCPPC Department of Parks staff, that identifies it as parkland that will include active recreation amenities.

5. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (“Covenant”). The Applicant shall provide verification to M-NCPPC staff prior to issuance of the 20<sup>th</sup> building permit that the Applicant’s recorded Homeowners Association Documents are incorporated by reference in the Covenant.

6. Rural Open Space

The 65.6-acre area designated as private rural open space (Parcels A: Blk C and B; Parcel C: Blk A; Lot 15, Blk A) is to be owned and maintained by the HOA, shown on the record plat and will remain in perpetuity as rural open space and no further subdivision is permitted.

7. Recreation Facilities

The Applicant must provide two picnic/sitting areas, an open play area II, a pedestrian system, nature trails, and natural areas.

8. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to picnic/sitting areas, open play area II, pedestrian system, nature trails, and natural areas.

## **Transportation**

9. Transportation

Provide typical driveway apron treatment at Street B for the shared driveway leading to Lot 19 and Lot 20.

## **Density & Housing**

10. Moderately Priced Dwelling Units (MPDUs)

- a) The Applicant is receiving a 22 percent density bonus for providing 15 percent MPDUs on-site.
- b) Elevations for MPDU units must be provided to DHCA prior to certified site plan approval.
- c) MPDU construction schedule to be approved by DHCA prior to certified site plan approval.
- d) The MPDU Agreement to Build shall be executed with DHCA prior to the release of any building permits in accordance with Chapter 25A.

## **Miscellaneous**

11. Architecture

Provide architectural treatment of the two groups of MPDU townhouses to have an outward appearance of one-family detached units consistent with the rest of the development.

12. Public Schools

Applicant is to construct a pedestrian connection from the terminus of Old Vic Boulevard at Batchellors Forest Road to the existing sidewalk on the William H. Farquhar Middle School site in an alignment as shown on the drawing on Appendix D.

**Site Plan**

13. Site Design

- a) Relocate Lot 14 behind Lot 21 and next to Lot 19 with access off Street B so that it is part of this residential cluster.
- b) Shorten the shared driveway for Lots 19 and 20 by locating it directly off the cul-de-sac on Street B.
- c) Eliminate the natural surface path north of Old Vic Boulevard.
- d) Ensure that Lot 23 meets the minimum of 25 feet of lot frontage on the public street.

14. Landscaping

- a) Provide additional plantings in front of the two individual lots fronting on Batchellors Forest Road (Lots 10 & 15).
- b) Provide additional plantings on the side of Lot 9 and 16 that are visible from Batchellors Forest Road.

15. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) The development program must provide phasing for installation of on-site landscaping and lighting.
- c) Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- d) On-site amenities including, but not limited to benches, play structure, open play area, and natural areas must be installed prior to release of the 30<sup>th</sup> building permit.
- e) Community-wide pedestrian pathways, including the natural surface trail between the two residential clusters and the sidewalks along the public streets, must be completed prior to issuance of the 30<sup>th</sup> building permit.

- f) Onsite landscaping associated with each building shall be completed as construction of each building is completed.
- g) Provide each section of the development with necessary roads.
- h) The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

#### 16. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Modify data table to reflect development standards enumerated in the staff report.
- d. Correct building restriction line (BRL) on individual lots.
- e. Ensure consistency of all details and layout between site plan and landscape plan.

## **APPENDICES**

- A. Preliminary Plan Resolution
- B. Montgomery County Circuit Court Civil Action
- C. Agency Letters
- D. Correspondence from Montgomery County Public Schools

# Appendix A



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

JAN 11 2008

**MCPB No. 08-15**  
**Preliminary Plan No. 120060850**  
**Batchellors Forest**  
**Date of Hearing: July 26, 2007**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

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

WHEREAS, on February 21, 2006, Oxbridge Development at Northwest, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 37 lots on 94 acres of land located on the north and south sides of Batchellors Forest Road, approximately 3,000 feet south of the intersection with Doctor Bird Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060850, Batchellors Forest ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated July 13, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

