

**MEMORANDUM**

DATE: July 14, 2004

TO: Nkosi Yearwood, Community Based Planning Division

VIA: Mary Dolan, Countywide Planning Division, Environmental 

FROM: Marion Clark, Countywide Planning Division, Environmental 

SUBJECT: 1. Preliminary Forest Conservation Plan for  
Special Exception request No. S-2604 Winchester School  
2. Special Exception request No. S-2604 Winchester School

**Recommendations**

Environmental Planning staff recommends:

1. **Denial** of the Preliminary Forest Conservation Plan for Special Exception request No. S-2604.
2. **Denial** of Special Exception request No. S-2604.

**Basis for Recommendation**

This site is located on Georgia Avenue south of Olney. Half of the site holds approximately one acre of healthy mature forest containing 33 healthy specimen and significant trees and contiguous to a 6.5 acre undisturbed forest. This forest is considered high priority by the Forest Conservation Regulations by virtue of its size, composition, and configuration.<sup>1</sup>

**1) Development as reflected on the Preliminary Forest Conservation Plan is not effective in protecting priority forest and specimen trees.**

Section 22A – 12(b) of the Forest Conservation law states that:

“1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:

- (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention....”
- (B) Reasonable efforts have been made to protect the specific areas and vegetation

<sup>1</sup> High priority forest stands are those that exhibit all of the following characteristics: high structural and species diversity; few alien or invasive species present; very good overall stand health; and high potential to provide a significant amount of habitat forest interior dwelling plant, animal and bird species. Additionally individual trees that are specimens of a species are considered highest priority.

- (B) Reasonable efforts have been made to protect the specific areas and vegetation listed in this plan; and
- (C) The development proposal cannot reasonably be altered.

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) identifies .96 acres of high priority forest containing 24 specimen and 9 significant trees on site and 4 significant trees in close proximity off site. The proposal indicates clearing .68 acres of high priority forest and removing 18 specimen trees and 7 significant trees. Staff believes that reasonable efforts to alter the development proposal can be made to protect the high priority forest and specimen trees.

This site plan can be altered to achieve greater forest retention by reducing the building footprint, shifting the building, removing the existing single family house, reducing the number of parking spaces to the amount required, consolidating the parking, and reducing the length of drive aisle. Staff believes that the full .96 acres of forest (or very nearly), can be retained. In addition staff believes an additional 6 specimen trees and 7 significant trees can be retained with a modified site design.

**2) The submitted Preliminary Forest Conservation Plan does not meet Forest Conservation Regulation requirements.**

A portion of forest cover (.28 acres) shown on the NRI/FSD is credited as forest to be retained on the Preliminary Forest Conservation Plan (FCP). The FCP also indicates this same area to be selectively cut and used as a mulched play area. If selectively cut and used, this portion of forest cover does not meet the definition of forest according to Chapter 22A-3 of the Forest Conservation law. 2 Therefore, it cannot be credited as forest retained and must be counted as forest cleared.

The Preliminary Forest Conservation Plan indicates that 13 of 28 specimen trees and 4 of 9 significant trees will be removed. Staff believes an additional 2 specimen trees should be counted as lost because more than two-thirds of the critical root zone will be impacted. Furthermore, over time an additional 3 specimen and 3 significant trees in the mulched play area will become hazard trees and must be counted as trees to be removed. The total count of trees to be removed should be 18 of 28 specimen and 7 of 9 significant trees removed.

**Forest Conservation**

An approved NRI/FSD is included in this application. The NRI/FSD indicates two lots on which the development is proposed. The front lot is approximately one acre in size and constitutes half of the proposed site. This lot contains a single family home, facing Georgia Avenue, and is surrounded by a landscape containing many high quality specimen and significant sized trees. The lot can be characterized as a residential landscape having a lawn, scattered shrubs and understory trees.

The second lot (approximately 1 acre) of the site contains a mature Tulip Poplar association forest stand in very good condition, but with some evidence of exotic invasives. This forest is contiguous to a 6.5 acre healthy mature forest stand on property adjoining the west boundary of the site.

There are a total of 28 specimen trees and 9 significant trees on site and immediately adjacent off site. There are 12 specimen trees and 1 significant tree on the front lot and 3 specimen trees on the property to the north. There are 12 specimen trees and 8 significant

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2 A biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor).

very good condition.

A Preliminary Forest Conservation Plan, submitted with the application, does not meet the Forest Conservation Law. The Preliminary Forest Conservation Plan indicates removal of .68 acres of high priority forest and retention of .28 acres of forest in a Category II Conservation Easement. Environmental staff believes the .28 acres of forest proposed for retention cannot be credited for retention, because the plan indicates this area to be selectively cleared and used as a mulched play area. Staff believes this use will cause sufficient wear and compaction to threaten the specimen and significant trees in this area. The forest conservation worksheet should be recalculated to show .96 acres of cleared forest.

### **Environmental Guidelines**

This property is not located within a Special Protection Area or Primary Management Area. There are no wetlands, steep slopes, erodible soils, and rare, threatened, or endangered species. There are no environmental or stream valley buffers.

### **Stormwater Management**

The Department of Permitting Services (DPS) reviewed and found unacceptable a Stormwater Management Concept request for this site. DPS requested the use of infiltration practices to provide on-site water quality control and alternative Best Management Practices. The applicant responded to DPS comments and resubmitted a plan, but this plan has not yet been approved. An approved concept Stormwater Management Plan is required at the time of Preliminary Plan approval.

### **Regional Water Quality**

This site is located in the Cherrywood Manor tributary of the Upper Rock Creek watershed. Upper Rock Creek north of Muncaster Mill Road is classified as a Use III watershed by MDE. A Use III classification means that the waters are suitable for the growth and propagation of trout, and that they are capable of supporting self-sustaining trout populations and their associated food organisms.

The *Countywide Stream Protection Strategy* (CSPS) designates this subwatershed as a Watershed Protection Area - special. This designation is applied to all subwatersheds currently assessed as supporting excellent or good stream conditions. The special level of protection designation recommends use of tools for headwater areas to protect the sensitive resources in streams where projections of imperviousness indicate that the highest levels of subwatershed land use change may occur. The CSPS rates stream quality excellent and habitat conditions good for the Cherrywood Manor tributary.

### **Noise**

This use is expected to generate noise that may be a disturbance to surrounding uses. A "passive play area" is indicated on the north side of the proposed school, adjacent to an existing residence. Noise generated by this use would be the normal sounds of 30–50 children playing. The children would be playing in an open area immediately adjacent to the property line. The applicant proposes a narrow landscaped buffer to mitigate the potential noise disturbance.

Chapter 31B Noise Control of the Montgomery County Code establishes maximum allowable noise disturbance levels at 65 dBA during the daytime in residential areas. The Department of Environmental Protection administers the ordinance and requires a noise study that verifies the noise level of the proposed use. In the absence of a noise analysis, staff is unable to determine the noise impact of the proposed use.

