



MEMORANDUM

DATE: May 7, 2010

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*

FROM: Doug Johnsen, Planner Coordinator *dj*
Environmental Planning

PLAN NAME: Montgomery College: Germantown Campus

PLAN NUMBER: MR 2009734

PLAN TYPE: Preliminary Forest Conservation Plan

REVIEW BASIS: Forest Conservation Law, Chapter 22A of the County Code

ZONE: I-3/R-60

LOCATION: 20200 Observation Drive, Germantown, MD

APPLICANT: Montgomery College

**APPLICANT'S
CIVIL ENGINEER:** A. Morton Thomas

HEARING DATE: May 20, 2010

STAFF RECOMMENDATION: Approval of the Preliminary Forest Conservation Plan subject to the following conditions:

1. Applicant to permanently protect an additional 2.88 acres of high priority forest along I-270 (to be shown on the Final Forest Conservation Plan as part of the 46 acres) by:
 - a. Re-aligning proposed Observation Drive, south of the BioScience building, and/or
 - b. Minimizing proposed grading and forest loss for future Goldenrod Lane with the use of engineering techniques such as retaining walls, and/or
 - c. Protecting more high priority forest between future Golden Rod Lane and the future

- daycare facility.
- d. If it is demonstrated to the satisfaction of MNCPPC staff that the required 2.88 acres of high priority forest along I-270 cannot be preserved, the applicant must mitigate the shortfall on-site at a 3:1 ratio within a category I forest conservation easement shown on the Final Forest Conservation Plan.
 2. Subject to alternatives as set forth in Condition 1, Applicant to demonstrate the preservation of 46 acres of high priority forest along I-270 at time of Final Forest Conservation Plan.
 3. Applicant to place all stream buffers, environmental buffers, retained forests, and planted forests in a category I conservation easement.
 4. Category I conservation easements must be described by metes and bounds and recorded in the Land Records Office prior to any land disturbing activity.

DISCUSSION

There are two items for Planning Board review for the Germantown Campus of Montgomery College project: recommendations on the mandatory referral for the BioScience Education Building and a portion of Observation Road, and the Preliminary Forest Conservation Plan for the entire campus. This memorandum covers staff's review and recommendations on the Preliminary Forest Conservation Plan for the entire site.

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

BACKGROUND

The 224.13-acre site is located at 20200 Observation Drive in Germantown. The project site is bounded by Germantown Road on the north, residential developments to the east, Middlebrook Road on the south, and I-270 and the I-270 exit ramp for Germantown Road on the west (Figure 1). The north-central portion of the site is occupied by the Montgomery College campus buildings and a WSSC water tower. The western portion contains high priority forest and the east and southern portions includes forests of varying age along with open fields.

The applicant is proposing to construct a new 127,000 square foot BioScience Education Center Building, surface parking for 379 vehicles, extend Observation Drive from Middlebrook Road to the proposed building, and relocate a WSSC water line for the water tower. This application is also establishing the alignment for the future roadway that will connect Observation Drive and existing Goldenrod Lane. A portion of this road alignment is the same location as the relocated water line for the WSSC water tower.

The purpose of this forest conservation plan is to provide a forest conservation plan for all future development projects on the 224 acre campus. The forest conservation plan will formally establish and provide a means to protect existing and future forests. The plan will identify areas in which future development/encroachments are prohibited. It will also mean that future mandatory referrals and development applications will need to show compliance with the approved forest conservation plan so that, unless the applicant is proposing any changes to the

protected areas, the applicant is not required to submit individual forest conservation plans for the Planning Board to approve.



Figure 1: Site Overview

Environmental Inventory

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the subject site and initially approved on October 19, 2006. The NRI/FSD was recertified on January 1, 2009. There are 124.38 acres of forest, 29.29 acres of stream valley buffer of which 25.80 acres are forested, and 5.30 acres of wetlands on the subject property of which 5.16 acres are forested. There are 86.97 acres of high priority forest on the site including 57.71 acres along the western boundary between the campus buildings and I-270. The balance of the high priority forest is located along the eastern boundary and in the stream valley buffers.

Gunners Branch, a tributary to Great Seneca Creek, originates near the northeast corner of the site and flows along the eastern and southern borders before exiting the western edge of the project site near Middlebrook Road and Observation Drive. Gunners Branch is listed in good condition, by DEP, despite relatively high levels of impervious surface. The Great Seneca Creek is a Use Class I-P watershed and is listed in good condition by the Montgomery County Department of Environmental Protection (DEP) in its upper reaches, but only fair condition in its middle to lower reaches. There are extensive wetlands associated with both Gunners Branch and two unnamed tributaries within the 57.71 high priority forests stands along I-270.