*PHL 1/7/08*

Approved for the Planning Board  
by the MCPB Office of

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

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

WHEREAS, on July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Cryor; with a vote of 3-1, Commissioners Cryor, Hanson, and Lynch voting in favor, Commissioner Bryant voting against, and Commissioner Robinson absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120060850 to create 37 lots on 94 acres of land located on the north and south sides of Batchellors Forest Road, approximately 3,000 feet south of the intersection with Doctor Bird Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Limit future development on the Property to a maximum of 37 single-family units, including 15% moderately priced dwelling units (MPDUs).
- 2) The proposed development must comply with the conditions of the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include, but are not limited to:
  - a. Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan.
  - b. Split rail fencing and permanent forest conservation signage are required along the easement line that adjoins residential lots and must be shown on the final Forest Conservation Plan.
- 3) The record plat must reflect a Category I conservation easement over all areas of environmental buffer and forest conservation as shown on the preliminary forest conservation plan
- 4) The Applicant must make payments equal to 50% of the applicable transportation impact tax for the area (consistent with the 2003-2005 Annual Growth Policy (AGP) – Policy Element, Section TLI ) to the Montgomery County Department of Permitting Services (DPS), concurrent with the release of the initial building permits for the proposed dwellings, to mitigate traffic impact related to the subject development at the Georgia Avenue (MD 97)/Emory Lane and Norwood Road/Layhill Road/Ednor Road intersections.
- 5) The Applicant must dedicate to M-NCPPC the approximately 17.4 acre portion of the Subject Property that lies east of Batchellors Forest Road and identified as "Parcel A" for use as a local park per the Olney Master Plan. The land must be conveyed by the time of record plat and must be free of any trash and unnatural debris

- 6) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 7) The Applicant must construct all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
- 8) At the time of site plan, the Applicant must show alignment of a pedestrian connection from the terminus of Old Vic Boulevard at Batchellors Forest Road to the existing sidewalk on the Farquhar Middle School site per letter dated May 8, 2006, from Montgomery County Public Schools (MCPS).
- 9) The Applicant must construct and install all Montgomery County Department of Public Works and Transportation (MCDPWT) and MCPS required site frontage roadway improvements along Old Vic Boulevard, Batchellors Forest Road, "Street A", and "Street B", including street trees, prior to the release of a building permit for the 22<sup>nd</sup> single-family unit.
- 10) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 11) The record Plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management areas.
- 12) The record plat must have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the Property is developed."
- 13) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 14) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated July 2, 2007.
- 15) The Applicant must comply with the conditions of MCDPWT approval letter dated May 4, 2006, unless otherwise amended.
- 16) No clearing, grading or recording of plats prior to certified site plan approval.
- 17) The final approval of the number and location of dwelling units, sidewalks, and bike paths will be determined at site plan. The Final number of MPDUs as per condition #1 above will be determined at the time of site plan in accordance with the actual number of units approved.
- 18) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and

incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The 2005 Olney Master Plan has general recommendations about properties in the Southeast Quadrant as well as specific recommendations for the Subject Property. On page 23, among other general recommendations for the Southeast Quadrant, it states:

Preserve open space, streams, significant forests, and the low-density character of the Southeast Quadrant through cluster development, on community sewer where appropriate.

Determine the exact amount and configuration of open space to be preserved on each property at the subdivision stage.

Protect the rustic road character of Batchellors Forest Road by using topography, clustering of houses away from the road, and landscaping to preclude, or minimize, the visibility of new developments from Batchellors Forest Road.

The Master Plan has the following design guidelines for all properties recommended for the RNC Zone in the Southeast Quadrant (including the Subject Property):

1. Cluster new houses away from sensitive areas.
2. Minimize the fragmentation of forest by preserving contiguous forest areas covering more than one property.
3. Minimize new driveway entrances on Batchellors Forest Road to preserve its rustic character.
4. Design connections of new access roads to Batchellors Forest Road to be respectful of the rustic character of the road.
5. For properties along Georgia Avenue, provide a green buffer of at least 100 feet, outside the Master Plan right-of-way, to screen views of houses from the road.
6. Preserve exceptional vistas of open fields on larger properties from Batchellors Forest Road, especially on the Casey, Hyde and Polinger properties by clustering homes in such a way that they are not visible from the road. If that is not feasible, use landscaping techniques to screen houses from the road.



The Property is designated as #3 in the Land Use Section of the Master Plan and has the following specific recommendations on page 28:

The 17.4-acre portion of the Property, located on the east side of Batchellors Forest Road is appropriate for ball fields and possibly other active recreation. Permitted density from the 17.4-acre portion should be located on the larger portion of the Property on the west side of Batchellors Forest Road and the 17.4-acre portion should be designated as rural open space under RNC Zone and dedicated as parkland for active recreation purposes. Houses should be clustered away from Batchellors Forest Road to preserve the views of open fields along the existing road. Preservation of the rustic character of Batchellors Forest Road and the existing vistas from this road should be explored at the time of subdivision through careful placement of housing clusters in appropriate locations to minimize their visibility from Batchellors Forest Road and other techniques.

The western portion of the site is recommended to contain a realigned Old Vic Boulevard Extended so that the new road will terminate at Batchellors Forest Road opposite one of the Farquhar Middle School entrances. The right-of-way of the proposed alignment should be dedicated at the time of the subdivision.

