



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

MCPB
 Item #
 May 6, 2010

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Mark Pfefferle, Acting Chief, Environmental Planning Division *MP*
 Stephen D. Federline, Master Planner, Environmental Planning Division *SD*
FROM: Candy Bunnag, Planner Coordinator, Environmental Planning Division *CB*
DATE: UPDATED April 26, 2010
REVIEW TYPE: Preliminary Forest Conservation Plan for Mandatory Referral
PLAN NAME: Third District Police Station: Phase 1 (Third District Police Station) and
 Phase 2 (Undetermined Use) on County- owned Property
PLAN NUMBER: MR2009742
REVIEW BASIS: Forest Conservation Regulations, COMCOR 22A.00.01
LOCATION: Northwestern Quadrant of the White Oak Interchange at Route 29 and New
 Hampshire Avenue, White Oak Master Plan
APPLICANT: Montgomery County Department of General Services

STAFF RECOMMENDATIONS

Preliminary Forest Conservation Plan recommendations for Planning Board action:

Approval of the Preliminary Forest Conservation Plan for Phase 1 (Police Station) and Phase 2 (undetermined) development, including **approval** of the request for a variance from the County Forest Conservation Law, with the following conditions:

1. Compliance with the conditions of approval of the Preliminary Forest Conservation Plan. The applicant must meet all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s):
 - a. Revise the Preliminary Forest Conservation Plan to provide a minimum of a 50-foot wide forest retention area along the western property line.
 - b. Submission and approval of a Final Forest Conservation Plan for each development phase for the property. No land disturbance activities, including forest clearing, can occur on either phase of the site until a Final Forest Conservation Plan is approved for the specific project phase.
 - c. The Preliminary Forest Conservation Plan must be amended by the Planning Board to include a specific proposal for Phase 2 prior to the review and approval of a Final Forest Conservation Plan for Phase 2.

- d. The Final Forest Conservation Plan for Phase 1 must include the following:
 - i. Identify the offsite location where the forest conservation planting requirements will be met. Priority for the offsite location is within the Paint Branch watershed.
 - ii. Add root pruning along the limits of disturbance where forest or trees are to be protected, including all areas of forest and trees in Phase 2.
 - iii. Evaluate all forest retention areas to identify the type and extent of non-native invasive (NNI) plants.
 - iv. Prepare a NNI management plan to provide specific control measures and include supplemental plantings of native trees and shrubs, as needed, for each forest retention area.
2. Prior to the start of clearing or grading for a specific development phase, the applicant must record Category I conservation easements over all onsite forest retention and forest planting areas associated with that phase of development.

BACKGROUND

Plan Overview

The 12.79-acre subject site is zoned R-90/TDR, and lies in the northeastern quadrant of the intersection of New Hampshire Avenue and Route 29. Montgomery County owns the entire site. Originally, the Montgomery County Department of General Services (DGS) had proposed two uses: a police station on the western portion, and a multi-family residential use on the eastern portion of the site. However, DGS has indicated that housing may not occur on the eastern portion and the mandatory referral application is only for a police station. The Preliminary Forest Conservation Plan includes the proposed police station and most of the remainder of the 12.79-acre site, excluding only that portion dedicated to SHA for purposes of constructing a grade-separated interchange of Route 29 and Stewart Drive.

The northeastern portion of the subject site is shown to be used for a future interchange project for Stewart Lane that will be constructed by State Highway Administration in the future. This portion of the site is not included in the current Preliminary Forest Conservation Plan nor the mandatory referral review.

The Preliminary Forest Conservation Plan and mandatory referral were originally scheduled for review by the Planning Board on March 4, 2010. The applicant, Montgomery County Department of General Services (DGS), requested to defer the item.

Staff's primary condition recommended that the Preliminary Forest Conservation Plan be revised to provide additional onsite reforestation and/or forest retention along the western property line.

Since March 4, there have been two meetings initiated by M-NCPPC staff: one with the applicant only and one with the applicant and the community. At the second meeting, the citizens expressed significant concerns about the inadequate buffer that the proposed plan would create between the police station and existing residences along the western property line, and the very small amount of forest retention proposed by the applicant.

After the two meetings, the applicant submitted a revised Preliminary Forest Conservation Plan, which is the subject of the review provided in this staff memorandum.

DISCUSSION

There are two items for Planning Board review for the Third District Police Station project: recommendations on the mandatory referral for the Police Station only, and the Preliminary Forest Conservation Plan for the County's two phases of development on the entire site, including the police station as the first phase. The mandatory referral covers only the Police Station phase of the County project.

This memorandum covers staff's review and recommendations on the Preliminary Forest Conservation Plan for the entire site and some additional offsite area, but excluding the SHA interchange area.

The Board's actions on the Preliminary Forest Conservation Plans are regulatory and binding. The Planning Board must act on the Forest Conservations Plan before it can proceed to make recommendations on the mandatory referral.

REVIEW UNDER THE COUNTY FOREST CONSERVATION LAW

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD)

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420050860) was originally approved by Environmental Planning staff on November 2, 2004 when the subject site was privately owned, and a private developer had started the process to subdivide the site. The subdivision was never reviewed by the Planning Board and the application expired. An updated NRI/FSD was submitted in February 2009 and was recertified by Environmental Planning staff on March 18, 2009.

The site is located in the Paint Branch watershed (Use III waters), but outside the Special Protection Area (SPA). There are no streams, floodplains, wetlands, or environmental buffers on or affecting the site. The closest stream to the site is over 1000 feet away on the northeastern side of Route 29. The mainstem of Paint Branch lies almost 3000 feet away from the site. The site lies within the Stewart-April Lane subwatershed of Paint Branch. The Montgomery County Department of Environmental Protection's "Countywide Stream Protection Strategy" (February 1998) documents the subwatershed condition as *poor* and designates the subwatershed as a watershed restoration area.