The topography of the site is categorized as gently sloping to steeply sloping in some of the undeveloped areas. The high point of the site is located at the WSSC water tower on the northwest edge of the current campus buildings. From this high point the land slopes away in all directions. The steepest slopes are to the southwest of the water tower with less steep slopes to the east and north.

FOREST CONSERVATION

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County code) under section 22A-4(d) “*a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger...*” The site is 224.13 acres in size and contains 124.38 acres of forest in twelve forest stands. Each forest stand is characterized by its dominant tree species mix, soils, and topography. The largest contiguous forest is comprised of six intermingled forest stands located along I-270 in the western portion of the site. Four of these six stands are rated as high priority for retention and are located west, southwest, south, and southeast of the water tower. These four stands total 57.71 acres. The remaining two stands are rated as moderate priority for retention and are located southwest of the water storage structure along the I-270 off-ramp for eastbound Germantown Road. These two stands total 7.04 acres. Figure 2 below identifies the location of the 57 acre high priority forest and the 7 acre low priority forest relative to the water tower and the proposed location of the new BioScience building.

The submitted preliminary forest conservation plan (PFCP) shows the removal of 53.98 acres of forest and the retention of 70.40 acres of forest. The forest removal is a result of the proposed BioScience building, extension of Observation Drive, the proposed alignment of Goldenrod Lane to Observation Drive, relocation of a WSSC water main, and other future development internal to the site (such as a daycare facility), or along the edges within low priority forest stands. The forest conservation worksheet indicates that there are no planting requirements associated with the removal of approximately 54 acres of forest on site. This is based primarily on the size of the property, amount of existing forest, and the amount of forest retained.

The applicant is proposing to retain 43.12 acres of existing forest in the high priority forest stand southwest, south, and southeast of the water tower and 27.28 acres of forest within the environmental/stream buffers of Gunners Branch on the east and south sides of the property. The applicant is also proposing to reforest 1.42 acres of open area adjacent to their proposed alignment of Observation Boulevard on the east side of the main forest located along the I-270 corridor even though there are no planting requirements. This area is outside of any stream or environmental buffer.



Figure 2: Location of the 57 acre high priority forest

The Germantown Sector Plan, approved by the County Council on September 22, 2009, requires the preservation of 46 acres of high priority forest along I-270. More specifically, the sector plan states:

“Preserve 46 acres of high priority forest along I-270 and other high priority forest within the site.”

The forest conservation law identifies priority areas for protection and indicates that the primary objective of a forest conservation plan is to avoid reforestation and to retain certain vegetation in undisturbed state. More specifically, section 22A-12(b)(1) states:

“(b) Retention

- (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 listed in the plan; and*
- c. *The development proposal cannot be reasonably altered.*

Section 22A-12(b)(2) identifies the areas to be remain undisturbed. This section specifically states the “*areas protected under this subsection include:.....(f) Areas designated as priority save areas in a master plan or functional plan.*”

The Germantown Sector Plan for the Germantown Employment Area amends the approved and adopted 1989 Germantown Master Plan. The Sector Plan requires the preservation of 46 acres of high priority forest along I-270. The forest conservation plan submitted by the applicant shows the preservation of 43.12 acres of forest in this area. That is 2.88 acres less than the master plan requirement. Staff has proposed Condition No. 1 to the PFCP because it believes that the applicant has not used all planning and zoning options to preserve forest nor has the applicant made reasonable efforts to preserve the 46 acres of high priority forest. With some additional effort as proposed, the applicant can preserve 46 acres of forest. Staff bases this primarily on three reasons.

First, the applicant’s plan for the extension of Observation Road from Middlebrook Road does not follow the sector plan’s alignment. Instead the submitted alignment hugs the existing forest near Middlebrook road and clips a corner of the existing high priority forest where Observation and future Golden Rod Road meet. It is estimated that the applicant could preserve approximately 1.65 acres of additional high priority forest by following the Sector Plan’s alignment for the Observation Road. The Sector Plan’s alignment has the middle of Observation Road approximately 400 feet east of the applicant’s proposal. Furthermore, there is no Planning Board approved plan, or application submitted to the Planning Department, indicating that Observation Road cannot be moved east to match the Sector Plan alignment. Figure 3 shows the Sector Plan’s alignment in black while the applicant’s alignment is shown in red. Without entirely relocating the proposed roadway staff believes the applicant could retain approximately 0.45 acres of forest by tightening the existing limits of disturbance and eliminating a proposed road round-about.