The proposal protects the environmentally sensitive portions of the Property by minimizing impacts to the stream valley buffers and placing them in a Category I easement. Contiguous forest is protected within the stream buffers. The plan responds to the need to protect Batchellors Forest Road by minimizing curb cuts and striving to preserve the viewsheds that the Master Plan calls for. Site Plan review will attempt to further minimize the visual impact of the development. The 17.4-acre portion of the Property is to be dedicated to MNCPPC for park purposes. The Planning Board finds, therefore, that the proposed subdivision accomplishes all of the Master Plan's goals and recommendations for this Property.

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

A traffic study was required for the subject Preliminary Plan in accordance with the Local Area Transportation Review (LATR) Guidelines since the development, with 32 new one-family dwelling units and five townhouse units, was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. - 9:30 a.m.) and evening (4:00 p.m. - 7:00 p.m.) peak-periods.

The Applicant submitted a traffic study (dated May 2007) that presented traffic-related impacts of the development within the study area during weekday morning and evening peak-periods. Staff review of the traffic study indicated that the study complied with the requirements of the LATR Guidelines and the traffic study scope provided to the Applicant by staff.

The traffic study estimated that the site would generate approximately 32 peak-hour trips during the weekday morning peak period and 40 peak-hour trips during the weekday evening peak period.

Under background traffic conditions, CLV at the Norwood Road/Layhill Road/Ednor Road and Georgia Avenue/Emory Lane intersections exceed the congestion standard for Olney Policy Area (1,475 CLV) during the morning and evening peak-hours, respectively. Under total (build) traffic conditions, site traffic increases CLV at these two intersections by three and four, respectively, thereby impacting the intersections.

Because CLV for the Norwood Road/Layhill Road/Ednor Road and Georgia Avenue/Emory Lane intersections exceeded the congestion standard for the Olney Policy Area (1,475 CLV) under background traffic conditions, the Applicant is required to mitigate site traffic impact to at or below the background traffic condition CLV. However, as a development that would generate between 30 and 49 peak-hour trips during the typical weekday morning and evening peak periods, the Applicant is eligible for the "Limited LATR" review, as provided for in the FY 05 AGP. Under this provision, the Planning Board must require the Applicant either to implement/construct all required LATR mitigation improvements or to make additional payments equal to 50% of the applicable transportation impact tax, before the subdivision receives any building permit.

The Applicant has expressed interest in paying the additional transportation impact tax in-lieu of physical improvements to mitigate the development's impact. The Planning Board supports this request since the proposed development will have minimal impact at the affected intersections (less than 5 CLV), one of which (Georgia Avenue and Emory Lane) already has a planned privately funded mitigation improvement. The Planning Board, therefore, determines that the Applicant must pay the additional transportation impact tax and satisfy the LATR requirements of the APF test.

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed units. The Property will be served by public water and sewage systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. Other public

facilities and services, such as schools, police stations, firehouses and health services are currently operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical and telecommunications services are also available to serve the Property.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lots and uses. The size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RNC zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

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

There are 19.42 acres of existing forest included in the seven distinctive forest stands on the subject site. Tulip trees dominate three of the stands, maple trees dominate two stands, and the remaining two stands have mixed forests. The approved NRI/FSD indicates 74 trees that are 24 inches in diameter and greater on the Subject Property, including 40 trees that are 30 inches in diameter and greater.

Because the Preliminary Plan proposes an optional method of development, it must comply with Section 22A-12(f) of the Montgomery County code. This section of the code states that "[a]ny site developed under a cluster or other optional method of development in a one-family residential zone....must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement." The Property is zoned Rural Neighborhood Cluster (RNC) which includes a single-family residential component; therefore, this section of the forest conservation law is applicable. Also, since there is more existing forest onsite than the afforestation threshold, the Applicant must reforest to meet the conservation threshold on-site. This requires that 25 percent of the net tract area, 22.97 acres, be in forest either as retained forest or planted forest.

The forest conservation plan submitted by the Applicant indicates that 2.08 acres of forest will be removed. This generates a 4.16-acre planting requirement. But in order to meet Section 22A-12(f) of the Forest Conservation law the Applicant needs to plant an additional 1.47 acres of forest. The plan submitted by the Applicant indicates that 17.34 acres of forest will be retained and 8.7 acres of forest will be planted for a total of 26.04 acres of forest. The amount of forest proposed for retention and planting exceeds the 25 percent requirement under Section 22A-12(f), and, therefore, the forest conservation plan submitted complies with this section of the forest conservation law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on July 2, 2007. The stormwater management concept includes on-site channel protection measures via construction of three detention facilities, on-site water quality control via construction of six sand filters, and on-site recharge via open section roadway swales and other nonstructural measures such as rooftop disconnection.