Vicinity Map



The site's topography slopes down roughly from northwest to southeast towards Milestone Drive and Rte. 29. The majority of the topography is less than 15 percent steep. There are relatively small segments of steeper slopes (15 to 25% and 25% and greater) on the southwestern edge of the site adjacent to Milestone Drive and as part of the created slopes adjacent to Seton Drive that was constructed on the northern portion of the site.

There are 9.52 acres of forest on the site. Forest covers the majority of the site except for the northern portion, which has been disturbed for the construction of Seton Drive, a temporary extension of Sherbrooke Woods Lane, from the existing subdivision to the north to Milestone Drive to the east side of the site. The forest is in an early successional stage that has been disturbed. The dominant native trees are red maples in the 6-inch to 11.9-inch size range, and black locusts in the 12-inch to 19.9-inch size range. Other native trees that exist in the forest include black cherry, black walnut, persimmon, mulberry, boxelder, pin oak, and eastern red cedar. The forest is documented in both the original NRI/FSD and the recertified NRI/FSD to have a large presence of non-native invasive plants, such as bush honeysuckle, multiflora rose, Japanese honeysuckle, and Asiatic bittersweet. The current NRI/FSD estimates that the non-native invasive species make up roughly 75 percent of all the forest layers.

There are 15 trees that are 24 inches and greater in diameter at breast height (dbh). Seven of these trees are of specimen size. There are no champion trees, or trees that are within 75 percent of County champion trees on the site.

Preliminary Forest Conservation Plan

This project is subject to Chapter 22A of the County Code (Montgomery County Forest Conservation Law). The applicant proposes to develop the subject site in two phases. The first phase is the Third District Police Station, which is the subject of the mandatory referral that is being reviewed by the Planning Board at this time.

The applicant proposes a two-phased project: the first phase will be the police station, and the second phase is currently undetermined as to its ultimate use.

Revised Preliminary Forest Conservation Plan

The Preliminary Forest Conservation Plan that was reviewed in the staff report dated February 19, 2010 and was originally scheduled to be reviewed by the Planning Board on March 4, 2010 has been revised by the applicant (see figure below). The following changes have been made by the applicant:

- Originally, an 8-foot wide clearance area would be created along the western property line that is shared with existing homes. The proposed 8-foot high security wall would have been set back 8 feet from the property line. No trees or shrubs would be allowed within the clearance area. The revised Preliminary Forest Conservation Plan moves the security wall further away from the western property line and proposes the security wall to be located along the western edge of the police station parking lot.
- A 24-foot wide landscaped area would be created along the western property line. This

landscaped area and a 6-foot wide clearance area would create a 30-foot wide “buffer” between the western property line and the proposed 8-foot high security wall.

- A proposed sewer line was originally shown to be constructed within the public utility easement along existing Milestone Drive. This proposed alignment contributed to the offsite disturbance that added to the site’s net tract area for purposes of calculating forest conservation plan forest planting and retention requirements. The revised Preliminary Forest Conservation Plan proposes to locate the sewer line entirely within the public utility easement along Sherbrooke Woods Lane Extension. The sewer line construction would be almost entirely within the subject site. This change slightly reduces the project’s net tract area for purposes of the forest conservation plan.
- An 0.03-acre forest planting area is proposed. The planting area would be adjacent to the 0.24-acre proposed onsite forest retention area and also adjacent to an offsite forested Category I conservation easement area.

Net Tract for Forest Conservation Worksheet

The gross tract area of the subject site is 12.79 acres. However, there is land disturbance that is proposed to occur outside the gross tract area as part of the police station project. This disturbance increases the tract area for purposes of the forest conservation worksheet calculations to 13.01 acres. However, part of the gross tract is covered by Parcel C, which is the proposed location of a State Highway Administration (SHA) project for the future Stewart Lane Interchange at Rte. 29. This SHA project has not been reviewed by the Planning Board. Since Parcel C is part of a separate project by a different government agency, the area is subtracted from the tract area for the forest conservation worksheet for the County's two-phase project. The net tract area for the worksheet for both phases of the County project is 11.33 acres.

Phase 1 Development (Third District Police Station)

With the County's proposed two-phased project on the site, the Preliminary Forest Conservation Plan shows how the first phase - the Police Station use - will meet forest conservation requirements.

Phase 1 development covers 7.55 acres of the 11.33-acre net tract area. This phase of development is defined by the proposed limits of disturbance for the police station use and the public road proposed through the site. Phase 1 consists of: the police station and its required parking; an 8-foot high security wall around the western, northern, and part of the eastern perimeter of the police station use; the extension of Sherbrooke Woods Lane from the existing residential subdivision to the north to connect to Milestone Drive to the south, and stormwater management measures and conveyance systems for the police station use and Sherbrooke Woods Lane Extension. Along the western property line of the police station, the security wall location has been adjusted so that it does not lie along the property line, but has been set back to a location along the western edge of the police station's proposed parking lot.

The Phase 1 portion of the site includes 6.74 acres of existing forest. The Preliminary FCP proposes to preserve 0.24 acre of existing forest along the northwestern portion of the property. The remainder of the forest in Phase 1, or 6.50 acres, would be cleared. There is a 5.84-acre reforestation requirement for the entire site, which includes the clearing associated with the Phase 1 (police station) project and assuming worst-case scenario with no long-term preservation of forest in the Phase 2 portion. The Preliminary FCP proposes to provide 0.70 acre of landscape credit with the use of native shade trees for landscaping. In addition, the Preliminary FCP proposes to provide 0.03 acre of onsite reforestation (adjacent to adjoining offsite, protected forest). The remainder of the reforestation requirement, or 5.11 acres for both phases of the County project, would be met at an offsite location that has not been determined at this time.