Second, the applicant’s plan shows excessive clearing and grading for the extension of Golden Road to the Observation Road. The plan shows high priority forest removal a minimum of 40 feet beyond the proposed right-of-way. This includes clearing on flat land that does not require any cut or fill operations. There are some parts of the road connection where fill may be extensive, however, the plan does not show any engineering techniques such as retaining walls to reduce the amount of fill necessary to construct the roadway. This would appear to be somewhat excessive given the site grading for the roadway considering stormwater management and sidewalks can be provided within the right-of-way. By reducing the LOD to twenty (20) feet the applicant can save an additional 1.5 acres of high priority forest in this section.

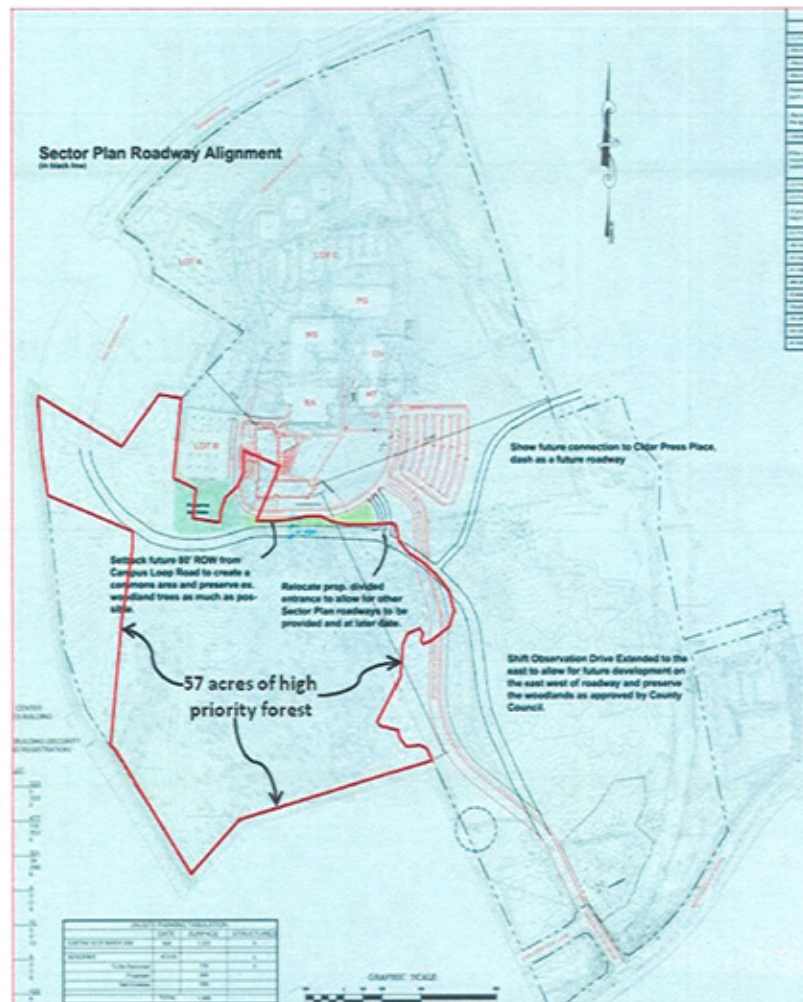


Figure 3: Proposed Observation Drive alignment

Third, additional high priority forest can be protected between future Golden Rod and a future daycare facility. This forest is in addition to the forest already shown on the submitted forest conservation plan. The applicant has indicated that there will not be a driveway in this location, so the forest retention area as proposed could be expanded and enlarged by 1.25 acres. This forested area would be bisected from the larger contiguous high priority forest but it is still within the original 57 acre forest that was identified as high priority.

These alternatives would provide an additional 3.2 to 4.4 acres of additional high-priority forest protection, though staff is only proposing the protection of an additional 2.88 acres of high-priority forest along I-270 in order to meet the minimum acreage required in the sector plan.

However, the Germantown Sector Plan calls for the preservation of not only 46 acres of high priority forest along I-270 but also *“other high priority forest within the site”*. The forest conservation plan shows the preservation of other high priority forest stands within the site. This includes the forests within the stream buffer along Gunner’s Branch.

