MCPB
Item No. 3
Date: 02-13-14

Farquhar Middle School

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Staff Report Date 02/06/14

Description

Farquhar Middle School

A. Mandatory Referral No. 2014028 review of land acquisition and change in use. MCPS is acquiring approximately 17 acres of parkland on Batchellors Forest Road in Olney located adjacent to the current school site to redevelop Farquhar Middle School, which will be combined with the 18 acre site currently housing the school. The combined 35 acres will be developed for use as a school and a park.

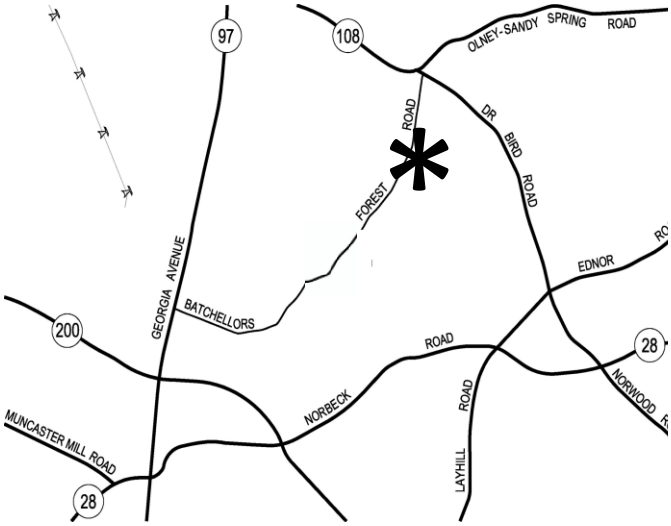
***Staff Recommendation**: Approval with conditions*

B. Release of Rural Open Space Easement granted to M-NCPPC by Pulte Home Corporation on approximately 17 acres of land dedicated to M-NCPPC as parkland as a condition of Batchellors Forest Site Plan No. 820080190/A located on Batchellors Forest Road in Olney adjacent to the Farquhar Middle School.

***Staff Recommendation**: Approval*

C. Abandonment of Deed of Dedication granted by Pulte Home Corporation to M-NCPPC on approximately 17 acres of land as parkland as a condition of Batchellors Forest Site Plan No. 820080190/A located on Batchellors Forest Road in Olney adjacent to the Farquhar Middle School in exchange for Perpetual Use Easement to be granted by MCPS to M-NCPPC over 18 acre site currently housing the adjoining Farquhar Middle School.

Staff Recommendation: Approval with Conditions



Summary

Montgomery County Public Schools proposes the following:

Combine the property in Olney now used for the William H. Farquhar Middle School with an adjacent parcel intended for use as a local park, construct a new school on the intended park property, and deliver the existing school property so that a local park can be designed and built on it. This requires release of an existing Rural Open Space (ROS) easement placed on the local park parcel as part of its development approval. This memorandum evaluates the proposed change in use. MCPS will submit a second Mandatory Referral application when more detailed design work is complete.

BACKGROUND

Montgomery County Public Schools (MCPS) proposes to combine the property in Olney now used for the William H. Farquhar Middle School with an adjacent parcel dedicated to M-NCPPC for use as a local park. MCPS then proposes to build a new and upgraded Farquhar Middle School on the park property and, once the new school building is ready for occupancy, deliver the existing school property to M-NCPPC, improved with interim park uses. A local park will ultimately be designed and improved, as contemplated in the 2005 Olney Master Plan. The two properties will thereby switch uses.

Implementing this complex arrangement requires the following actions, some of which are part of this review before the Board, and some that require the Board's supplemental review as the proposed development moves forward:

1. MCPS must acquire by eminent domain the underlying fee to the 17 acre parkland site that Pulte Homes dedicated to M-NCPPC as a condition of its development approvals for the Batchellors Forest subdivision;
2. M-NCPPC must abandon the dedication;
3. M-NCPPC must release the Rural Open Space ("ROS") Easement that Pulte Homes granted to it as a condition of its development approvals for the Batchellors Forest subdivision based on the Release of ROS Easement Policy approved by the Board on May 9, 2013;
4. MCPS must grant both a Perpetual Use Easement and an ROS Easement to M-NCPPC over the existing school site as consideration for the abandonment and the release;
5. MCPS and M-NCPPC must enter into a Joint Use Agreement to establish the terms and conditions of joint operations for the new park site, specifically access and maintenance of jointly used facilities; and
6. MPCS must construct both the new school facilities and the interim park:
    a. consistent with the concept plan submitted with this mandatory referral, and
    b. consistent with the bid documents for such improvements as approved by the Planning Board, as the Board will review in a later mandatory referral for construction of the school and interim park.

This memorandum analyzes and makes recommendations for release of the dedication and the ROS easement as part of its review of the proposed changes in use. MCPS will submit a second Mandatory Referral application when more detailed design work is complete.

The Planning Department recommends that the Planning Board:

- approve release of the ROS Easement;
- approve abandonment of the dedication;
- approve the proposed change in use for the middle school property.

Staff further recommends that the documentation to implement these actions be held in escrow by the Department of Parks until Parks staff has approved the 100 percent Construction Plans or Bid Documents for construction of the interim park, and staff reviews detailed design of the new school for Master Plan conformance and coordination with the interim park.

Farquhar Middle School is located at 16915 Batchellors Forest Road in Olney. It sits on a 20.03-acre site on the east side of the road. MCPS built the school in 1968 and its current enrollment is 577 students. It is one of two middle schools that serve the Sherwood High School cluster.

MCPS decided several years ago to rehabilitate the school, which is now in its fifth decade of use. Its evaluation concluded that the most cost effective way to bring the school up to its program of requirements for a middle school and to incorporate appropriate climate and information systems infrastructure was to build a new building. It initially intended to build on its existing site and planned to use the Tilden Center, in north Bethesda, to house the students for two academic years while construction was underway.

Farquhar parents raised significant concerns about this arrangement, because it meant long bus rides for students from Olney to north Bethesda that, they felt, would disrupt academic and extracurricular schedules and diminish the quality of learning. MCPS agreed to approach the Department of Parks about an arrangement that could allow the new school to be built without closing the existing school. The current proposal is the result.

This arrangement results in a land exchange and a "swap" of uses: a school and a park on "mirror image" properties. The proposal would enable building the school on 17.2 acres of land directly adjacent to the school, property Pulte Homes dedicated to M-NCPPC as parkland to meet the open space requirements of its development approvals for the Batchellors Forest subdivision, a neighborhood of single family homes located across Batchellors Forest Road in the RNC zone. This existing parkland property was recommended in the Olney Master Plan for development and use as a local park, although the Department of Parks has not developed its Facility Plan for the long-term use of the park and does not contemplate the development of the park in its final form for at least 10 years. The property is also part of the Rural Open Space associated with Batchellors Forest. Once the new school opens, MCPS will demolish the old school, improve the existing school site as an interim park, and deliver it to the Department of Parks for later development and use as the local park recommended in the Master Plan. The approximately 17 acre park site becomes the school; the approximately 20 acre school site becomes the park.

*This memorandum will refer to the existing school (and future park) site as **Parcel A**, and the existing park (and future school) site as **Parcel B**.*

Before MCPS can begin this project, it must undertake a number of related actions. Parcel B was dedicated to M-NCPPC as a parkland to meet a portion of the open space requirements of Pulte Homes' Batchellors Forest subdivision, which developed in the Rural Neighborhood Cluster (RNC) Zone under the optional method. That dedication must be formally abandoned. Upon such abandonment, the ownership of the property would, without further action, revert to Pulte. However, MCPS intends to condemn the owner's underlying fee interest prior to the formal abandonment so that, upon the abandonment, ownership of the property to be developed as the new school will revert to MCPS.