The final amount of reforestation that would be required for the entire site (Phases 1 and 2) will be dependent on two main items: 1) Planning Board concurrence on the staff recommendation to increase onsite forest conservation retention area within the police station project (Phase 1), and, 2) the content of the subsequent amendment to the Preliminary FCP (incorporating the details of Phase 2) to be reviewed by the Planning Board at the time the County submits a Phase 2 proposal. For the Phase 1 (police station) portion of the site, the reforestation requirement would be 3.85

acres, using the applicant's proposed layout. Of this reforestation amount, the applicant proposes to meet 3.12 acres at an offsite location and use 0.03 acre of onsite reforestation and 0.70 acre of onsite landscape credit.

The County proposes an 8-foot high security wall along the western boundary of the subject site. The proposed wall is set back from the property boundary that is shared with three existing homes. The applicant proposes to create a 6-foot wide cleared area next to the security wall for security purposes and a 24-foot wide landscaped area.

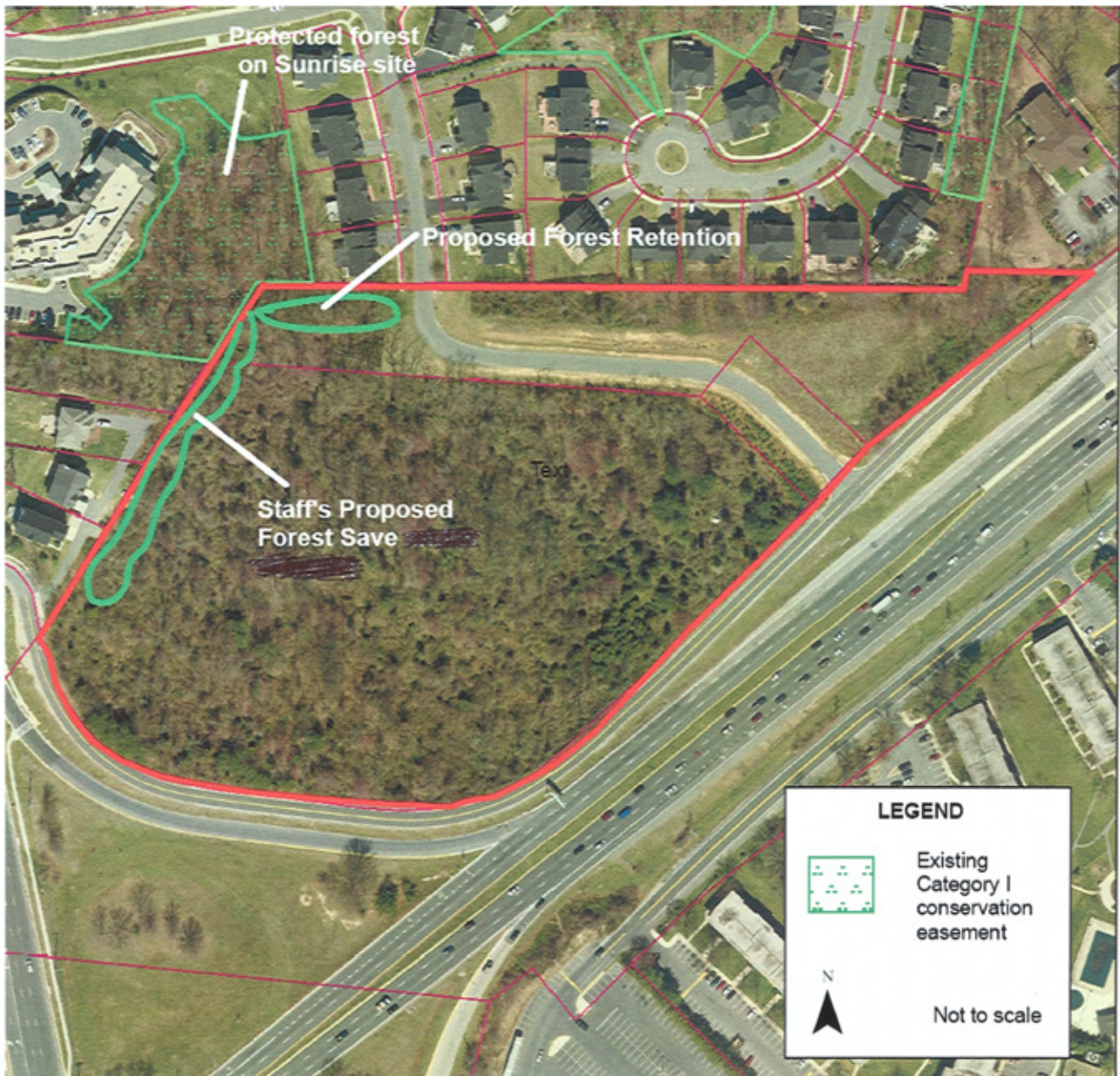
Community-based Planning's comments on the mandatory referral recommend that the police station layout be revised to create an area of forest between the homes and the wall to create a green buffer to enhance compatibility between the police station use and existing residences.

Community-based Planning's comments could result in a planted and/or existing 50-foot wide forest edge along the western property line that would connect with the County's proposed forest preservation area on the northwestern portion of the site. In addition, the green forest buffer would also be adjacent to existing forest in a conservation easement on the adjoining White Oak Assisted Living special exception.

In the original review, Environmental Planning staff supported Community-based Planning's comments and believed the creation of a strip of forest along the western property line would provide a visual buffer between different land uses (residences and police station), as well as expand and connect to onsite and offsite protected forest stands. The creation of a forested buffer is consistent with Section 107B(3) of the Forest Conservation Regulations¹.