The applicant has questioned the need to protect more forest than is necessary to avoid reforestation. Section 22A-12(b) indicates the need to protect forest to avoid reforestation but more importantly, County Council resolution 16-1126 discusses tree canopy coverage goals. Specifically, *“An analysis of the Sector Plan area shows that canopy coverage of at least 31 percent is achievable. Achieving this goal depends on retaining substantial areas of remaining existing forest, including most of the forest on the Lerner and Montgomery College properties.”* The Council recognized the importance of setting canopy goals and acknowledged that the goal for the sector plan area could be achieved on retaining most of the forest on the applicant’s property. The submitted forest conservation plan shows the retention of 70.4 acres of existing forest, or only 57 percent of the existing forest on the property.

Section 115 of the forest conservation regulation requires a long-term protection mechanism that restricts the uses for land retained as forest or planted in forest. The applicant’s plan does not include 8.46 acres of retained high-priority forest along I-270 within an easement. Staff recommends a condition of approval that will require all retained and planted forests, and all stream and environmental buffers be protected with a conservation easement so that the plan complies with Section 115 of the forest conservation regulation.

Review History

Protection of high priority forests is an important feature of the forest conservation law and regulation and is identified in sections 22A-12(b) of the County code and Section 107(a) of the regulation. The County Council recognized the need to protect high-priority forest along I-270 and included in the Sector Plan a requirement that the College preserve 46 acres of the high priority forest along I-270 as well as other high priority forest. The applicant has been aware of the need to protect high priority forest on the property, and Planning Department staff has been coordinating with Montgomery College concerning forest conservation issues since October 2007. The applicant was made aware of the need to preserve high priority forest specifically along I-270 since July 2008. This requirement was reiterated to the applicant in another staff email dated March 5, 2009.

First Forest Conservation Submission

The first forest conservation plan was submitted to the Planning Board on August 6, 2009. Staff found the application to be incomplete and rejected it on September 3, 2009. In addition to its being incomplete, the staff review generated 17 comments. The major comment was that the applicant’s plan did not preserve 46 acres of high priority forest along I-270. So, on November 6, 2009 staff sent a graphic to the applicant showing the outline and extent of the high priority forest along I-270 that must be preserved per the Sector Plan.

Second Forest Conservation Submission

On January 8, 2010, the applicant submitted a revised forest conservation plan to staff. Once again, staff found the application incomplete and rejected it on February 1, 2010. The submitted plan still did not show the preservation of 46 acres of high-priority forest along I-270, and not all of the initial 17 comments were addressed.

Third Forest Conservation Submission

On March 30, 2010, the applicant submitted another revised forest conservation plan. On April 8, 2010, Staff advised the applicant that the plan as submitted could not be approved, provided 12 comments on the plan and 6 suggestions on what would be needed to protect 46 acres of high-priority forest along I-270. Staff also noted in their comments that 5 comments provided on September 3, 2009 and February 1, 2010 were still not addressed.

April 14th Meeting with Applicant

On April 14th Planning staff meet with the applicant, and their engineer, to articulate ways to meet the Sector Plan requirement to protect 46 acres of high-priority forest along I-270. Staff provided the suggestions that were previously mentioned (tightening the limits of disturbance, using engineering techniques to minimize the clearing and grading, and realigning Observation Road to match the Sector Plan). The applicant rejected these suggestions and requested a hearing with the Planning Board.

A partial list of the communications with the applicant is provided in Attachment A.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's 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 Montgomery County Code. The law requires no impact to and the retention and protection to the greatest extent possible of all trees that measure 30 inches in diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to affect/impact six trees. There are 458 trees that are 24" diameter breast height (DBH) or greater within the existing forests and of these 458 trees 110 trees are 30" DBH and greater. The applicant has requested a variance to impact the following six trees:

1. White Oak (*Quercus alba*), 32" DBH, Tree #160
2. Chestnut Oak (*Quercus prinus*), 30.5" DBH, Tree #192
3. Tulip Poplar (*Liriodendron tulipifera*), 33.5" DBH, Tree #331
4. White Oak (*Quercus alba*), 33.5" DBH, Tree #333
5. Tulip Poplar (*Liriodendron tulipifera*), 30.5" DBH, Tree #337
6. Northern Red Oak (*Quercus rubra*), 33" DBH, Tree #338.

Even though only six trees are being removed, a total of 20 trees are being impacted by having adjacent forest removed within their critical root zones. The applicant has proffered to reforest an area of 1.42 acres of open area adjacent to their proposed alignment of Observation Boulevard on the east side of the main forest located along the I-270 corridor. Staff believes the proposed reforestation offsets the impacts to the balance of the 20 trees.