Further, in accordance with Section 59-G-4.25[1] of the Zoning Ordinance, the homes in the Batchellors Forest subdivision will not be considered nonconforming as a result of the reduction in open space directly associated with that subdivision.[2]

MCPS will ultimately own both parcels but will enter into agreements with the Commission that will allow construction of the new school on Parcel B, and enable use of Parcel A as a local park. The agreements include i) a Perpetual Use Easement in which MCPS will grant the Commission perpetual use of Parcel A as a local park, and ii) a Joint Use Agreement, which allows a single access to serve the park and the school and provides for maintenance of that access road and the parking area for the park. These agreements will be fully executed and held in escrow by the Department of Parks until staff is assured that construction of the interim park and the new school (with regard to Master Plan and coordination with the interim park) will go forward as approved by the Planning Board in a subsequent mandatory referral submission. Once MCPS has completed its design of the new school and, working with Department of Parks the interim park, MCPS will submit that mandatory referral for Planning Board review.

Parcel B was also encumbered by an ROS Easement as required under Section 59-C-9.573 of the Zoning Ordinance. That easement must be released before development of the school can proceed. Discussion of the ROS Easement Release follows.

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[1] **59-G-4.25(b). Nonconformity through public taking.**

A building or structure is not a nonconforming building or structure if the lot on which the building or structure is located is reduced in area by a taking under eminent domain or another government action that would otherwise make the building or structure nonconforming because a dimension of the building or structure, or the location on the lot, is deficient.

[2] Note that the quantity of open space will not actually have been diminished since the Department of Parks will be receiving Parcel A, which is approximately two acres larger than Parcel B, as consideration for the abandonment.

RELEASE OF THE RURAL OPEN SPACE EASEMENT

RECOMMENDATION: Approval

ANALYSIS AND FINDINGS

After a public hearing on May 9, 2013, the Planning Board formally articulated a policy to review proposals to release Rural Open Space easements from properties so encumbered. The Board devised the policy in part in anticipation of the MCPS proposal for Farquhar Middle School. The policy recognizes that circumstances may arise in which there may be a clear public interest in extinguishing such easements, but replacing them with similarly situated property. The policy acknowledges that "perpetual" easements can be extinguished when circumstances warrant, but should not be done so without some manner in which to ensure the intent of the perpetuity is reasonably maintained.

The Board policy sets out five criteria that must be met before the Board can release a Rural Open Space easement:

a. The purpose for the release must be to balance another public interest;
b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance is addressed;
c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;
d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be lost;
e. There must be a finding of conformance with the Master Plan for the ultimate replacement of ROS restricted property.

The following paragraphs analyze the MCPS proposal to release the existing easement on Parcel B under each of the criteria.

a) The purpose for the release must be to balance another public interest;

Montgomery County Public Schools is requesting release of the ROS easement to enable construction of its new middle school without requiring Farquhar's student body to relocate for two academic years during construction. The Tilden Center, currently the school system's only facility available to house middle schools during renovation or reconstruction projects, is 14 miles from Farquhar's location on Batchellors Forest Road, and its use for Farquhar students would require extensive redesign of bus routes. MCPS staff estimates that relocation could require students to spend as much as three hours a day in transit. Relocation could also compromise extracurricular activities by complicating parents' ability to pick students up from school in the late afternoon. Farquhar parents have expressed concerns that relocation will diminish the educational atmosphere for their children by requiring significant amounts of time in transit, time that, in their view, could be used for educational purposes. In addition, much of the travel time would occur during peak periods, further burdening the roadway networks

between Olney and Bethesda. Constructing the school on Parcel B eliminates the potential damage to educational opportunities and reduces the burden on peak hour travel.

Enabling construction of a new middle school on Parcel B can also hasten creation of the local park for the community's use. The Joint Use Agreement includes delivery of a cleared and graded Parcel A once construction is finished on Parcel B. Department of Parks staff have indicated that such an arrangement would allow interim use of Parcel A for recreation while facility and detailed site planning for a permanent park is underway. This would make the new park available to community residents some years before it would be available under other scenarios.

Planning staff concludes that releasing the ROS Easement meets two public interests: it enables the new school to be constructed without burdening educational opportunities for Farquhar students or contributing to traffic congestion; and it enables recreational activities on an interim basis on land controlled by the Department of Parks years earlier than previously anticipated.

b) *The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance is addressed;*

To replace the Rural Open Space, MCPS will provide Parcel A at approximately 20.3 acres encumbered with the same ROS Easement as is being proposed for release. The two parcels are adjacent. Furthermore, the Commission's current interest in Parcel B was acquired as a dedication from Pulte Homes. Pulte continues to own the underlying fee, granting the Commission the perpetual use of the property "…consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1 of the Montgomery County Zoning Ordinance and uses as set forth in Section 59-C-9.572 of the Montgomery County Zoning Ordinance...,"[3] which allows for the property to be used as the local park contemplated in the Master Plan. Under Maryland law, such a dedication has the effect of Pulte having granted a restrictive use easement to the Commission, operative for so long as the designated use continues. MCPS proposes to grant a Perpetual Use Easement to the Commission for use of the property as the local park contemplated in the Master Plan.

Park and Trail Planning staff indicates that co-located parks and schools offer a desirable synergy of uses and that the increased size of the proposed new park site will be advantageous as potential recreation activities are identified for the new local park. As indicated earlier, enabling construction of a new middle school on Parcel B will also hasten development of the local park for the community, as it creates active recreational activities on an interim basis on land controlled by the Department of Parks years earlier than previously anticipated. If this proposal does not go forward, development of Parcel B with even interim active recreational uses as recommended in the Master Plan will not occur for many years.

The importance of this schedule lies with the challenge of timing. In order for MCPS to begin construction of the new school, the required release of the ROS Easement from Parcel B must occur

[3] Restrictive language from the Deed of Dedication.

prior to June 2014. In order for MCPS to continue to operate the existing school on Parcel A, the effective date of the new ROS Easement on Parcel A must be delayed until July 2016, the projected completion date for the school construction. Although this results in a two-year lag time, the value of the ROS Easement on Parcel B would not have been experienced during that time.

Planning staff concludes that MCPS has agreed to provide a similarly situated property to be encumbered with the same ROS restriction, which meets the intent of "perpetuity," as required by the Zoning Ordinance.

c) *The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;*

As noted in the Background section, Parcel A, the existing school site, totals about 20 acres; Parcel B, the existing school site, is about 17 acres in size. The two subject properties share physical traits that essentially made them mirror images of one another, prior to development of the school site. Batchellors Forest Road follows a minor ridgeline from its northern terminus at Dr. Bird Road; past the subject properties to the road's crossing of a major tributary to the Northwest Branch located approximately 3,000 feet south and west of the subject properties. Land along both sides of this section of Batchellors Forest Road is best described as *broad uplands*, with slight to moderate slopes in the range of 3 percent to 8 percent, with the highest elevations along the road. Steeply sloping land is generally found in the stream valleys that drain the upland areas. Parcels A and B are part of these broad uplands. Older aerial photos indicate that they had both been used for agriculture, because their soils are deep, well-drained and well-suited for crops and pasture. With Batchellors Forest Road at the ridgeline, the traveler along this road had views of open farmland that were occasionally separated by hedgerows that grew along property boundaries and the streams.

Parcel B contains an intermittent stream that emerges as a wetland seep on the southern portion of the property and flows at certain times of the year to the east within a shallow channel that briefly touches Parcel A. Older aerial photography suggests that the stream may have extended on to Parcel A but grading for the school "pushed" the stream entirely on to the Parcel B. Generally, the stream is located in its entirety on the north side of the common property line separating the two subject properties. Prior to construction of the school, both properties shared similar topography with modest slopes that generally directed runoff to this stream.