With the current review, staff still supports Community-based Planning's recommendation to create a minimum 50-foot wide vegetated area along the western property boundary. However, with the applicant's revision to offset the location of the security wall so that it is no longer on the western property line, but setback into the subject site, staff believes there is a greater opportunity to retain existing forest. So, the 50-foot wide vegetated area should be retained forest instead of a combination of retained and planted forest. Therefore, staff recommends that the Preliminary FCP is revised to reconfigure the police station layout to create a minimum 50-foot wide forest retention area along most of the western property line. The forest buffer would be protected with a Category I conservation easement. It should be noted that there may not be adequate space to provide a 50-foot wide forest on the extreme southernmost portion of the western property line, but a narrower band of tree cover may be possible to create a buffer.

¹ Section 107B(3) of the County Forest Conservation Regulations state: "The following areas are not subject to the retention provisions in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible: ... (3) trees which act as a buffer between incompatible land uses and between dwellings and roads;..."



Phase 2 Development

As noted above, the remaining 3.77 acres of land that is outside the Phase 1 development area has no specific use proposed by the County at this time. The Preliminary FCP shows no clearing or grading outside of Phase 1: that is, no forest or trees outside the limits of Phase 1 will be removed. When the County has a specific project for Phase 2, staff recommends that the Preliminary FCP be amended to show the details of Phase 2 development, and that the amended Preliminary FCP is reviewed by the Planning Board together with a mandatory referral or private development plan, as appropriate. Staff also recommends that no clearing or grading can occur within the Phase 2 portion of the site unless a Final FCP for a Phase 2 project is approved.

Request for a Variance from the Forest Conservation Law

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria to be incorporated into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove trees. In general, the variance provision of Bill 666 applies to: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove five trees greater than 30 inches DBH, a variance is required.

The applicant has requested a variance (see Attachment 1) to remove the following trees – a 30-inch tulip poplar (Liriodendron tulipifera) and a 42-inch black cherry (Prunus serotina), both of which are in good condition.

Montgomery County Code 22A - Forest Conservation Law (FCL) Section 22A-21(c) - requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. If the County Arborist does not provide a recommendation within 30 days the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within the Montgomery County Department of Environmental Protection (DEP) on December 31, 2009. The County Arborist has elected not to review the variance request (see Attachment 2). By law, the County Arborist's recommendations for the variance request are therefore presumed to be favorable.

Section 22A-21(e) of the County Forest Conservation Law states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. FCL Sect. 22A-21(d) states that a variance must *not* be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Findings

1. *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. The two trees are located in the northwestern portion of the site where part of the proposed parking lot for the police station will be located. None of the trees are champion trees or 75% of the DBH of the state champion tree for that species. The circumstances related to this variance are neither unique nor avoidable, except by denying

otherwise appropriate development. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

2. *Is based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant. The requested variance is based on site layout and design for a County police station. Given that two uses will ultimately be located on this site, an alternate site layout for the police station use would not alter the need for the removal of these two trees.

3. *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

4. *Will violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. Under section 22A-16(d) of the County Code “*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*” In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area, and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.

In addition, the stormwater management concept for the police station use has been conditionally approved by the County Department of Permitting Services (Attachment 3). The concept provides for onsite water quality controls and onsite groundwater recharge measures.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant’s request for a variance from the Forest Conservation Law to remove the two specimen trees. The approval is assumed into the Planning Board’s approval of the forest conservation plan.

Citizen Correspondence

On January 27, 2010, Mr. Barry Wides, President of the North White Oak Civic Association, and Ms. Elizabeth Molloy, President of the Homeowners Association for the Sherbrooke Subdivision, met with Planning staff to go over the proposed project and identify their issues. One question that the citizen representatives raised was why the proposed project could be allowed to clear a large proportion of the onsite forest and mitigate by meeting some of the project’s forest conservation requirements offsite. Environmental Planning staff indicated that the County’s project is not a cluster or an optional method of development, as defined by the Forest Conservation Law, and, therefore, there is no minimum amount of forest retention that is required to be met onsite.

Subsequent to the meeting, staff directed the citizens to online resources that would help them better understand the County's forest conservation law and program. In addition, Mr. Wides continued discussion with Environmental Planning staff. His comments and recommendations are found in an attached email (Attachment 4). His comments and recommendations are summarized below, followed by the staff response:

1. The North White Oak Civic Association does not support an offsite location to meet part of the project's forest conservation requirements. If an offsite option is proposed, the Association believes that the site should be identified and reviewed as part of the Preliminary FCP that is in front of the Planning Board. The Association believes the Preliminary FCP is not complete until the community can review an applicant's proposed offsite forest conservation area.

Staff response: As previously stated, the County Forest Conservation Law does not require that a project meet minimum forest retention requirements onsite if it is not a cluster or an optional method of development in a one-family residential zone. The proposed police station phase of the project is neither a cluster nor optional method of development as defined by the law and zoning ordinance. Since the County proposes a two-phase development on the site, and has stated that it wants to have flexibility for the second phase, staff cannot assume that the forested part of the site that is outside the police station phase can be preserved.

If a project proposes an offsite location to meet some or all of its forest conservation requirements, the specific offsite location is typically not identified by the applicant at the Preliminary FCP stage. A period of time is usually required in order for the applicant, often with assistance from staff, to research and locate suitable offsite locations to meet a project's requirements. Sites that are available in specific watersheds, sites that have adequate forest planting or protection areas, approved forest bank sites that have sufficient forest credits or are located in specific watersheds, are options to be considered. A condition is placed on the approval of the Preliminary FCP that requires the applicant to propose an offsite location prior to the approval of the Final FCP. On occasion, the condition may require that the highest priority is given to an offsite location in the same watershed as the project site. Staff's recommended condition 1d incorporates this provision.

2. The Civic Association recommends that all of the police station's forest conservation requirements be met onsite, as shown in Mr. Wides' illustration (Attachment 5).

Staff response: The illustration creates a single-use public site, which is contrary to the county's proposal for a two-phased development project. Staff does agree with the Civic Association's recommendation to create a forested buffer along most of the western property line. However, staff's recommendation is to create a minimum 50-foot wide forest buffer, rather than a 100 to 200 foot wide forest buffer.