6. *The requested waiver of maximum cul-de-sac length is granted.*

Section 50-26(d) of the Subdivision Regulations limits the use of cul-de-sacs in new subdivisions unless their use results in an improved street layout because of the unusual shape, size or topography of the subdivision. The section also limits the maximum length of a cul-de-sac to 500 feet, unless the Planning Board finds that a greater length is justified because of shape, size, topography, large lot size, or improved street alignments.

For the subject Application, the existence of the mainstem of the Northwest Branch on the western edge of the Property justifies using a cul-de-sac in that location to provide access for proposed Lots 16 through 27. Properties immediately abutting the Subject Property in that location have already been subdivided and have no need for additional road access. Crossing the stream with a through-road would be both unnecessary and environmentally damaging. Connecting the cul-de-sac to Old Vic Boulevard was investigated, however, this would not be possible without paving within the stream valley buffer, and the language in the Master Plan places a premium on preservation of forest and open space.

The Planning Board determines that development located in this portion of the site is best served by the road alignments as proposed. The Planning Board finds that the length of the cul-de-sac is essential to reach the developable portions of the Property and give all lots frontage on a public right-of-way; a trail connection will provide pedestrian access between the two developable areas of the Property.

7. *With the approval of 37 lots and 15% MPDUs, the required number of MPDUs is six units, not the five proposed by the Applicant.*

The Applicant proposes to create 37 lots for 37 dwelling units. The base density for the subject property is 31 units. But by providing 15% MPDUs, the Applicant achieves a total density bonus of 22%, or six units, for a total of 37 units.

The Applicant correctly calculates the required number of MPDUs as six, but proposes to reduce the number to five based on the provisions of Section 25-A-5(d)(2) of the Montgomery County Code, which states:

If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of MPDUs required must be governed by subsection (c) unless the formula in subsection (c) would not allow the development to have one bonus market rate unit. In that case, the Planning Board must reduce the required number of MPDUs by one unit and approve an additional market rate unit.

Citing Section 25-A-5(d)(2), the Applicant argues that one of the six MPDUs required to achieve the 22% density bonus in this case should be converted to a market rate unit. In support of this proposal, the Applicant argues that unless the number of required MPDUs is reduced by one and the number of market rate units permitted is increased by one, no bonus market-rate unit is achieved. The Applicant bases this argument on a comparison of the number of market-rate units that may be built after the bonus density calculations are performed, which is 31 units, and the underlying base density permitted for the project, which is 31 units. The Applicant asserts that the Board should therefore reduce the required number of MPDUs from six to five, permitting the development of a total of 32 market-rate units and five MPDUs.

The Board disagrees. In determining whether the formula in subsection (c) would allow the development to have one bonus market rate unit, the relevant comparison is the number of market-rate units the Applicant would be entitled to if no greater than the minimum number of MPDUs were provided. For this

project, the base density is 31 units. But because 12.5% of those units, which is four units, must be MPDUs, the base density permits development of only 27 market rate units. After the density bonus, the number of market rate units is 31, for a market-rate bonus of four units. This four-unit bonus far surpasses the one-bonus-unit minimum required by Section 25-A-5(d)(2).

The Board acknowledges that in one past case it has permitted an additional market-rate unit above the total base density under circumstances similar to those in this case, but in light of the plain language of Section 25-A-5(d)(2), and because the bonus of four market-rate units should provide more than sufficient incentive to provide more than the minimum percentage of MPDUs, the Board believes that the reduction in MPDUs in that case was improper.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is JAN 11 2008 (which is the date that this Resolution is mailed to all parties of record); and

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

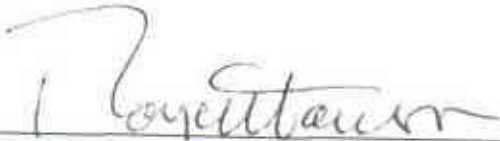
\* \* \* \* \*

**CERTIFICATION**

At its regular meeting, held on Thursday, January 10, 2008, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Cryor, seconded by Commissioner Bryant, with Chairman Hanson and Commissioners Cryor and Bryant present and voting in favor, with Vice Chair Robinson abstaining and with Commissioner Lynch absent. This Resolution constitutes the final decision of the

MCPB No. 08-15  
Preliminary Plan No. 120060850  
Batchellors Forest  
Page 11

Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120060850, Batchellors Forest.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman  
Montgomery County Planning Board

## Appendix B



IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF OXBRIDGE  
DEVELOPMENT AT BATCHELLORS  
FOREST, LC  
600 Jefferson Plaza, Suite 550  
Rockville, MD 20852

Petitioner

Civil Action No. 292245-V

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE MONTGOMERY  
COUNTY PLANNING BOARD OF  
THE MARYLAND-NATIONAL  
CAPITAL PARK AND PLANNING  
COMMISSION  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Respondent

IN THE CASE OF PRELIMINARY  
PLAN NO. 120060850, BATCHELLORS  
FOREST

**ENTERED**

DEC 30 2008

Clerk of the Circuit Court  
Montgomery County, Md.