Before the school was constructed, Parcels A and B exhibited very similar visual and environmental characteristics. They both are situated in the same geographic position with respect to Batchellors Forest Road and had similar topographic features, including similar slopes, which directed runoff to a stream that essentially created a natural separation of the two properties. It is reasonable to assume that because of the same soil types, the vegetation on the properties would have likely been the same, if left out of agricultural production and allowed to lie fallow. Views from Batchellors Forest Road would have been similar whether looking across the park property or the future school site.

The properties' similarity strongly suggests that they are equally suitable for recreational uses. In addition, Parcel A can meet all requirements for rural open space in the RNC Zone: it was largely unmanaged at the time of subdivision, confronts existing Batchellors Forest property and is large

enough to make a significant contribution to the required rural open space percentage for RNC development. Had both properties been vacant at the time Batchellors Forest was under review, and had Pulte owned Parcel A instead of Parcel B, Parcel A would have been an acceptable property for implementing the Olney Master Plan recommendations in this area. Parcel A could have been designated as Rural Open Space and Parcel B used as a school.

Planning staff concludes that either property, in an undeveloped state, could have met the Rural Open Space requirements of the Batchellors Forest subdivision at the time of its review.

d) *The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be lost;*

The Background section notes that Parcel B was a portion of the Rural Open Space required for the Batchellors Forest subdivision as part of the optional method of development in the RNC Zone. This arrangement allows development to be concentrated on smaller lots, creating a land use pattern that preserves sensitive natural features as undeveloped open space. This undeveloped open space nonetheless contributes to allowable density on the site and is considered when density is calculated. So it cannot be simply severed from the rest of the development without risking creation of a non-conformity.

MCPS intends to condemn and acquire Pulte's underlying fee in Parcel B. Section 59-G-4.25 of the Zoning Ordinance states that a lot that is reduced in area by a government taking and would become as a result deficient in any dimension is not non-conforming. The proposed condemnation process, while it reduces the percentage of Rural Open Space associated with the Batchellors Forest subdivision, it is the result of government action outside the control of the property owner, and any resulting deficiency does not create a non-conforming condition.

e) *There must be a finding of conformance with the Master Plan for the ultimate replacement of ROS restricted property.*

As noted in the next section, the Olney Master Plan made specific recommendations for Parcel B, identifying it as suitable for a local park and including it as part of the Rural Open Space associated with the RNC Zone. The proposed arrangement—releasing the Rural Open Space easement on the 17-acre parcel identified as parkland, condemning certain underlying interests so that the parcel can be used as a school, and encumbering the property now occupied by the school with a perpetual rural open space restriction so that it can function as a park—creates a local park on property adjacent to Farquhar Middle School, which conforms to the Master Plan's recommendation. It maintains the Master Plan recommendations for a single access to serve the school and the park, and the proposed concept contributes to the rural character of Batchellors Forest Road by locating the fields nearest the road.

The replacement arrangement provides a local park in the Southeast Quadrant and enables provision of recreational fields needed in this part of Olney. It also meets Master Plan objectives and recommendations for preserving the rural character of both Southeast Olney and Batchellors Forest Road. As such, it substantially conforms to the Olney Master Plan.

MANDATORY REFERRAL: CHANGING USES

RECOMMENDATION: Approve the change in use with the following condition:

- MCPS must submit a subsequent Mandatory Referral at a later point in the project's design that includes both Parcel B (for the school construction) and Parcel A (for the interim park construction). That submission must substantially conform to the Concept Plan submitted with this Mandatory Referral and should carefully evaluate the relationship between the proposed school on Parcel B and the adjacent properties.

ANALYSIS AND FINDINGS

The Planning Board's Mandatory Referral responsibility requires review of the proposed location and development of public roads, parks, and public buildings before the project begins. The Board also reviews changes of use for the same public properties. This review focuses on the second responsibility, changing the uses of Parcels A and B. The proposed detailed development plans will be reviewed in a subsequent Mandatory Referral review.

a. Conformance with the Master Plan

The 2005 Olney Master Plan includes the findings of an analysis of park and recreation needs undertaken for the Olney Planning Area. That analysis concluded that, while Olney was generally well served by existing and proposed parkland, there remained a projected need for additional ballfields during the life of the Master Plan. The Plan (page 118) identified properties in the southern part of Olney as suitable for park acquisition. The analysis deemed a 17-acre parcel next to Farquhar Middle School (Parcel B) as suitable for active recreation, and noted that the school could share the recreational facilities.

Parcel B was part of the Casey property, which had been evaluated as part of the Master Plan's broader analysis of properties in the Southeast Quadrant. The Master Plan made land use and zoning recommendations for the Casey property. It proposed residential development in the RNC Zone. The RNC Zone requires substantial amounts of generally contiguous undeveloped open space as part of any residential neighborhood and defines those areas as Rural Open Space. Master plans can, however, recommend that portions of recommended rural open space can be used for active recreation. The Olney Master Plan makes such a recommendation (p 28). "The 17.4-acre portion of the property [next to the middle school] is appropriate for ballfields and possible other active recreation since it is clear with no significant environmental features, and can share its ballfields and parking area with the adjoining middle school site. Access to the ballfields should be from the Old Vic Boulevard Extended and through the middle school property." The Plan goes on to recommend designation of the parcel as Rural Open Space and acquired through dedication for a local park (p 29).

The low density residential character of this portion of the Southeast Quadrant allowed an evaluation of the area's roadway network in light of the reduced development potential reflected in Master Plan land use and zoning recommendations and the desirability of protecting sensitive natural resources in the Northwest Branch watershed. The evaluation led to the removal of previously approved roads and the

designation of Batchellors Forest Road as a Rustic Road. The Plan also modified the primary residential road system in this area so that primary road P-16, called Old Vic Boulevard Extended, would intersect Batchellors Forest Road opposite Farquhar Middle School. These recommendations are on pages 100-101 of the Plan.

The land use recommendations included a requirement that a single access from Batchellors Forest Road serve the park and the school and that the access be located opposite the Old Vic Boulevard intersection.

The Master Plan did not intend to identify Parcel B as the only appropriate place for parkland in this part of Olney. The Plan's objective is the provision of a local park in the part of the southeast quadrant of Olney to meet an already-identified need for active recreation. The Plan identified the Casey property because it was vacant and next to an existing middle school, which meant that a second desirable outcome—shared recreational resources between the middle school and a residential community that would soon have a number of additional households—could be achieved. The Plan is substantively indifferent to which of the two similarly sized properties is the park and which is the school. The Plan could not have anticipated the precise circumstances that led to this proposal; that MCPS would decide to renovate the school, and that it would decide to rebuild instead of rehabilitate. Had this proposal been made at the time of the Master Plan's development, planning staff would have recommended that it go forward.

Planning staff concludes that building the new middle school on Parcel B and establishing a local park on Parcel A meets the Master Plan's recommendations for recreational opportunities in this part of Olney, and also meets the Plan's recommendations for Rustic Roads. Changing the use of this public property substantially conforms to the Master Plan.

b. Compatibility

MCPS has provided a concept drawing for the new middle school, which is attached to this memorandum. It contemplates locating the school building some distance from Batchellors Forest Road and placing the school's playing fields and tennis courts along the road. The school's bus loop and parking facilities largely would be to the side and rear of the school nearer Parcel A. In this scheme, the house nearest the new school would be next to playing fields, rather than the school building. Homes across Batchellors Forest Road would see the school at a distance, across the fields. Woods would separate the school and its parking from several homes to the east of the property.

The concept plan also shows a single entrance for combined park and school, with parking areas included to serve the park. The entrance is opposite Old Vic Boulevard Extended, as recommended in the Master Plan.

