



**Primrose Schools: Preliminary Forest Conservation Plan No. CU2018-08**

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**Staff Report Date: 10-25-2019**

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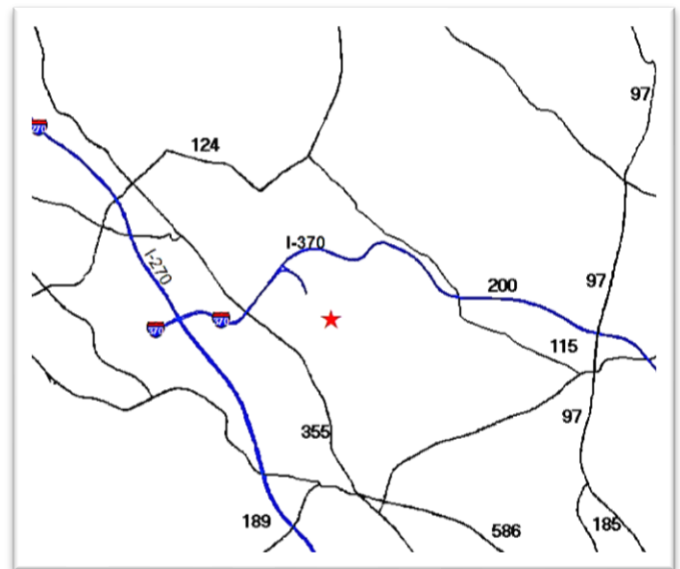
**Description**

**A. Preliminary Forest Conservation Plan CU2018-08**

Request for approval of a Preliminary Forest Conservation Plan as part of a Conditional Use application to construct a child day care center for 195 children, on a 2.95-acre located at 7430 Needwood Road, Rockville, MD, at the southeast corner of its intersection with Carnegie Avenue, approximately 500 feet east of Redland Road identified as Lot 8, Block B, Derwood Heights Subdivision RE-1 Zone, 2004 Upper Rock Creek Area Master Plan.

**Applicant:** Primrose School Franchising Corp.  
**Application Filed:** November 16, 2018  
**Review Basis:** Chapter 22A, Forest Conservation Law

**Staff Recommendation: Approval with conditions (Planning Board Action)**



**Summary**

- **Staff Recommendation: Approval with Conditions**
- The Planning Board must take action on the Forest Conservation Plan for Conditional Use Application CU2018-08. The development proposed under this application fully complies with Chapter 22A, the Forest Conservation Law.

## **STAFF RECOMMENDATION:**

Approval of the Preliminary Forest Conservation Plan No. CU2018-08 subject to the following conditions:

1. This Preliminary Forest Conservation Plan (PFCP) is conditionally approved and final approval is contingent upon approval by the Montgomery County Hearing Examiner of Conditional Use No. CU2018-08.
2. Within ninety days of the date of the Hearing Examiner's Opinion approving the Conditional Use Application CU2015-04, the Applicant must Submit a Final Forest Conservation Plan (FFCP) to M-NCPPC Staff for and approval. The FFCP must be approved Prior to any clearing, grading or demolition on the project site. The FFCP must be consistent with the final approved PFCP and include the following:
  - a. Changes to the plan as required by the Planning Board and/or the Hearing Examiner
  - b. Planting Plan for the afforestation area required by the FFCP
  - c. Signage along the boundaries of the forest conservation easement
3. Mitigation for the loss of specimen trees as determined by the FFCP must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
4. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
5. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
6. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property

## **SITE DESCRIPTION**

This site is located in an upland area of the Crabbs Branch subwatershed of Middle Rock Creek, a Use IV Stream area that was originally developed with homes in the 1940's. This 2.95-acre property is currently developed with one home. The RE-1 zone would allow up to two single-family detached homes on this acreage. Water quality in the Crabbs Branch watershed was identified as "good" in the January 2000 Environmental Resources Inventory of the Upper Rock Creek Watershed. Its quality has fallen to "poor" in recent years. The Department of Environmental Protection 2017 monitoring reports a "Fair" water quality. Although located in the Upper Rock Creek Master Plan area, this property is not within the Upper Rock Creek Special Protection Area. According to the NRI/FSD (420181150) no sensitive areas such as streams, wetlands or their buffers exist on site.

The subject property is fairly open in places but does contain significant individual and groups of trees onsite. This includes six large trees ranging in size from twenty-four to twenty-seven inches dbh.