**ORDER**

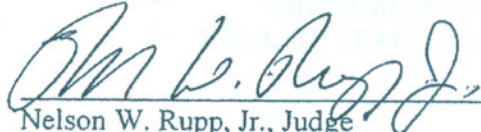
Upon consideration of the Petition for Judicial Review, the Petitioner's Memorandum, the Answering Memorandum of Respondent, the Montgomery County Planning Board, Petitioner's Reply to the Answering Memorandum of the Montgomery County Planning Board, and the entire record of Preliminary Plan No. 120060850 filed in this proceeding, and a hearing having been held, and for the reasons and rationale stated in my oral decision issued from the Bench after the close of the hearing on December 15, 2008, and this Court further finding no facts are present in the record to support the Montgomery County Planning Board's decision, it is this 15 day of December, 2008, by the Circuit Court for Montgomery County, Maryland,

**ORDERED**, that the decision of the Montgomery County Planning Board in the proceeding designated as Preliminary Plan No. 1200060850 on the issue of the required number of MPDUs be and hereby is REVERSED; and it is further

**ORDERED**, that the required number of MPDUs be reduced by one to five (5) MPDUs and that one additional market rate unit be added for a total of thirty-two (32) market rate units; and it is further

**ORDERED**, that Finding No. 7 of the Resolution of the Montgomery County Planning Board for Preliminary Plan No. 1200060850 on the required number of MPDUs be amended to reflect this Order; and it is further

**ORDERED**, that a copy of this Order shall be served on all counsel of record.

  
Nelson W. Rupp, Jr., Judge  
Montgomery County Circuit Court

Stephen Z. Kaufman, Esq.  
Yum Yu Cheng, Esq.  
Linowes and Blocher LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, Maryland 20814  
*Attorneys for Petitioner*

David B. Leib, Esq.  
Debra Y. Daniel, Esq.  
Office of General Counsel  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
*Attorneys for Respondent*

**ENTERED**

DEC 30 2008

Clerk of the Circuit Court  
Montgomery County, Md.

## Appendix C



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

**TO:** Sandra Pereira, Senior Planner, Development Review Division  
**VIA:** Stephen D. Federline, Master Planner, Environmental Planning Division  
**FROM:** Candy Bunnag, <sup>CB</sup> Planner Coordinator, Environmental Planning Division  
**SUBJECT:** Site Plan No. 820080190 – Batchellors Forest  
**DATE:** July 15, 2009

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**RECOMMENDATIONS**

Environmental Planning staff recommends **approval** of the above referenced site plan with the following conditions:

1. Compliance with the conditions of approval of the Final Forest Conservation Plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as appropriate. Conditions include, but are not limited to the following:
  - a. Final sewer line alignments to be determined in coordination with WSSC and M-NCPPC Environmental Planning Division prior to submission of the certified site plan. If technically feasible, the final sewer line alignments should further minimize forest clearing and wetland impacts within environmental buffers.
  - b. Submittal of financial security to M-NCPPC for review and approval prior to clearing or grading. Financial security to cover forest planting areas.
2. Pre-construction and pre-planting meetings must include inspectors from M-NCPPC Environmental Planning and Department of Parks.
3. Category I conservation easements must be placed over all environmental buffers and forest conservation areas that are not dedicated as M-NCPPC parkland. Conservation easements must be shown on record plats.

**DISCUSSION**

**Environmental Guidelines**

A Natural Resources Inventory/Forest Conservation Plan (NRI/FSD), #420043350, was approved in December 2008. The 93.64-acre site is located in the Northwest Branch watershed (Use IV streams). The Batchellors Forest Tributary traverses through the western portion of the property. A small stream that flows into this tributary originates on the subject site. A 100-year floodplain and about 1.75 acres of wetlands are associated with these two streams. Another small stream originates on the portion of the property that lies to the east of Batchellors Forest Road.