The relationship between the playing fields and the neighboring residential properties should be carefully evaluated during the next Mandatory Referral review. It may be necessary to increase setbacks beyond the minimum required to reduce visual and noise impacts on the residence. Additional landscaping in this area may be appropriate as well. As noted in more detail in the next section, the subsequent review should also evaluate the relationship between the school's location on Parcel B and

private Rural Open Space associated with recently approved RNC development on the adjacent property.

COMMUNITY ISSUES

Residents of the neighborhoods adjoining Farquhar Middle School and Farquhar families have been engaged in a vigorous discussion of the MCPS proposal. It enjoys substantial support from parents of Farquhar students, represented by the Parent-Teacher Associations of both Farquhar Middle School and Brooke Grove Elementary School. Residents of properties adjacent to the combined properties have raised a number of issues about the proposed land exchange. This section focuses on those issues.

Several correspondents have asserted that the proposed arrangement converts a large block of open space to other uses and suggested that such an arrangement is contrary to the concept of perpetual rural open space. As noted in the master plan analysis above, the zoning ordinance allows recreational facilities in the rural open space but limits them to "trails and related amenities or other facilities recommended in the master plan." The Olney Master Plan recognized that rural open space could be used for active recreation and specifically recommends that the open space associated with Batchellors Forest be dedicated to the Commission for use as a local park, which adheres to the ordinance language. As noted above, this recommendation responds to a demonstrated need for recreational facilities in this part of Olney during the life of the master plan. In addition, the Rural Open Space easement to be applied to Parcel A once it is delivered as an interim park will ensure that the amount of rural open space associated in this part of Olney remains the same.

An adjoining property owner, whose property is part of the recently approved Stanmore subdivision, has raised questions of compatibility between rural open space on the Stanmore property and Parcel B. The concept drawing submitted with this Mandatory Referral shows the school adjacent to Stanmore Rural Open Space. That rural open space will be part of a privately owned lot in the Stanmore community. There are currently a strip of woods separating the Stanmore rural open space lot from Parcel B, shown on the concept drawing as the location of the school and part of its parking. The existing trees help minimize the visual impact of the school and the private nature of the Stanmore rural open space limits the number of residents who will be affected. The subsequent Mandatory Referral can evaluate more closely the relationship between the school and the adjacent open space.

The same property owner has also sought information about Forest Conservation Plans as part of this Mandatory Referral submission. Parcel B is part of an existing approved Final Forest Conservation Plan for the Batchellors Forest subdivision. Development of the school on Parcel B must comply with the conditions of the original approval. Should aspects of the school's development require changes to the approved Forest Conservation Plan, MCPS must formally request an amendment to the Plan.

This memorandum includes attachments containing correspondence from interested parties.

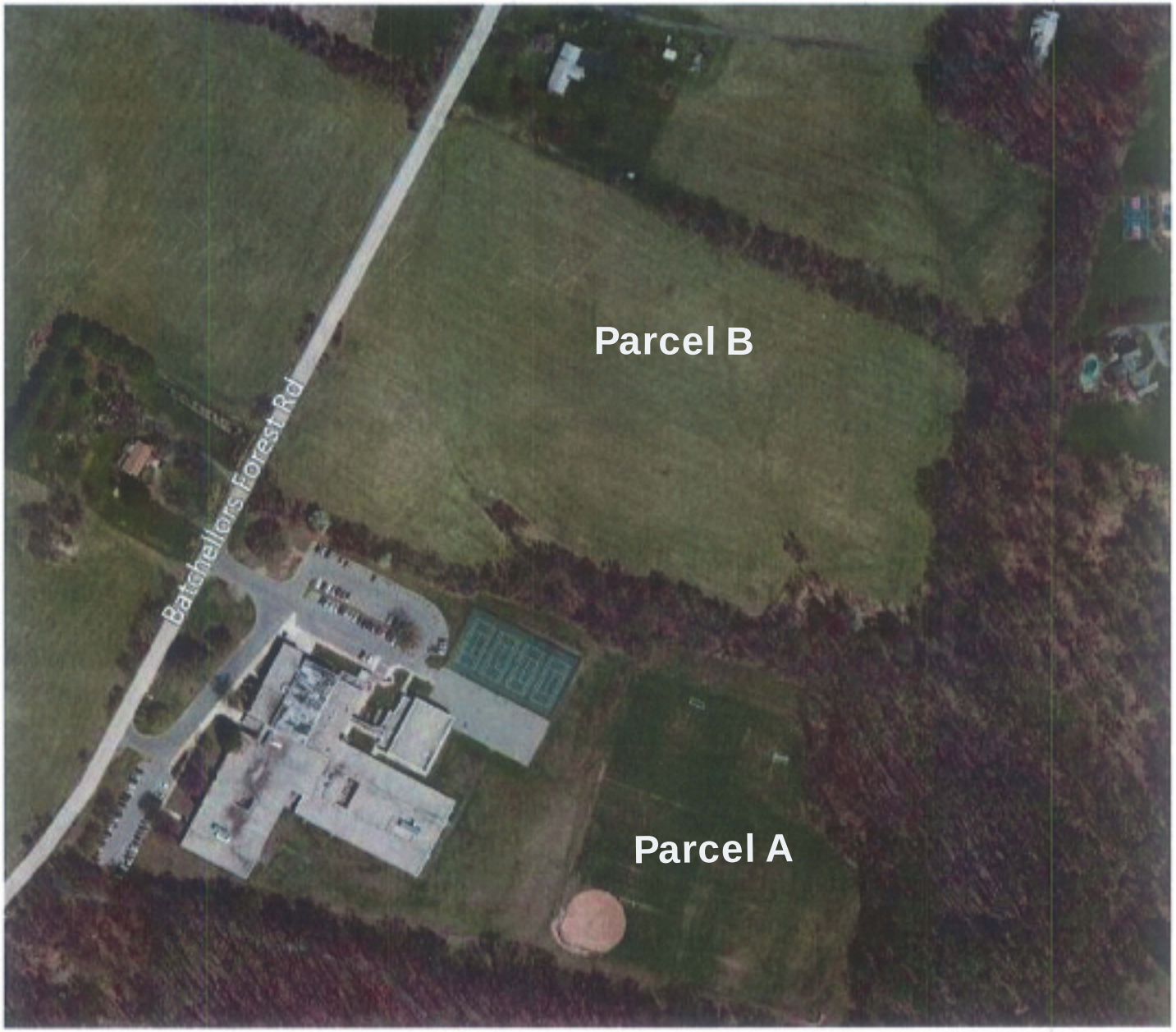
CONCLUSION

This proposal arises from the desire of Farquhar Middle School parents to reduce the inconvenience and diminished academic atmosphere they strongly believe will occur if students must be relocated to North Bethesda while MCPS builds a needed new middle school on the existing Farquhar site. To

accommodate their desires, MCPS agreed to find a way to build a new school on the adjoining property. The complex set of arrangements under review in this memorandum can achieve this objective. They enable MCPS to release the existing Rural Open Space easement on the property next to the existing school, acquire that property through condemnation, and build a new middle school on it. At the same time MCPS will also enter into a series of agreements that will allow establishment of a Master Plan-recommended local park, under the control of the Department of Parks, some years earlier than anticipated, and allow the school and local park to share access, as the Master Plan recommends.

Planning staff recommends that the Planning Board approve with conditions the Mandatory Referral for a change in use; approve with conditions the release of the Rural Open Space Easement on approximately 17 acres of land granted by Pulte Homes to the Commission; and approve with conditions the deed of dedication granted by Pulte Homes to the Commission as part of the approval of Site Plan 82008019A, Batchellors Forest.