3. The Civic Association's suggested forest conservation areas surround the police station and complement the protected existing forest on the adjoining Sunrise Assisted Living Facility.

Staff response: Staff agrees that the Civic Association's suggestion for onsite forest

conservation areas would be adjacent to and join protected, offsite forest on the assisted living facility. Staff's recommendation to modify the applicant's FCP to create a minimum 50-foot wide forest buffer along the majority of the western property line would also adjoin and complement the assisted living facility's conservation easement, and still provide land left over for a second phase of development on the county site.

4. The Civic Association disagrees with the NRI/FSD description of the forest. It believes the sample points established to help describe the forest in the NRI/FSD are not representative of the entire forest. The association believes the forest is worth saving and that the trees provide "needed green space" and preservation would be consistent with the goals laid out in the Montgomery County Forest Preservation Strategy. It does acknowledge that "much of the area has invasive species".

Staff response: The sampling points established as part of a NRI/FSD follow methods that are identified by the Maryland Department of Natural Resources "Forest Conservation Manual". The sampling points establish that the entire forest has common characteristics in the composition of species, age of trees, density of trees, occurrence of native versus non-native species so that all of the forest can be considered as one stand.

The NRI/FSD describes the forest as of poor quality because of the very high occurrence of invasive, non-native plants. The forest is an upland forest which is not connected to any large offsite forest stands or environmentally-sensitive areas such as streams, wetlands, floodplains, or their buffers. As noted above, the closest stream in the same watershed is roughly 1000 feet away from the site. In addition, the forest on this site is not identified in the White Oak Master Plan as priority forest for retention. These characteristics and description of the forest on the site do not place this forest as the highest priority for retention, as defined in the County Forest Conservation Law and Regulations.

The issue of forest quality does not mean that no onsite forest preservation should occur. Staff agrees with the Civic Association that green space should be part of any project on the site. The applicant has proposed a forest conservation area on the northwestern portion of the property. In addition, staff is recommending that an additional forest conservation area (forest retention) be created along most of the western property boundary to create a forested buffer between the police station use and the existing residences on Milestone Drive.

5. The Civic Association believes that saving trees adjacent to the southernmost portion of the area next to 900 Milestone Drive will prevent runoff from the steep slope at this location.

Staff response: The project proposes to grade the small area of existing steep slopes adjacent to Milestone Drive to install a 5-foot sidewalk, create an entrance into the police station, and construct a parking lot. In addition, stormwater runoff will be controlled by the stormwater concept that has been reviewed and conditionally approved by DPS (Attachment 3).

6. The Civic Association believes that the proposed project does not provide the maximum onsite forest conservation that is possible. It believes that there is a large area that is not proposed for use in the current plan, and that it is possible to move the police station itself eastward, as shown in Mr. Wides' illustration (Attachment 5).

Staff response: The determination of the “maximum possible” onsite forest preservation is based on many factors already mentioned: 1) forest quality and other characteristics; 2) master plan/zoning expectations for the property; and 3) flexibility in achieving expected development. In this case, a necessary public facility needs a strategic, visible, and accessible location to best serve a certain area of the county. Weighing all these factors, staff believes that this plan achieves appropriate forest save/planting requirements in this prominent location.

7. The Civic Association recommends that the Planning Board deny the Preliminary FCP and require resubmission. It believes the current PFCP is not a complete plan. It believes a complete plan is needed for public input.

Staff response : Staff believes the Preliminary FCP can be revised to provide additional forest buffer along the western edge of the property without significantly affecting the proposed police station use. No one part of the existing forest on the site has a higher priority for retention from a natural resource perspective than another part. Staff does not believe that the Preliminary FCP can be denied. The conditions that staff recommends be part of the approval of the Preliminary FCP would require the plan to be revised to create additional forest conservation area along the western edge of the site to provide a vegetated buffer between the police station and existing houses.

In addition, the public hearing process that is part of the Preliminary FCP review at this time for the police station (Phase 1) and the public hearing process that will occur when the Preliminary FCP is amended to include the details of Phase 2 provides the public with good opportunities to voice its concerns and recommendations for the Planning Board’s consideration. The Planning Board, at these public hearings, can require changes at these two stages of review as part of its actions on the Preliminary FCP and the amendment of the Preliminary FCP.

SUMMARY

Staff recommends approval of the Preliminary Forest Conservation Plan with conditions as specified in the staff report.

ATTACHMENTS

1. Forest conservation variance request from applicant (4 pages)
2. Montgomery County DEP arborist letter on variance request
3. Montgomery County DPS stormwater management concept approval letter (2 pages)
4. Email and photographs of site from Barry Wides, President, North White Oak Civic Association (5 pages)
5. Illustration of layout of police station preferred by North White Oak Civic Association, submitted by Barry Wides

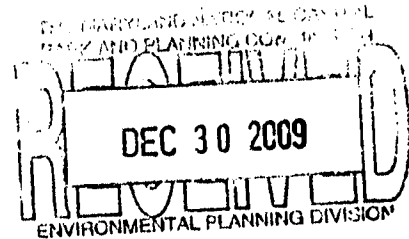


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ATTACHMENT 1
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December 10, 2009



Mr. Mark Pfefferle
Acting Division Chief
M-NCPPC Environmental Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Forest Conservation Variance Request
3rd District Police Station MR2009742

Dear Mr. Pfefferle,

On behalf of our client, the Montgomery County Department of General Services, and in accordance with Section 22A-21 of the County Code, we hereby request a variance to Maryland State Bill 666 and to Section 22A-12(b)(2)(E) to allow the removal of two trees 30 inches or greater in diameter as measured 4.5 feet above ground.