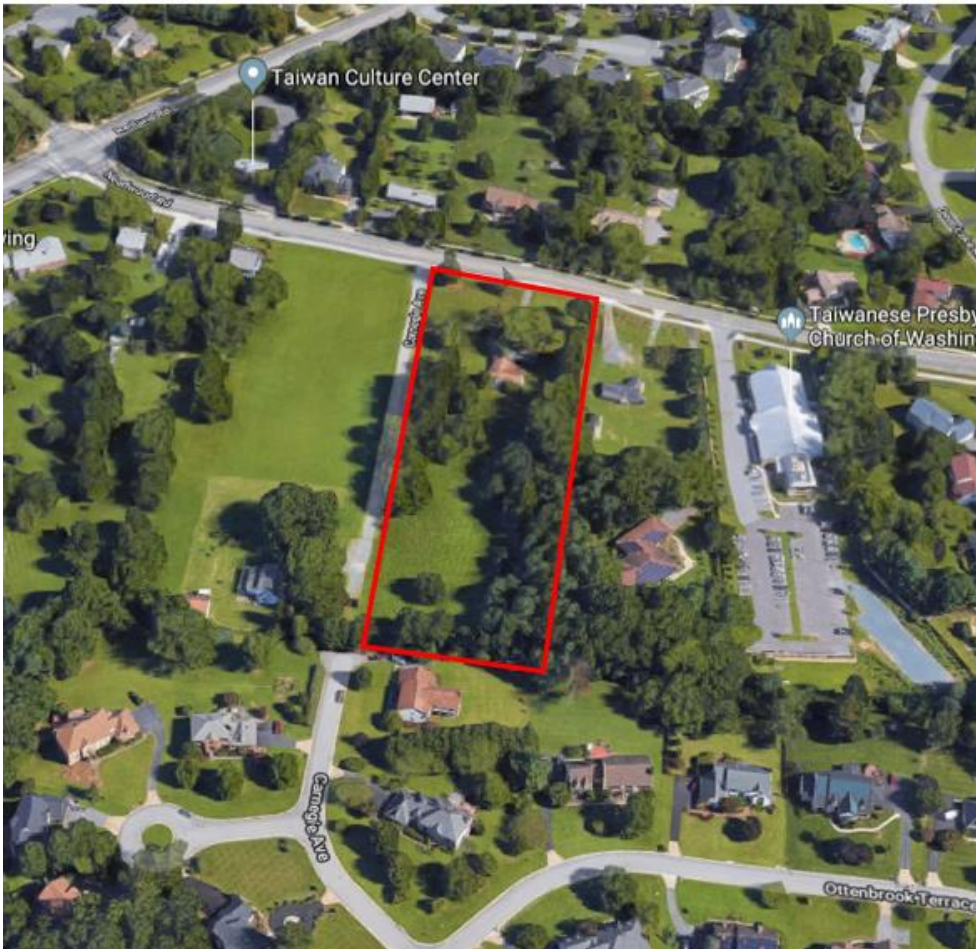


Figure 1. PFCP showing site vicinity

## PROJECT DESCRIPTION

The PFCP (Attachment A) was prepared as part of Conditional Use Application No. CU2018-08 (“Application”). This Application proposes to construct a child day care center for 195 children. While the Planning Board is technically advisory on Hearing Examiner applications per 59.7.3.1 of the Zoning Ordinance, the Planning Board must make a finding that the pending Application complies with Chapter 22A and approve the Forest Conservation Plan.

## ANALYSIS AND FINDINGS

### Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County code. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on February 12, 2018. There are no forest or environmentally sensitive features on the Property. A Preliminary Forest

Conservation Plan has been submitted for review as part of this Application (Attachment A). There is 0.07 acres of existing forest in the southeast corner of the property. This forest will be preserved and augmented with 0.54 acres of forest planting. This will result in 0.61 acres of forest planting and protection. This area will be protected by a Category I Conservation Easement.

### **Tree Loss**

Of the seven on-site trees, five, including three along the eastern property boundary will be removed, substantially altering the nature of the area. The arrangement of these and other smaller trees along the property boundary provide them with additional value. Grouped nearly continuously along the eastern and southern property boundaries are numerous large, medium and small trees. In addition, there is a large group of trees located along the western property boundary. All of the boundary trees in the front three quarters of the site are proposed for removal. The trees in the rear of the property will be incorporated into a 0.61-acre afforestation/forest protection area, providing screening to the south. Tree loss along the eastern property boundary is a large part of the neighborhood's objection to this project.