Aerial View- Existing School Site



0 150 300 FT

N

Proposed Site Plan

0 150 300 FT

N

MCP-Chair

From: Rural Open Space <ruralopenspace@gmail.com>
Sent: Wednesday, January 01, 2014 1:53 PM
To: Montgomery County Council
Cc: MCP-Chair; tomandruthh@verizon.net; dave.tacchetti@clarkconstruction.com; jsweske@juno.com; lesliecro@verizon.net; meg.peasefye@fda.hhs.gov
Subject: Re: Rural open space/ Mandatory Referral - Farquhar Middle School 0002

Ms. Navarro and Councilmembers,

I would like to thank you again for your response in regard to the substitution of Rural Open Space.

As you are aware, the PHED committee was very specific in it's language as it related to the creation and permanent preservation of Rural Open Space in the RNC zone. The PHED committee, and subsequently the full Council, was aware of the concerns that civic associations had over these large blocks of open space being converted to public or private uses in the future even after public promises had been made that they would remain Rural Open Space in perpetuity. It was reassuring to read your response below and to see that the Council still understands the relevance and importance of the promises you made.

Below you offer to craft further restrictions, if necessary, and the time has come when those further restrictions may indeed be necessary.

MCPS has submitted an application to substitute Rural Open Space as part of their replacement of Farquhar Middle School. This application is exactly the type of bait and switch that the PHED committee, led by Mrs. Praisner, had looked to prevent.

I would ask that you reach out to the Planning Board, whom I have cc'd on this email, before the January 30th hearing to reiterate the position that you have outlined below. I would also request that the Planning Board add this email, including your response below, to the record for the FMS Mandatory Referral.

I have also cc'd the residents most impacted by this application to let them know your position.

On Fri, Nov 1, 2013 at 9:51 AM, Montgomery County Council <County.Council@montgomerycountymd.gov> wrote:
Dear Neighbor,

Thank you for your correspondence expressing your views on rural open space. I have shared your correspondence with my Council colleagues, and I am pleased to respond on their behalf.

The Planning, Housing, and Economic Development (PHED) Committee reflected the current restrictions for rural open space in the RNC zone. I interpret your request as a desire to restrict the exchange of rural open space. If further restrictions are necessary, the Council will make further revisions.

I appreciate you taking the time to share your concerns with me. Your views are important and will help me in my deliberations on matters that affect the residents of Montgomery County.

Sincerely,

Nancy Navarro

Council President

073530

MCP-Chair

From: tomandruthh@verizon.net
Sent: Thursday, January 02, 2014 10:15 AM
To: ruralopenspace@gmail.com; County.Council@montgomerycountymd.gov
Cc: MCP-Chair; tomandruthh@verizon.net; dave.tacchetti@clarkconstruction.com; jsweske@juno.com; lesliecro@verizon.net; meg.peasefye@fda.hhs.gov
Subject: Re: Re: Rural open space/ Mandatory Referral - Farquhar Middle School

0002

Good morning.

We agree with what was written below and would graciously accept any help that the council could provide. We've certainly spent enough of our money already to enforce something that should have been Park and Planning's responsibilty in the first place. There are plats, subdivision plans and eaements to memorialize the decisions already made and agreed to.

We already won a lawsuit on this matter and feel that this action simply ignores that ruling. It certianly shows why Park and Planning voted against the ZTA they are now dismissing as irrelevant.

We've lived in this house since 1978 and our family has lived on this farm for roughly 100 years. We certainly wouldn't have supported the Batchellor Forest subdivsion had we known that a middle school would end up next to our bedroom window instead of a park.

Tom and Ruth Hyde

On 01/01/14, Rural Open Space<ruralopenspace@gmail.com> wrote:

Ms. Navarro and Councilmembers,

I would like to thank you again for your response in regard to the substitution of Rural Open Space.

As you are aware, the PHED committee was very specific in it's language as it related to the creation and permanent preservation of Rural Open Space in the RNC zone. The PHED committee, and subsequently the full Council, was aware of the concerns that civic associations had over these large blocks of open space being converted to public or private uses in the future even after public promises had been made that they would remain Rural Open Space in perpetuity. It was reassuring to read your response below and to see that the Council still understands the relevance and importance of the promises you made.

Below you offer to craft further restrictions, if necessary, and the time has come when those further restrictions may indeed be necessary.

MCPS has submitted an application to substitute Rural Open Space as part of their replacement of Farquhar Middle School. This application is exactly the type of bait and switch that the PHED committee, led by Mrs. Praisner, had looked to prevent.

I would ask that you reach out to the Planning Board, whom I have cc'd on this email, before the January 30th hearing to reiterate the position that you have outlined below. I would also request that the Planning Board add this email, including your response below, to the record for the FMS Mandatory Referral.

I have also cc'd the residents most impacted by this application to let them know your position.

On Fri, Nov 1, 2013 at 9:51 AM, Montgomery County Council <County.Council@montgomerycountymd.gov> wrote:
Dear Neighbor,

Thank you for your correspondence expressing your views on rural open space. I have shared your correspondence with my Council colleagues, and I am pleased to respond on their behalf.

The Planning, Housing, and Economic Development (PHED) Committee reflected the current restrictions for rural open space in the RNC zone. I interpret your request as a desire to restrict the exchange of rural open space. If further restrictions are necessary, the Council will make further revisions.

I appreciate you taking the time to share your concerns with me. Your views are important and will help me in my deliberations on matters that affect the residents of Montgomery County.

Sincerely,

Nancy Navarro

Council President

073530

MCP-Chair

From: Troy Kimmel <TKimmel@stratsight.com>
Sent: Friday, January 03, 2014 4:17 PM
To: 'county.council@montgomerycountymd.gov'; MCP-Chair
Cc: 'boe@mcpsmd.org'; 'Richard_C_Shuman@mcpsmd.org'; James_Song@mcpsmd.org; Rubin, Carol; karen.montgomery@senate.state.md.us; Craig (zucker.craig@gmail.com); roger.manno@senate.state.md.us; eric.luedtke@house.state.md.us; bonnie.cullison@house.state.md.us; benjamin.kramer@house.state.md.us; anne.kaiser@house.state.md.us; sam.arora@house.state.md.us
Subject: Rural Open Space / Mandatory Referral for Farquhar Land Swap
Attachments: 3 Jan 2014 Letter to MCC and MCPB from Troy Kimmel re Farquhar and Rural Open Space.pdf

Montgomery County Councilmembers and Planning Board Members,

Please read the enclosed letter responding to a recent email you've received from Tom and Ruth Hyde about the **Farquhar Middle School land swap and Rural Open Space protections**.

Regards,
Troy Kimmel
Future Farquhar Community Coalition Executive Committee member
Farquhar Middle School PTA Board Member
Brooke Grove Middle School PTA Board Member

3 January 2014

Dear County Council and Planning Board members,

You've recently received emails from ruralopenspace@gmail.com and Tom and Ruth Hyde **(see TAB A)** regarding the swap of rural open space associated with the modernization of Farquhar Middle School in Olney.

My intent in writing is to 1) ensure that you're not being misled about how the Planning Board deals in Rural Open Space easement transfers, and 2) show the overwhelming support for the Farquhar Middle School land swap among Olney civic groups and several County advisory boards.

1. Farquhar Middle School is in the last stages of modernization planning. Rather than bus students ½ way across the County for 2 years, MCPS has worked with the Planning Board and their staff on a 'land-swap' that keeps the old school operating while the new one is built. The new school will be built on recently dedicated parkland that borders directly to the north of the existing school property. When complete, the old school will be demolished and the old school site becomes the planned parkland.