Environmental buffers cover about 23.39 acres of the site. The majority of the 21.63-acre forest cover lies within or adjacent to environmental buffers. The remainder of the site is in field. The majority of the site lies on the west side of Batchellors Forest Road and generally slopes westward towards the forested stream valley and floodplain. The portion of the property that lies to the east of Batchellors Forest Road slopes southeastward towards the partially forested stream valley that flows along the southern property boundary.

### **Forest Conservation**

There are 21.63 acres of forest onsite. A Preliminary Forest Conservation Plan was approved with conditions by the Planning Board as part of the approval of the preliminary subdivision plan on July 26, 2007. Conditions of approval of the Preliminary Forest Conservation Plan are as follows:

- 1) Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan.
- 2) Split rail fencing and permanent forest conservation signage are required along the easement line that adjoins residential lots and must be shown on the final Forest Conservation Plan.

The Final Forest Conservation Plan (FFCP) proposes to clear 1.57 acres of forest, preserve 19.53 acres<sup>1</sup>, and plant 6.84 acres of forest. Where forest retention or planting occurs on private property, a Category I conservation easement is placed over the area to provide permanent protection. Forest preservation or planting on land that will be dedicated as M-NCPPC parkland will not have a conservation easement.

The Final FCP is consistent with the Preliminary FCP:

- Forest preservation and planting areas are within or immediately adjacent to environmental buffers.
- The total amount of on-site forest retention and planting (26.37 acres) is larger than 25 percent of the net tract area (22.57 acres) as required under Section 22A-12(f) of the County Forest Conservation Law. The Preliminary FCP conditionally approved with the preliminary subdivision plan also provided for on-site forest retention and planting which exceeded 25 percent of the net tract area.
- Split rail fencing is shown along the segments of conservation easements that are adjacent or close to proposed boundaries of private residential lots. Permanent signs are proposed along the boundaries of forest retention, forest planting, and environmental buffer areas on both private open space and park dedication areas.

Forest clearing will occur within environmental buffers for unavoidable outfalls for stormwater management facilities and connections of new sewer lines in the subdivision to existing sewer lines within the floodplain of the Batchellors Run Tributary that flows along the western edge of the subject site.

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<sup>1</sup> The total amount of forest retention does not include 0.53 acre of existing forest within existing WSSC sewer line rights-of-way.

There are two sewer line outfalls serving the subdivision that will require forest clearing within the environmental buffer in order to connect to an existing sewer trunk line within the stream valley of the Batchellors Forest Tributary. One of the proposed sewer line connections through the forested environmental buffer will require the removal of some specimen-size trees. Staff believes that there are alternative alignments and/or consolidation of these two sewer line outfalls which would result in less forest loss and wetland impacts than the alignments shown in the site plan. The alternative for one of the sewer lines may also allow two of the proposed lots to be served by gravity sewer rather than by grinder pumps. Staff recommends that prior to the submission of the certified site plan, the applicant evaluate alternative sewer alignments through the stream valley, in coordination with WSSC and Environmental Planning Division to determine alignments that will minimize forest loss and impacts to wetlands within the environmental buffers.

### **STAFF RECOMMENDATION**

Environmental Planning staff recommends approval of the site plan, including approval of the Final Forest Conservation Plan with conditions. The plan, if it incorporates staff's recommended changes, would comply with the County Forest Conservation Law (Section 22A of the Montgomery County Code).

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**MEMORANDUM**

**3/5/09**

**TO: Sandra Pereira, Site Plan Review, Development Review Division  
Robert Kronenberg, Site Plan Supervisor, Development Review  
Division**

**FROM: Doug Powell, Plan Review Coordinator, Park Planning and  
Stewardship Division, Department of Parks**

**RE: Conditions of Approval for Site Plan 820080190, Batchellors Forest**

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The subject property is located on the east and west side of Batchellors Forest Road. The land located on the east side was identified in the Olney Master Plan as suitable for a local park to satisfy the need for ballfields in this area. It is large enough and relatively free of environmental constraints that would limit the types of active recreation facilities that could be constructed on the property. After Parks Department review of the proposed plan, the following Conditions of Approval are therefore requested:

- Applicant to dedicate to M-NCPPC the approximately 17.1 acre portion of subject property designated as Parcel A that lies east of Batchellors Forest Road, for use as a local park per the Olney Master Plan. Land to be conveyed to M-NCPPC in fee simple by deed acceptable to M-NCPPC staff, by time of record plat. Dedicated property to be marked with boundary posts in locations acceptable to Department of Parks staff, and to be conveyed free of any trash and unnatural debris.
- Applicant to place a sign on the dedicated parkland, acceptable to M-NCPPC Department of Parks staff, that identifies it as parkland that will include active recreation amenities.