A Preliminary Forest Conservation Plan was submitted to the MNCPPC Environmental Planning Division as part of the Mandatory Referral for the proposed 3rd District Police Station in White Oak, Maryland. In accordance with your letter dated October 14, 2009, and as part of the submittal process, per Maryland State Bill 666, we are required to refer to your attention any project within which the removal of trees 30 inches and greater in diameter is proposed. Also, a variance request to permit the removal of said trees must be referred to your attention before the forest conservation plan can be reviewed by the Montgomery County Planning Board.

Project Development

The police station is being developed on a portion of a 12.79 acre tract of land owned by Montgomery County, located at the north-eastern corner of the intersection of New Hampshire Avenue and Columbia Pike. The Montgomery County Program of Requirements for the police station calls for a two story building of approximately 30,000 square feet, 57 guest parking spaces in front of the building, and 140 secure parking spaces in the rear, with one access point off Milestone Drive and two access drives off Sherbrooke Woods Lane.

A proposed extension of existing Sherbrooke Woods Lane will divide the county land into two parcels. The western 4.19 acre parcel will be used for the proposed police station site, and the remainder of the tract will be reserved for a future county facility, the details of which will be determined at a later date. The location and design of the Sherbrooke Woods Lane extension is mandated by the design requirements of a secondary residential street, specifically the location of the new intersection with existing Milestone Drive, to provide safe sight distance and intersection spacing, as well as the proposed right of way width, grades, and curve radii. This street alignment has been approved by MCDPS.

Existing Site Conditions

The site has gently rolling topography with two ridges and a swale bisecting the parcel, with existing slopes between 3% and 15% in the interior and an embankment between 6 and 12 feet high across the front of the property, adjacent to Milestone Drive. The County property contains an existing forest

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stand with a priority rating of Disturbed, described in the project's approved Forest Stand Delineation as follows:

Stand A (9.52 acres) is a disturbed, early seral forest co-dominated by red maple, *Acer rubrum* in the 6" to 11.9" d.b.h. size class and black locust *Robinia pseudo-acacia* in the 12" to 19.9" d.b.h. size class. This stand makes up all of the forest located on the site and is fragmented into three forest areas. The over story species include black cherry, *Prunus serotina*; black walnut, *Juglans nigra*; persimmon, *Diospiros virginiana*; mulberry, *Morus alba*; boxelder, *Acer negundo*; pin oak, *Quercus palustris*; and eastern redcedar, *Juniperus virginiana* along with the red maple and black locust. Regeneration of the over story species has moderate potential due to the lack of large seed-bearing stock observed, also, the high amount of invasive shrubs and vines is hindering the growth and establishment of smaller stock. Canopy closure is approximately 36%. The understory (44% coverage) is made up of grape, *Vitis sp.*; brambles, *Rubus sp.*; American holly, *Ilex opaca*; dogwood, *Cornus florida*; boxelder; black cherry; black locust, and eastern redcedar. Four invasive species (bush honeysuckle, *Lonicera maackii*; multiflora rose, *Rosa multiflora*, Japanese honeysuckle, *Lonicera japonica*; and Asiatic bittersweet, *Celastrus orbiculatus*) were observed within the stand. These species comprise approximately 75% of all layers. The understory is very thick with brambles, multiflora rose, greenbrier, and Japanese honeysuckle in some places and movement through the stand is made only by deer trails. Very little herbaceous ground cover was observed within the stand. The amount of downed woody debris averages approximately 20% throughout the stand. Several deciduous trees have fallen and it appears that shallow root systems are the reason.

The Subject Property is mostly forested and located within the Paint Branch Watershed that is designated as Use Class III. No streams, wetlands, floodplains or associated buffers exist on or near the property. No critical habitats are known to exist on the site.

As shown on the approved NRI-FSD, there are four specimen-size trees within the project limits near the northwest portion of the site:

- #1: 30" Tulip Poplar,
- #2: 42" Tulip Poplar,
- #5: 30" Tulip Poplar,
- #6: 42" Black Cherry.

One additional specimen-size tree is located to the east of the Sherbrook Woods Lane Extension:

- #7: 35" Red Maple.

Proposed Conditions

The project is being developed in accordance with the 2007 MD stormwater management act Environmental Site Design criteria, using a green roof, permeable pavement, and four biofiltration facilities. Extensive landscaping in the form of shade and flowering trees, providing over an acre of new tree canopy between the parking bays, will shade the pavement and further reduce the runoff. The total depth of the permeable pavement and the stone under-drain will be 19 inches. The design criteria for permeable pavement require that the slopes on the pavement be set between zero and three percent grades in all directions, and the access drive from Milestone Drive has a maximum allowable grade of 10

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percent. These design factors require the site to be extensively graded in order to remove the two ridges on site and lower the average sub-grades by approximately five and a half feet, and in many places by more than nine feet. The overall plan of the site was designed to minimize stormwater impacts by maximizing sheet flow and infiltration, and by reducing drainage area sizes such that the one-year peak flow will be less than 2 cfs in any direction.

As part of this development, two specimen-size trees (noted as #5 - 30" dbh Tulip Poplar and #6 - 42" dbh Black Cherry) located within the proposed secured 135 space parking lot must be removed. These trees are situated on one of the existing ridges which will need to be re-graded during project construction, in order to level the parking lot. Specifically, the sub-grade would be excavated between four to five feet at the location of the specimen tree trunks and up to six and a half feet within the trees' critical root zones. It is estimated that the critical root zones of these trees span approximately 65% of the width of the parcel, covering the area needed for about 45 of the proposed parking spaces and one of the access drives. It should be noted that during the design process, the parking lot was reduced in size, to accommodate 135 spaces rather than the 140 spaces originally proposed, in order to minimize limits of disturbance around the four specimen trees near the northern property line (2 on-site and 2 off-site), and to facilitate the designation of a 0.24 acre forest conservation easement around the saved specimen trees, and adjacent to an off-site forest conservation easement.