This involves a transfer of rural open space easements from one piece of property to the other. Rural Open Space (ROS) will remain protected in perpetuity (in fact, the County gains 2.9 acres). To ensure that such transfers aren't done haphazardly or via 'bait and switch' as the Hydes allege, the Planning Board adopted a strict policy for such transfers that require a release of a ROS Easement (see entire policy at **TAB B**):

a. The purpose for the release must be to balance another public interest;

b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance is addressed;

c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;

d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be challenged; and

e. There must be a finding of conformance with Master Plan for the ultimate replacement of ROS restricted property.

These are very rigid requirements, and require replacement ROS property very nearby (in the case of Farquhar, literally next door) that meets the same ROS requirements of the Zoning Ordinance. **No further legislation is needed from the County Council to keep ROS preserved.**

2. The Farquhar land swap, which will require a transfer of ROS easements, enjoys widespread and substantial support from PTAs, Civic Associations, County Advisory Boards, and all of the District 14 and 19 State Senators and Delegates (see list at TAB C). MCPS and the Planning Board have worked extensively with the community, and have even modified the design of the school to reflect privacy concerns of the Hyde Family. The land swap keeps kids from up to 3 hours of daily busing for 2 years, keeps badly needed playing fields at Farquhar open during modernization, and gets the Olney community its planned and approved new park 10 years sooner. It's always been and remains a 'win-win' for Olney and the County. **We urge you to support the land swap and its necessary transfer of ROS easements.**

Regards,

Troy Kimmel (tkimmel@stratsight.com, 301-602-1663)
On behalf of the Brooke Grove ES and Farquhar MS PTAs and the Future Farquhar Community Coalition

TAB A

Recent Emails from ruralopenspace@gmail.com

and Tom & Ruth Hyde

MCP-Chair

From: Rural Open Space <ruralopenspace@gmail.com>
Sent: Wednesday, January 01, 2014 1:53 PM
To: Montgomery County Council
Cc: MCP-Chair; tomandruthh@verizon.net; dave.tacchetti@clarkconstruction.com; jsweske@juno.com; lesliecro@verizon.net; meg.peasefye@fda.hhs.gov
Subject: Re: Rural open space/ Mandatory Referral - Farquhar Middle School

0002

Ms. Navarro and Councilmembers,

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Below you offer to craft further restrictions, if necessary, and the time has come when those further restrictions may indeed be necessary.

MCPS has submitted an application to substitute Rural Open Space as part of their replacement of Farquhar Middle School. This application is exactly the type of bait and switch that the PHED committee, led by Mrs. Praisner, had looked to prevent.

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Sincerely,

Nancy Navarro

Council President

073530

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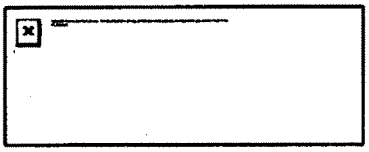
Sincerely,



Nancy Navarro

Council President

073530

TAB B

Montgomery County Planning Department
Code Interpretation Policy
Release of Rural Open Space
Easement or Covenant

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

CODE INTERPRETATION POLICY

DATE	SECTION OF CODE	Release of Rural Open Space Easement or Covenant
October 7, 2013	59-C-9.574 (h)(4), 59-C-9.571, 59-C-9.23.1	

STATEMENT/BACKGROUND OF ISSUE

Introduction

Two projects have been presented to Planning Staff regarding the potential transfer and development of property currently protected by Rural Open Space ("ROS) easements granted to The Maryland-National Capital Park and Planning Commission ("Commission"), which would require the Planning Board to approve the release of ROS easements: 1) for redevelopment/modernization of Farquhar Middle School, which would require release of an ROS Easement granted by Pulte Home Corporation over property dedicated to the Commission ("Park Property") as part of the Batchellors Forest development, and 2) for expansion of the Montgomery County Hospice ("Hospice") site, which would require release of an ROS Easement granted by Stanley Martin as part of the Preserve at Rock Creek development. Each project is proposing to have the existing ROS easements released, exchange the protected property with adjacent properties that are not part of the original application, and place an ROS easement on the exchanged property. Staff presented these proposals to the Board solely to establish the context for the Board to consider and adopt a policy to guide the release of certain ROS easements through consistent bases for such release.

Park Property

The Park Property involves a 17.4-acre property that was dedicated to the M-NCPPC as required for approval of the Batchellors Forest Preliminary Plan #120060850 and Site Plan #820080190/A for development to be used an active park in accordance with the Olney Master Plan (page 28 of the Land Use Section), and encumbered by an ROS easement to protect the site as required under §59-C-9.574(h)(4). Batchellors Forest is comprised of 37 one-family detached and attached lots in the Rural Neighborhood Cluster ("RNC") Zone, located across Batchellors Forest Road from the Park Property. Consistent with the RNC zone, the plan provides approximately 70% of the tract area as ROS; a portion surrounding the homes and property owned by the homeowner's association-protected by an ROS easement granted to The M-NCPPC and Sandy Spring Green Space, with the balance being the Park Property. Batchellors Forest is dependent on the Park Property to meet its density and ROS development standards of the zone. Adjacent to the Park Property is Farquhar Middle School, which is slated for reconstruction and would require relocation of students for at least two years while the building is razed and reconstructed on site. Therefore, at the urging of the parents, and with official support of the Board of Education, the Montgomery County Public Schools ("MCPS") is proposing to build the new school on the adjacent Park Property so that the students could remain at the existing school during construction, after which the students would be relocated to the new school, and the existing school site would be developed into the park contemplated by the Master Plan. If approved, the process required to implement the exchange of properties will be outlined in separate agreements among MCPS, M-NCPPC, the County and Pulte. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and MCPS to determine, if appropriate, the conditions required to release the existing ROS easement from the Park Property.

Hospice Site

The Casey House at 6001 Muncaster Mill Road is a hospice program providing medical, nursing and other health services in a 14-bed facility that received special exception approval for a Domiciliary Care Home in 1994 and subsequent Preliminary Plan approval in 1995. The Hospice owns four separate parcels of land all located in the RE-1 Zone. The adjoining Preserve at Rock Creek development owned by Stanley Martin is within the RNC Zone and consists of 186 one-family attached and detached residential units. Several parcels, which are privately owned, are protected with ROS easements granted to the Commission, including a 2 acre tract on Muncaster Mill Road directly adjacent to the Hospice Site.

The Hospice and Stanley Martin have submitted the amendments (Preliminary Plans #11994021A and #12006032B, and Site Plan #82006011A) ("Amendments") to exchange parcels of land, both of which equal 2 acres in size. Without release of the ROS easement from the parcel owned by Stanley Martin, the Hospice can't move forward with its expansion plans, as the parcel owned by the Hospice is limited for development due to environmental constraints. Other issues to resolve as part of this proposal will be discussed as part of the Board's consideration of the Amendments at a later hearing. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and the Applicants to determine, if appropriate, the conditions required to release the existing ROS easement from the Stanley Martin parcel.

AGENCY INTERPRETATION/POLICY

Discussion

RNC Zone Criteria

The purpose of the RNC zone under §59-C-9.23.1 is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large lot development. This is accomplished through site design and protection of open spaces and with the provision of public water and sewer to allow clustering of lots. To implement the purposes of the zone, a master plan provides recommendations for vistas, preservation of neighborhood character and environmentally sensitive areas to ensure compatibility with the surrounding community. And more specifically, §59-C-9.571 sets forth certain special regulations for development in the RNC zone to preserve large areas of contiguous rural open space, consistent with the recommendations and guidelines of the applicable master or sector plan.

Rural Open Space is typically unmanaged land that is contiguous with other open spaces and natural resources; however, it may be managed or modified to improve its appearance, function and overall condition and can include reforestation, woodland, wetlands, agricultural and meadow management, stream bank protection and non-structural stormwater management practices. Or under §59-C-9.571 it may be developed and managed consistent with the recommendations and guidelines of the applicable master or sector plan.[1] The RNC zone does not address whether the ROS easement area is required to be in RNC zoned land.