## Pereira, Sandra

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**From:** Schwartz, Lisa [Lisa.Schwartz@montgomerycountymd.gov]  
**Sent:** Friday, June 26, 2009 2:28 PM  
**To:** Pereira, Sandra  
**Cc:** Elliot Totah; Anderson, Christopher; Ababu, Essayas  
**Subject:** Batchellor's Forest Site Plan

Sandra,

I have discussed the above revised site plan with Elliot Totah and Chris Anderson, and we are in concurrence on the following conditions:

1. Elevations for MPDU units to be provided prior to certified site plan approval. (Note: our office has previously reviewed these elevations, because they are the same as for another Oxbridge development.)
2. MPDU construction schedule to be approved by DHCA prior to certified site plan approval.

Please let me know if you have any questions. --Lisa

Lisa S. Schwartz  
Senior Planning Specialist  
Montgomery County Department of Housing and Community Affairs  
100 Maryland Ave., 4th Floor  
Rockville, MD 20850  
(240) 777-3786 - office (240) 777-3709 - fax  
[lisa.schwartz@montgomerycountymd.gov](mailto:lisa.schwartz@montgomerycountymd.gov)  
[www.montgomerycountymd.gov/mpdu](http://www.montgomerycountymd.gov/mpdu)



## Pereira, Sandra

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**From:** Kronenberg, Robert  
**Sent:** Friday, March 20, 2009 1:17 PM  
**To:** Pereira, Sandra  
**Subject:** FW: Batchellors Forest Site Plan #820080190

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Forgot to cc you

---

**From:** Kronenberg, Robert  
**Sent:** Friday, March 20, 2009 1:17 PM  
**To:** 'Navid, Sarah'  
**Cc:** Saville, Leslie; rburns@mhgpa.com; scrum@mhgpa.com; Eapen, Cherian  
**Subject:** RE: Batchellors Forest Site Plan #820080190

Thanks Sarah. Sandra Pereira is working on this case and is cc'd on the email. We will take a look at the comments and condition as necessary.

Robert

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**From:** Navid, Sarah [mailto:Sarah.Navid@montgomerycountymd.gov]  
**Sent:** Friday, March 20, 2009 1:08 PM  
**To:** Navid, Sarah; Kronenberg, Robert  
**Cc:** Saville, Leslie; rburns@mhgpa.com; scrum@mhgpa.com; Eapen, Cherian  
**Subject:** RE: Batchellors Forest Site Plan #820080190

I'm resending this message because it did not go thru to P&P on the first try.

*Sarah Navid*

*Department of Permitting Services  
Right of Way Permitting and Plan Review  
255 Rockville Pike  
Rockville, MD 20852*

*t 240-777-6304 f 240-777-6339*

-----Original Message-----

**From:** Navid, Sarah  
**Sent:** Friday, March 20, 2009 10:46 AM  
**To:** Kronenberg, Robert  
**Cc:** 'Saville, Leslie'; 'rburns@mhgpa.com'; 'scrum@mhgpa.com'; 'Eapen, Cherian'  
**Subject:** Batchellors Forest Site Plan #820080190

Robert,

We took a look at this site plan at the Rustic Roads Advisory Committee Meeting last night. These are the combined comments of the RRAC and DPS Right of Way Planning and Permitting Section:

### Old Vic Boulevard and Batchellors Forest Road

Although typically we would not approve of concrete curb returns at the intersection of a rustic road, in this particular case, due to the proximity of two schools and the amount of traffic anticipated, we are concerned that without curb and gutter, turning vehicles will create rutting and maintenance issues on the corners. Therefore, we

concur with the curb and gutter as shown on the Old Vic Blvd. leg. However, the 30' radius should be reduced to 25' on the northwest corner and the 24 foot width should be carried to the intersection rather than the 36 foot flare proposed. The setback of the curbs from Batchellors Forest Road as shown is acceptable.

The sidewalk connection into Farquhar Middle School will need re-working at permitting to provide a safe connection. This connection should be set back from the pavement edge, maybe with a curb and will probably require the removal of one parking space on site. This quadrant of the intersection should be coordinated with MCPS with a field meeting at the time of permitting.

#### Street B and Batchellors Forest Road

The concrete curb returns should not be used at this intersection. Both radii should be reduced to 25 feet.

#### Street Trees

Although we have to provide the street lights and sidewalk/bikepath approaching Batchellors Forest Road, we would prefer not to have the standard soldier tree design on the two public streets as they approach Batchellors Forest Road within the Rural Open Space/Common Open Space areas. Please consider if there is a more rural planting scheme that could be provided to soften the suburban look of these streets. I do not personally know what this might be – maybe clustering the trees.

Please contact me if you have any questions regarding these comments.