The following rationale is presented to support this variance request:

1. The property's physical location within the County and its proximity to existing and proposed roadway network were contributing factors in the decision to utilize the property for the Montgomery County police station. Unfortunately, the existing property contains a rolling landscape which, in order to create site conditions appropriate for the proposed use, must be significantly altered. Much of the on-site existing forest and landscape resources will therefore necessarily be removed.
2. Should this requested variance not be granted, Montgomery County would be unable to develop the property as is currently planned in order to accommodate County service needs.
3. State water quality standards will be met. As previously discussed, the project is being developed in accordance with the 2007 MD stormwater management act Environmental Site Design criteria. Granting the requested variance will not alter the project approach to, or implementation of, water quality protection.
4. In addition, while both of the trees currently proposed for removal were rated in good condition as part of the natural resources inventory, the trees are not part of an environmentally significant forest stand in terms of age or size, and neither species provides outstanding qualities of uniqueness, rarity or status as a landmark. Both trees are much smaller than the State Champion tree of their respective species, as identified by Maryland DNR. Both tree species are fast growing, and have limited life spans. Were they to be saved, the proposed changes to the site conditions around these trees, including a major reduction to their critical root areas, increased exposure to wind, and reduced availability of water due to proposed drainage design, would result in the trees' demise and potential for creating a safety hazard to future visitors to the site.

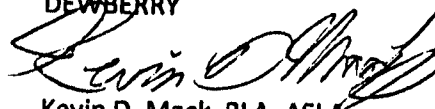
In summary, we are requesting a variance to Maryland State Bill 666 and to Montgomery County Code Section 22A-12(b)(2)(E) with the understanding that this site and project present unique conditions which, if the variance were not granted, would result in an unwarranted hardship to the development of

Mr. Mark Pfefferle
RE: Forest Conservation Variance Request
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this site. The applicant has made efforts to reduce the size and configuration of the proposed development in order to preserve several specimen trees along the north-west property boundary and to create a quality forest conservation area inclusive of those specimen trees adjacent to an existing off-site forest conservation area. The proposed site plan has been designed to meet the State water quality standards by maximizing infiltration, reducing runoff, and providing significant shade to reduce the heat island effect. And finally, the specimen trees in question are not unique in their size, age, or species as defined by Maryland DNR State Champion tree criteria.

We appreciate your consideration of this request and are available via mail, email, or telephone listed below, should you have any further questions or comments regarding this variance application.

Very Truly Yours,
DEWBERRY



Kevin D. Mack, RLA, ASLA
Associate

KDM:mdb G:\ADMIN\Files\Kevin\2009\Reports\3rd District Tree Removal Variance.docx

cc: Behrooz Alemi, Montgomery County Dept. of General Services
Calvin Nelson, M-NCPPC



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

January 11, 2010

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Brink Road and MD 355, MR2009802, NRI/FSD applied for on 2/13/2008
3rd District Police Station, MR2009742, NRI/FSD originally applied for on 9/29/2004 and
recertification applied for on 2/5/2009

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief



ATTACHMENT 3
(Page 1 of 2)

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

April 27, 2009

Carla Reid
Director

Ms. Cheryl Hannan
Dewberry
203 Perry Parkway, Suite 1
Gaithersburg, MD 20877-2169

Re: Stormwater Management **CONCEPT** Request
for 3rd District Police Station
Preliminary Plan #:
SM File #: 235445
Tract Size/Zone: 12.79 acres / R-90 / TDR
Total Concept Area: 5 acres
Lots/Block: N/A
Parcel(s): 725, 731, 790
Watershed: Paint Branch

Dear Ms. Hannan:

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 water quality control and onsite recharge via various methods as outlined below, including grading of the site to disperse flow. The drainage area boundaries shown on the approved stormwater concept plan are integral to the stormwater concept and must be adhered to in the final design. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

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. Water quality for the building will be provided via green roof.
5. Water quality for the entrance driveway off Milestone Drive will be provided via an Infiltration Trench.
6. Water quality for the extension of Sherbrook Woods Lane will be provided via roadside swale design.
7. Water quality for the parking areas will be provided by a combination of porous paving and bio filters. The drive isles will be constructed of traditional asphalt or concrete paving, while the parking spaces will be constructed of porous concrete.

8. A letter of permission to grade on the adjacent property to the east must be submitted prior to plan approval.
9. This conceptual approval is for the proposed police station and extension of Sherbrook Woods Lane only.

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 mca

cc: C. Conlon
M. Pfefferle
SM File # 235445

QN -ON; Acres: 5
QL - ON; Acres: 5
Recharge is provided

Bunnag, Candy

From: Wides, Barry [Barry.Wides@occ.treas.gov]
Sent: Friday, February 12, 2010 12:31 PM
To: Bunnag, Candy
Cc: Pfefferle, Mark; Carter, John; Nelson, Calvin; Carter, John; Afzal, Khalid; Oconnor, Kristin; Barron, Bill
Subject: Forest Conservation Plan for Police Station

Candy,

Thank you for taking the time to speak to me this morning about the Forest Conservation Plan for the proposed Silver Spring Police Station in White Oak. On behalf of the North White Oak Civic Association, I would like to summarize our thoughts with respect to the county's revised Forest Conservation Plan:

1. We continue to be troubled by the fact that the county is proposing that a portion of forest conservation be done off site and the county cannot provide a specific location as to where the forest conservation will be done. We do not see how the Planning Board can consider this application without the community knowing where the offsite forest conservation will be done. In our opinion, the Forest Conservation Plan is not complete until the community has an opportunity to review where offsite forest conservation will be done.
2. Our association recommends that 100% of the forest conservation be done on-site in the locations identified in the map provided to your at our January 29 meeting. These locations are east of the homes at 900 Milestone Drive and south/southeast of the home at 11700 Sherbrook Woods Lane. We recommend a tree buffer/Forest Conservation Area of between 100 and 200 feet between these homes and the security wall of the police station. The police station plan requires that about 10 feet surrounding the wall be maintained without trees for security purposes which can be accommodated under this approach.
3. This location for the police station's forest conservation is adjacent to and nicely builds upon the existing forest conservation easement behind the Sunrise Assisted Living Facility.
4. We disagree with the county's assertion that this forest is not worth saving. The NRI sampled five points. Three of the five points sampled (those furthest east and towards US 29) are in a portion of the property where the forest is the thinnest. The two points sampled close to the 3 Milestone Drive homes would show a dense forest cover at approximately 100 trees per acre (as documented in photographs we will provide separately). While much of this area is invasive species, these trees nonetheless provide needed green space for our area and preservation would be consistent with the goals laid out in the Montgomery County Forest Preservation Strategy:
<http://www.montgomerycountymd.gov/content/dep/forest/strategy.pdf>
5. Saving trees adjacent to the southernmost portion of the land next to 900 Milestone Drive will prevent runoff from the steep slope at this location (see photo provided separately).
5. The Forest Conservation Law provides for maximum on-site forest conservation whenever possible. Clearly, on site forest conservation is QUITE POSSIBLE considering that a number of acres are not being proposed for use in this plan. It is quite possible to move the development further east as we illustrated in the proposed plan we provided at our January 29 meeting.

Based on these points, we recommend that the Planning Board DENY the Forest Conservation Plan provided by the County and require resubmission. We believe the County should be required to resubmit a COMPLETE Forest Conservation Plan for consideration by the Planning Board through a process that requires public input.

In advance, thank you for conservation of our views.

Barry Wdies
President, North White Oak Civic Association

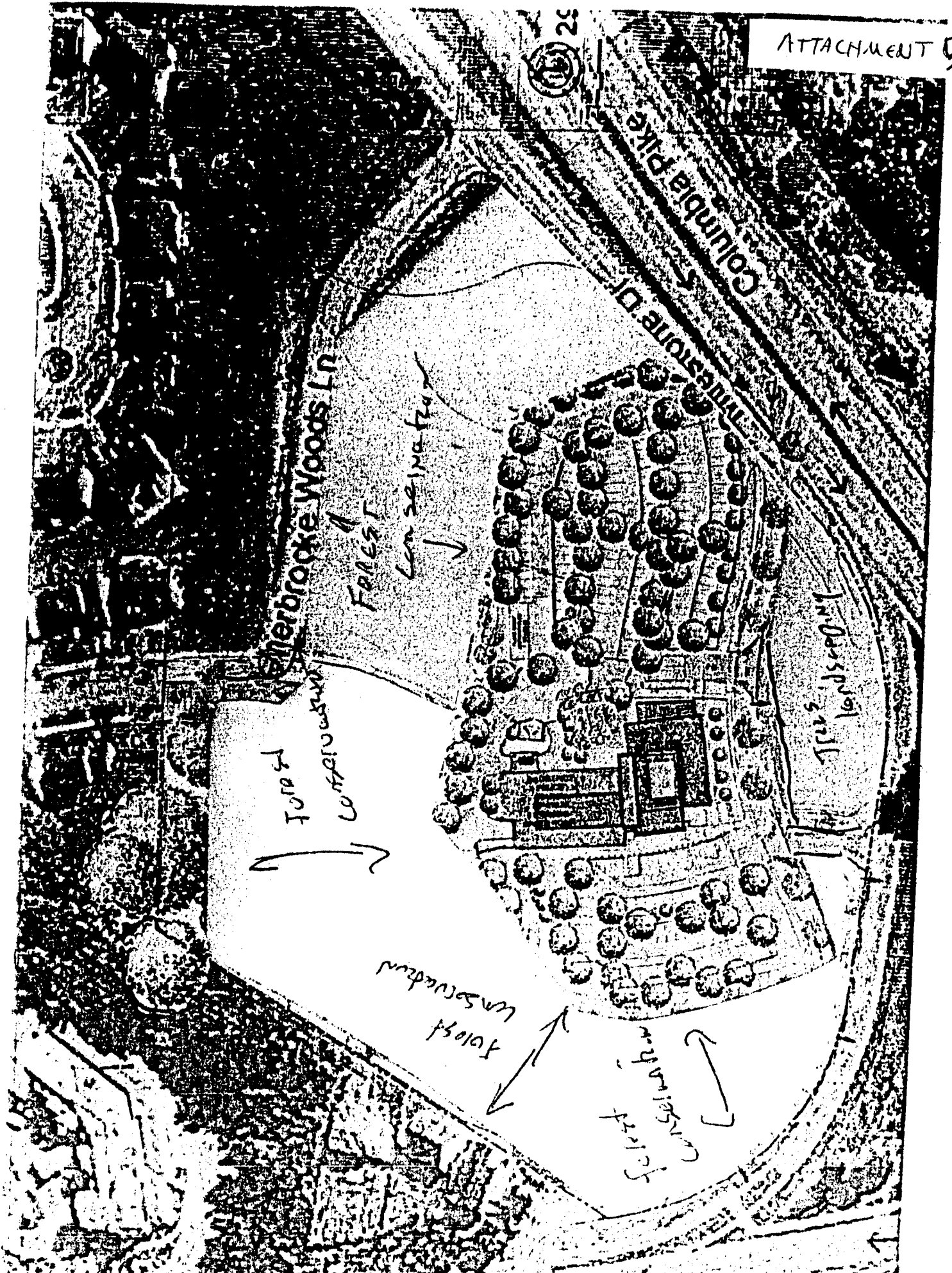








25



Herbrocke Woods Ln

COLUMBIA PIKE

WILSONS LANE

FOREST

Trees

Trees

Forest

Curb

Forest

Curb