Perpetuity

All land designated as the ROS area as part of a development plan, whether developed under the standard or optional method must be *preserved in perpetuity*. This requires either dedication as parkland

[1] In the case of the Park Property, the Master Plan recommended ball fields and possibly other active recreation on the ROS protected land.

(limited to standard method development), or application of an easement or covenant in a recordable form approved by the Planning Board. However, in *Hyde v. Planning Board*,[2] the Court required the Board to protect ROS but agreed with the Board's attorney that there is no such thing as perpetuity in land use when it was suggested that even "perpetual" easements might be extinguished through condemnation or abandonment. Therefore, although the Zoning Ordinance requires preservation in perpetuity, it is clear that even the courts would support release of an ROS easement under certain circumstances and conditions designed to meet the legislative intent of the preservation in perpetuity. Therefore, Staff recommended the criteria and conditions under which the Board may find it is appropriate to release certain ROS easements.

Recommendation

Staff recommended that the Planning Board approve the release of certain ROS easements, if and when appropriate, as determined by applying the following criteria for their replacement/substitution when evaluating the specific request for such release:

a. The purpose for the release must be to balance another public interest;
b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance is addressed;
c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;
d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be challenged; and
e. There must be a finding of conformance with Master Plan for the ultimate replacement of ROS restricted property.

Staff received correspondence and testimony. A copy of the transcript is available as an attachment to this policy. The primary issue of concern was of meeting the intent to protect ROS "in perpetuity." The Board found that with the recommended criteria, subject to the revision as outlined below, will assure the legislative intent is met. The adopted policy gives direction to Planning staff and applicants that a request for release of an ROS easement must include sufficient support that meets the recommended criteria. Furthermore, the request may require appropriate amendments to preliminary and/or site plans and address master plan compliance as well as compatibility.

The Planning Board adopted the Rural Open Space Policy by a vote of 5-0, with a motion by Commissioner Anderson and seconded by Commissioner Presley. Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voted in favor of the application, with criteria (d) revised as follows:

The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be lost.

INTERPRETATION/POLICY NO. 9	DATE 6-21-13	AREA CHIEF Robert Kronenberg

[2] *Hyde v. Planning Board* was a challenge in the Batchellors Forest development approval to the park dedication as allowable protection of ROS in an optional method development

	DATE **8-29-13**	**M-NCPPC LEGAL STAFF** **Carol Rubin**
	DATE **5-2-2013**	**PLANNING BOARD** **Agenda Item 12, Planning Board Agenda May 2, 2013**

TAB C

Farquhar Middle School Modernization

Land Swap Supporters

These people and organizations have expressed written support for the Farquhar Middle School land-swap. **Other positions are as noted.**

- Brooke Grove Elementary PTA
- Sherwood Elementary PTA
- Cloverly Elementary PTA
- Stonegate Elementary PTA
- Farquhar Middle School PTA

(note - each PTA above voted on language for a joint letter delivered to the Board of Education by hand on 27 June 2011, expressing a preference for the "Land-Swap" option for Farquhar modernization. **Each vote was UNANIMOUS.** These PTAs represent 2400 students and their families!)

- Belmont Elementary PTA

- State Senator **Karen Montgomery**, Maryland District 14
- State Delegate **Anne Kaiser**, Maryland District 14
- State Senator **Roger Manno**, Maryland District 19
- State Delegate **Craig Zucker**, Maryland District 14
- State Delegate **Sam Arora**, Maryland District 19
- State Delegate **Ben Kramer**, Maryland District 19
- State Delegate **Bonnie Cullison**, Maryland District 19
- State Delegate **Eric Luedtke**, Maryland District 14
- County Councilman **Craig Rice**, County Council District 2

- The **Mid-County Citizens Advisory Board** - in a letter to County Executive Ike Leggett that said, "The Land Swap Option is not burdensome, is the most family-friendly of the options presented, avoids subjecting students to unreasonably long bus rides, and would take advantage of a unique circumstance which would serve the best interests of the students and the greater community."

- The Townes Homeowners Association (HOA)
- James Creek HOA
- Fair Hill Farm HOA
- Christie Estates HOA
- Environ HOA
- Lake Hallowell HOA
- Hallowell HOA (only against busing Farquhar students to Tilden)
- Ashton Preserve HOA
- Brookville Crossing HOA
- Cloverly Civic Association

- The **Sandy Spring Civic Association**, who wrote to the Montgomery County Planning Board Chair, "We believe the land swap option for the modernization of Farquhar Middle School is the best solution to meet the needs of the children."

- The **Greater Olney Civic Association,** who passed the following resolution in June 2011: "Now therefore be it resolved that GOCA supports the PTA's position that busing Farquhar Middle School students to the Tilden Holding Center for two years would not be in the best interest of the students." GOCA Delegates passed a resolution at their 11 Oct 2011 meeting affirming the above statement, and takes no other position on the land-swap, leaving the issue instead to local HOAs, PTAs, groups and individuals.

- **County Councilmember Nancy Navarro,** County Council District 4

- **1,943 concerned citizens who signed a petition** against busing our students to the Tilden Holding Center. Copies of the petition were mailed to the County Council, Board of Education, Superintendent of Schools, and the County Executive in May 2011.

- The **Mid-County Recreation Advisory Board**

- The **Montgomery County Junior Councils** - the Middle School Student Government of the County

Boyd, Fred

From: Pfefferle, Mark
Sent: Monday, January 13, 2014 8:43 AM
To: Tom Hyde
Cc: Kishter, Mary Jo
Subject: RE: NRIFSD - 420043350

Mr. Hyde

As I previously mentioned, I believe that MCPS will be instructed to submit a second mandatory referral to construct the school. When that is submitted, then if any changes are needed to the previously approved forest conservation plan they will be addressed at that time.

Mark Pfefferle
Chief
Development Applications and Regulatory Coordination
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

From: vthyde@gmail.com [mailto:vthyde@gmail.com] **On Behalf Of** Tom Hyde
Sent: Thursday, January 09, 2014 7:50 AM
To: Pfefferle, Mark
Cc: Kishter, Mary Jo
Subject: Re: NRIFSD - 420043350

Sorry, here is the attachment. I must need that second cup of coffee!

Have a good day.

Tom

On Thu, Jan 9, 2014 at 7:49 AM, Tom Hyde <vthyde@yahoo.com> wrote:
Mark

The mandatory referral isn't for "disposition/acquisition of land", but specifically for a "Change-of-Use and release of the Release of Rural Open Space Easement" per MCPS's application and a "concept plan" showing the school was included. (Attached)

I understand that this might not fit into the typical box, but it certainly seems that the Board will be acting on a "change of use" at the hearing.

I appreciate your efforts on these questions and, again, apologize for taking too much of your time.

Tom

On Tue, Jan 7, 2014 at 12:11 PM, Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org> wrote:

Mr. Hyde.

The section that you reference is related to properties that have not been previously subject to the forest conservation law. If any property/proposed development meets the requirements of 22A-5 it could qualify for an exemption from submitting a forest conservation plan. Since the property in question has an already approved final forest conservation plan it is not eligible to be exempt from a forest conservation plan and therefore must comply with the previously approved plan or amend that previous approval. Therefore, a new NRI/FSD and forest conservation plan is not required.

Since the current mandatory referral is for the disposition/acquisition of land, the land use would remain as is Only once a development application, or mandatory referral, is received will an amendment to the forest conservation plan be needed.