### **Forest Conservation Variance**

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to high priority vegetation, including disturbance to the critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Development of the Property requires impact to trees identified as high priority for retention and protection; therefore, the Applicant has submitted a variance request for these impacts.

Variance Request - The Applicant submitted a variance request in a letter dated October 25, 2019 (Attachment B). The Applicant proposes to remove three (2) specimen trees and impact the CRZ of six (6) trees that are 30 inches or greater DBH. The County Champion Red Pine is also proposed for impact and relocation. Although relatively small, this tree is the largest of its kind known to be growing in Montgomery County. These trees are considered high priority for retention under Section 22A-12(b)(3) of the County code (Table 1).

Tree Number	Species	DBH Inches	Impact
CH-1	Red Pine <i>Pinus resinosa</i>	12"	7.2% of Critical Root Zone to be impacted
SP-1	Silver Maple <i>Acer saccharinum</i>	45"	100% impact - To be removed.
SP-2	Black Maple <i>Acer Nigrum</i>	36"	1% of Critical Root Zone to be impacted
SP-3	Yellow (Tulip) Polar <i>Liriodendron tulipifera</i>	32"	1.7% of Critical Root Zone to be impacted
SP-5	Silver Maple <i>Acer saccharinum</i>	48"	1% of Critical Root Zone to be impacted
SP-6	Silver Maple <i>Acer saccharinum</i>	56"	11.7% of Critical Root Zone to be impacted
SP-7	Silver Maple <i>Acer saccharinum</i>	48"	21% of Critical Root Zone to be impacted
SP-8	Silver Maple <i>Acer saccharinum</i>	36"	3% of Critical Root Zone to be impacted
SP-9	Silver Maple <i>Acer saccharinum</i>	44"	60% of Critical Root Zone to be impacted Proposed for removal.

**Table 1: Variance Trees to be impacted or removed**

Unwarranted Hardship Basis

Per Section 22A-21(a), an applicant may request a variance from Chapter 22A if the applicant can demonstrate that enforcement of Chapter 22A would result in an unwarranted hardship.

The Applicant proposes to remove three (2) variance trees and impact the critical root zone of seven (7) others. All trees except Ch-1, SP-1 and SP-9 are located offsite, but along the site perimeter. Tree SP-1 is internal to the site. Tree SP-9 is located along the eastern property boundary. Tree CH-1 is located along Needwood Road. (Figure 3).

The arboriculture industry standard for construction impacts to trees is to limit those impacts to no more than approximately 30 percent of the Critical Root Zone (CRZ). More than 30 percent impact to the CRZ and the overall healthy viability of the tree comes into question. Trees SP-1 is proposed to have 100 percent of its CRZs impacted while Tree SP-9 will have approximately 60 percent of its CRZ impacted. The Champion Red Pine (CH-1) will have 7.2 percent of its CRZ impacted.

Trees SP-1 is internal to the site and located close to the existing site such that protection of this tree would be difficult under any redevelopment process. Denying the variance request would create an unwarranted hardship to develop this site and not impact less than 30 percent of the CRZ's of Tree SP-1.

Tree SP-9 is located along the eastern site perimeter. Because of all the trips associated with this use, the location of the drive was moved from Carnegie Avenue to its present location. Development according to RE-1 standards with far fewer trips would allow much more flexibility with the driveway location and the ability to preserve SP-9. The proposed use could give SP-9 the potential for survival if the driveway and parking lot configuration could be altered and special measures used to protect the

tree during construction. Preservation of this tree would also provide a better opportunity for the survival of other smaller trees along the eastern property boundary. These trees, although significant as a group, are neither forest, nor specimen trees and are simply shown as canopy cover on the FCP. Allowing the removal of this tree provides this developer with a benefit that is unique to this conditional use application.

The remainder of the trees listed on Table I will be preserved. Most, if not all, of their impacts take place within existing right-of-way and under either pavement or gravel roads. This existing condition makes it likely that fewer roots will be located in those disturbance areas.

Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to justify a variance request for all specimen trees with the exception of Tree SP-9.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. M-NCPPC staff ("Staff") has made the following determinations in the review of the variance request and the proposed forest conservation plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal of Tree SP-1 and impact to the other trees is due to the location of the trees and necessary site design requirements. The Applicant proposes removal of this tree with mitigation. Therefore, Staff believes, with the exception of SP-9, that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not 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 upon the existing site conditions and necessary design requirements of this conditional use application.