*Sarah Navid*

*Department of Permitting Services  
Right of Way Permitting and Plan Review  
255 Rockville Pike  
Rockville, MD 20852*

*t 240-777-6304 f 240-777-6339*



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Carla Reid Joyner  
Director

July 2, 2007

Mr. Steven L. Wilde  
Macris, Hendricks & Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request  
for Batchellors Forest - Casey Property  
Preliminary Plan #: 1-06085  
SM File #: 224092  
Tract Size/Zone: 91.9 acres / RNC  
Total Concept Area: 35 acres  
Lots/Block: N/A  
Parcel(s): P771  
Watershed: Northwest Branch

Dear Mr. Wilde:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via construction of three detention facilities; on-site water quality control via construction of six Montgomery County Sand Filters (MCSF's); and onsite recharge via open section roadway swales and other nonstructural measures such as rooftop disconnection.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. Acceptability of the use of "Natural Area Credits" will be decided upon at the time of detailed plan review. The applicant has demonstrated that the required stormwater management controls can be provided even if this credit is not applied.
5. The outfall of the proposed stormwater facility in Area A1 extends onto the adjacent property. A stormwater easement has been recorded for this extension.

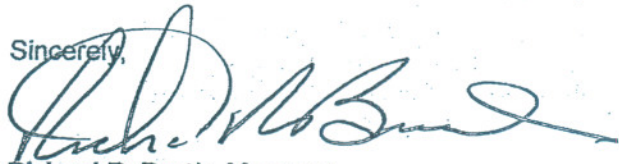
This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at 240-777-6338.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm mce

cc: C. Conlon  
S. Federline  
SM File # 224092

QN - ON; Acres: 35  
QL - ON; Acres: 35  
Recharge is provided



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## FIRE MARSHAL COMMENTS

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**DATE:** MAY 6, 2008  
**TO:** RAY B8 RN6 – 0 HG  
**FROM:** TYLER MOSMAN  
**RE:** **BATCHELLORS FOREST 8-20080190**

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### PLAN APPROVED.

1. Review based only upon information contained on the plan submitted 04-18-08. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

cc: Department of Permitting Services  
MNCPPC-MC

## Appendix D

## Pereira, Sandra

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**From:** Wilson, MaryPat [MaryPat\_Wilson@mcpsmd.org]  
**Sent:** Friday, July 17, 2009 10:22 AM  
**To:** Pereira, Sandra  
**Cc:** Fain, Christopher; sarah.navid@montgomerycountymd.gov; Murphy, Scott W.; Turpin, Janice  
**Subject:** RE: Batchellors Forest Site Plan  
**Attachments:** Batchellors Forest Intersection Imp.PDF

Sandra,

We do have a concern. There is no provision in the draft condition to require the Applicant to actually construct the pedestrian connection.

This is to request that the condition be revised to read "Applicant is to construct a pedestrian connection from the terminus of Old Vic Boulevard at Batchellors Forest Road to the existing sidewalk on the William H. Farquhar Middle School site in an alignment as shown on the attached drawing." Please use the drawing that I have attached with this email transmittal.

If you have any questions, please contact me.

Thank you for the opportunity to comment.

Mary Pat Wilson  
Real Estate Management Specialist  
Dept. of Facilities Management  
Montgomery County Public Schools  
(O) 240-314-1071

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**From:** Pereira, Sandra [mailto:Sandra.Pereira@mncppc-mc.org]  
**Sent:** Friday, July 17, 2009 10:00 AM  
**To:** Wilson, MaryPat  
**Subject:** RE: Batchellors Forest Site Plan

Mary Pat,

The Planning Board date has been postponed to July 30<sup>th</sup>. I have included the condition below on the draft staff report. "Applicant to show alignment of a pedestrian connection from the terminus of Old Vic Boulevard at Batchellors Forest Road to the existing sidewalk on the Farquhar Middle School site per correspondence dated July 8, 2009, from Montgomery County Public Schools (MCPS) [Appendix D]."

Let me know if you have any comments or concerns.

Sandra

**Sandra Pereira**  
Senior Planner

M-NCPPC Montgomery County Planning Department  
**Development Review Division**  
8787 Georgia Avenue, Silver Spring, MD 20910  
**phone** (301) 495-2186 :: **fax** (301) 495-1306  
[sandra.pereira@mncppc-mc.org](mailto:sandra.pereira@mncppc-mc.org)

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**From:** Wilson, MaryPat [mailto:MaryPat\_Wilson@mcpsmd.org]  
**Sent:** Friday, July 17, 2009 9:39 AM  
**To:** Pereira, Sandra  
**Subject:** Batchellors Forest Site Plan