Mark Pfefferle

Chief

Development Applications and Regulatory Coordination

Montgomery County Planning Department

8787 Georgia Avenue

Silver Spring, MD 20910

From: vthyde@gmail.com [mailto:vthyde@gmail.com] **On Behalf Of** Tom Hyde
Sent: Monday, January 06, 2014 3:17 PM

To: Pfefferle, Mark

Cc: Kishter, Mary Jo
Subject: Re: NRIFSD - 420043350

Mr. Pfefferle

Good afternoon.

I don't mean to be a bother, but this process has been difficult on my family and I want to make sure that the proper rules are being followed.

I reread what I thought was the applicable section of the law and, it seems to me, that this land acquisition and change in use would trigger all of the submissions required under Article II of the Forest Conservation Law.

Specifically, Section 22A-5(m) states that the following would be exempt from the Article II requirements - "a real estate transfer to provide a security, leasehold, or other legal or equitable interest, in a portion of a lot or parcel if; (1) the transfer does not involve a change in land use, or new development or redevelopment with associated land disturbing activities; and (2) both the grantor and grantee file a declaration of intent". Given the intention to build a school on the Rural Open Space parcel proposed for acquisition, I wouldn't think that the BOE would be willing to sign a declaration of intent to keep the property in its current condition.

Given that a change in use and acquisition are being proposed as part of this Mandatory Referral, and the fact that the Planning Board is going to act on the same, it seems that the NRIFSD and FCP would be required before this hearing. The land acquisition and change in use will have been approved by the Board and a mute point by the time the submission and hearing on the design phase takes place.

If I'm misinterpreting the rules, I apologize in advance.

Thanks-

Tom

On Thu, Jan 2, 2014 at 5:15 PM, Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org> wrote:

Mr. Hyde

It is my understanding that the Mandatory Referral scheduled for the 1-30-2014 is only for a "land acquisition and change in use" review. A second mandatory referral would be submitted, with a forest conservation plan, in the future and only after MCPS has moved from the concept stage to the design stage. That second mandatory referral would also be reviewed by the Planning Board and if changes are necessary to the existing forest conservation plan, then the forest conservation plan would be reviewed at the same time.

I am not familiar with the ROS issue and therefore do not have a perspective on it.

Mark Pfefferle

Chief

Development Applications and Regulatory Coordination

Montgomery County Planning Department

8787 Georgia Avenue

Silver Spring, MD 20910

From: vthyde@gmail.com [mailto:vthyde@gmail.com] **On Behalf Of** Tom Hyde
Sent: Wednesday, January 01, 2014 1:02 PM
To: Pfefferle, Mark
Cc: Kishter, Mary Jo
Subject: Re: NRIFSD - 420043350

Mr. Pfefferle-

Thank you for the prompt response.

This is all a bit confusing.

I would have thought a new FCP would have been part of MCPS's 12/12/13 Mandatory Referral application which is scheduled for a hearing on 1/30/14. When would the new FCP be required/submitted? I would have thought the Planning Board would have wanted to review it all at one time. This seems to be how MCPS Mandatory Referral packages have been handled in the past.

Given that MCPS will need to utilize the new policy for the substitution of ROS, can you explain that process in more detail from your perspective? It will certainly have ripple affects through the existing subdivision approvals, open space requirements, FCP, etc..

Thanks-

Tom

On Tue, Dec 24, 2013 at 2:43 PM, Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org> wrote:

Mr. Hyde

The Montgomery Planning Department has not received any new NRI/FSDs for any land covered by forest conservation plan 820080190. Nor is one needed for the land is already covered by a forest conservation plan. Any development that is proposed on a tract of land subject to an approved forest conservation plan must comply with that approval or the property owner must seek approval from the Montgomery County Planning Board to make changes to the approved plan. It is the responsibility of the owner of the property proposing the change to make the application.

The construction, addition, or rehabilitation of the Farquhar Middle School requires that Montgomery County Public Schools submit a Mandatory Referral to the Planning Board for review and recommendations. The Mandatory Referral should show all proposed changes on the property including new construction and demolition of buildings that may exist on the property, or on adjoining properties.

It is difficult for us to determine what the imperviousness will be on a property without a plan that shows the ultimate build-out and demolition. In addition, I am unaware of an impervious cap on the subject property. The Planning Board's opinion of the Preliminary Plan of Subdivision and the Site Plan, I believe, do not indicate the presence of an impervious cap on the Batchellors Forest Subdivision.

Mark Pfefferle

Chief

Development Applications and Regulatory Coordination

Montgomery County Planning Department

8787 Georgia Avenue

Silver Spring, MD 20910

From: vthyde@gmail.com [mailto:vthyde@gmail.com] **On Behalf Of** Tom Hyde
Sent: Monday, December 23, 2013 9:17 AM
To: Kishter, Mary Jo; Pfefferle, Mark
Subject: NRIFSD - 420043350

Mr. Pfefferle and Ms. Kishter-

Good morning.

Do you know if a new NRIFSD and FCP have been submitted for this site? I believe the NRIFSD expired 3 years ago.

Now that MCPS is proposing to relocate Farquhar Middle School to this location, can you explain how it will impact the existing plans that were agreed upon during the Batchellors Forest Subdivision? Will new plans be needed for this site and will revisions need to be made to the existing plans? I can only assume that Putle, the developer, will need to sign off on any changes to their FCP requirements.

Also, can you explain the ramifications to the existing subdivision as it relates to impervious calculations? Although I haven't completed the calculations, I can only assume that this use, a 115,000sf building with associated drive aisles and parking areas, will push the Pulte subdivision above the mandated impervious cap.

Thanks in advance for your assistance.

Regards-

Tom

MONTGOMERY COUNTY DEPARTMENT OF PARKS
MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

MEMORANDUM

DATE: January 16, 2014

TO: Fred Boyd, Planner Coordinator, Area 2, Planning Department

FROM: Brooke Farquhar, Master Planner Supervisor, Park and Trail Planning (PPSD) Brooke Farquhar

SUBJECT: **Farquhar Middle School Mandatory Referral**

The *2005 Olney Master Plan* includes designation of the 17-acre portion of the property adjacent to Farquhar Middle School as rural open space under the Rural Neighborhood Cluster Zone and acquisition of that property through dedication for use as a local park with active recreation, as follows:

Three properties in the Southeast Quadrant are appropriate for purposes of active and passive recreation and should be acquired as parkland…. The third property, the approximately 17-acre portion of the Casey property next to Farquhar Middle School, would serve the need for a future active recreation local park in the area and could be shared by the school. (p.119, Olney Master Plan, 2005)

The Commission has a long history of locating local parks next to schools because of the synergy of uses. If Montgomery County Public Schools had proposed a land swap during the master plan's development, Park Planning staff would have supported the proposal, because it met the Plan's overall goal of meeting an identified need for active recreation and allowed the sharing of recreation space.

Park Planning staff has analyzed the site of the current Farquhar Middle School site as a potential park and finds that it is slightly better than the site to the north because it has approximately 2.5 more developable acres. This scenario has the added benefit of making an interim park available to the public as soon as the existing buildings are removed, and the site is stabilized, including access, parking, athletic fields, community open space and storm water management.

A typical local park program can be accommodated on this site in the future. The site is large enough for athletic fields, playground, shelters, trails, community open space, and perhaps a skate spot and a community garden. When facility planning for the ultimate park is added to a future CIP, there will be extensive public outreach to determine a final program.

Cc:

Mary Bradford, Director of Parks

Mike Riley, Deputy Director of Parks for Administration

John Nissel, Deputy Director of Parks for Operations

Mike Horrigan, Chief of Northern Region

Dr. John E Hench, PhD, Chief of Park Planning and Stewardship Division

Mitra Pedoeem, Chief of Park Development Division

Megan Chung, Associate General Counsel