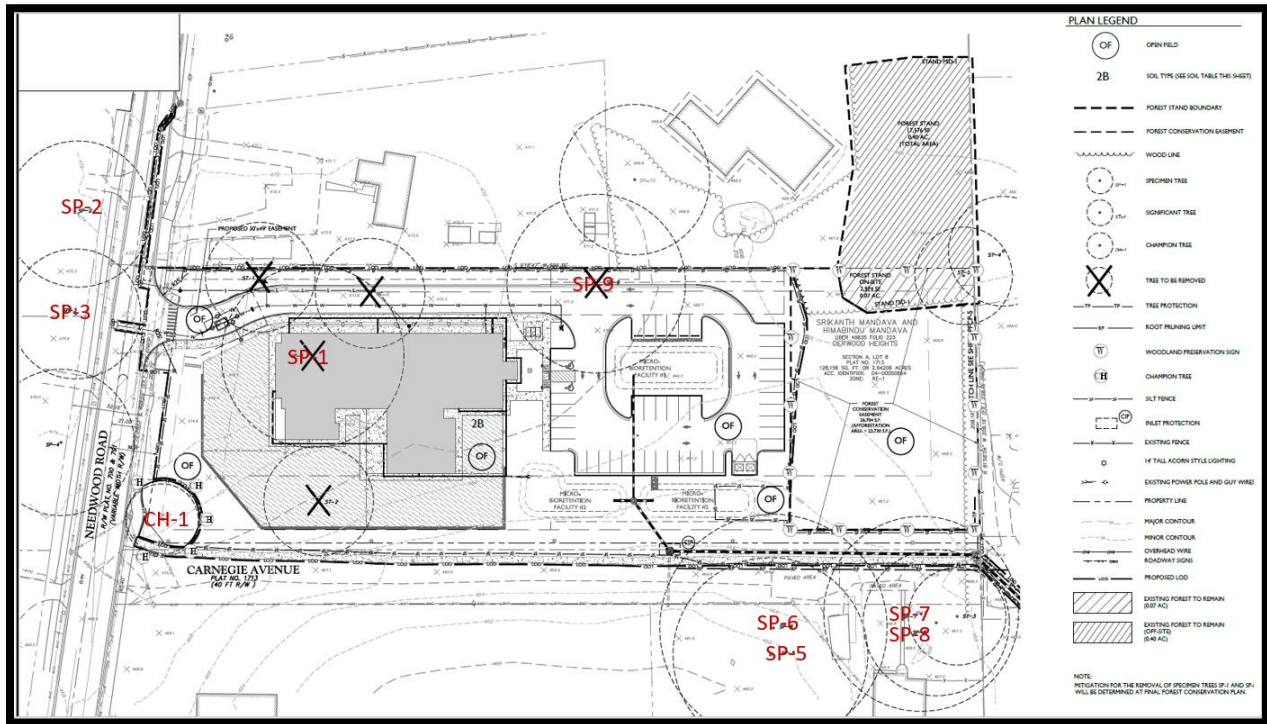
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or impacted are not located within a stream buffer. The Application proposes mitigation for the removal and impact to these trees. The mitigation trees will eventually provide shade runoff mitigation, and cooling to the site.

Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.



**Figure 3. PFCP showing impacted variance trees**

Mitigation for Trees Subject to the Variance Provision - For removal of specimen trees associated with a variance request, Staff recommends mitigation for the tree loss by replacing the total number of DBH removed with  $\frac{1}{4}$  of the amount of inches replanted using 3-inch caliper overstory trees native to the Piedmont Region of Maryland. These trees will be located on the Property outside of the rights-of-way for Needwood Road, outside of any utility easements. The number type and location of trees will be addressed in the Final Forest Conservation Plan. The specific details of the Champion Tree relocation will also be addressed in the Final Forest Conservation Plan.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on several occasions during the plan process. Under Section 22A-19(c), the County Arborist is provided with the opportunity to comment on the variance request. Staff has not received a response from the County Arborist.

Variance Recommendation - Staff recommends approval of the variance request with the exception of tree SP-9.

## **CONCLUSION**

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve Applicant's request for a variance from Chapter 22A and the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

## **Attachments**

Attachment A – Preliminary Forest Conservation Plan

Attachment B – Tree Variance Request Letter