In accordance with Montgomery County Code, Section 22A-21(c) the staff referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on February 25, 2010. The County Arborist responded on to the variance request on March 11, 2010 by stating that their office had no recommendations.¹

In accordance with Section 22A-21(e), Environmental Planning staff recommends a finding by the Planning Board that the Applicant has met all criteria required to grant the variance.

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

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. Other applicants will require variances and some are already in the process of obtaining a recommendation from the County Arborist before their subdivision plan comes to the Planning Board. Variances will be necessary in some cases to realize master planned densities and in other cases to remove a potentially hazardous tree and still others to obtain other planning goals. Therefore, staff believes that granting this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is based on site layout and design for the BioScience educational building located within the main campus of Montgomery College, Germantown. The site layout and design necessitates the removal of six trees requiring a variance for the building, associated parking and extension of Observation Blvd. The College has worked to save the majority of the specimen trees by preserving a 46 acre area of high priority forest that contains many of the specimen trees.

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

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

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The applicant is offering to protect 26.55 acres of forest

¹ On March 19, 2010 Planning technical and legal staff met with the DEP County Arborist, her supervisor, the Director of Montgomery County DEP, the Maryland DNR Forest Conservation Administrator, and DNR legal staff to discuss DNR's interpretation of this new variance requirement. DEP staff, supported by DNR, suggested that the Planning Board should require mitigation for the disturbance or removal of trees and vegetation covered by the tree variance in addition to the requirements of the forest conservation plan. Even though the DEP County Arborist is recommending mitigation for tree removals and impacts to critical root zones of trees to remain the County Arborist continues to decline reviewing applications submitted prior to October 1, 2009, such as this application.

buffer adjacent to the headwaters and running along the length of the Gunner's Branch tributary to the Great Seneca Creek from Germantown Road (MD 118) to Middlebrook Road. In addition, the applicant will also preserve 46 acres of contiguous high quality forest on-site. Both of these areas contain several wetlands important to preserving and enhancing water quality for the Great Seneca Creek.

As a result of the above findings, staff recommends approval of the applicant's request for a variance from Forest Conservation Law to remove or otherwise impact specimen (and/or certain other specified) trees on-site. The specimen trees to be impacted are all within the existing forest and their removal is addressed by the removal of onsite forest in the forest conservation worksheet. The variance approval is assumed into the Planning Board's approval of the preliminary forest conservation plan.

SUMMARY

Although staff is proposing the applicant preserve only 2.88 acres of additional forest, staff estimates that the applicant can preserve anywhere from 3.2 to 4.4 acres of additional high-priority forest along I-270. With the conditions as set forth at the outset of this memo, the Environmental Planning staff recommends approval of the Preliminary forest conservation plan and approval of the forest conservation variance associated with the mandatory referral for the Montgomery College BioScience Education Center Building, MR2009734.

Attachment 1 _Timeline for Montgomery College BioScience Building MR2009734

DATE	ACTION
July 2008	Mr. Poteat of Montgomery College was notified of requirement to save high priority forest along I-270 as well as other high priority forest on-site by email from Mr. Steve Findley (MNCPPC).
December 19, 2008	New NRI/FSD of Montgomery College submitted for recertification.
January 8, 2009	Comments issued on NRI/FSD.
January 13, 2009	NRI/FSD resubmitted.
January 30, 2009	NRI/FSD recertified and approved.
February 11, 2009	Pre-Application meeting with Montgomery College. Karen Kumm made college aware that roadway alignment is different than the master plan submitted to the Planning Board and is in conflict with Germantown Master Plan along with preservation of high priority forest.
March 5, 2009	Sandra Filippi and John McClean notified by email from Karen Kumm (MNCPPC) that the proposed road alignment is in conflict with the requirement to save high priority forest.
March 30, 2009	Design charrette between MNCPPC and Montgomery College to generate alternatives to roadway alignments and to preserve 50 acres of high priority forest along I-270.
April 24, 2009	PHED Committee meeting to discuss alternatives to roadway alignment on Montgomery College to preserve 50 acres of high priority forest. Council Staff recommends West Alternative #2.
June 22, 2009	PHED Committee discusses 50 acre forest along I-270. College wanted 30 acres of protection. Council agrees to protect 46 acres of high priority forest along I-270.
August 8, 2009	Preliminary FCP (PFCP) submitted for review.
September 3, 2009	PFCP reviewed & comments sent back. Plan was incomplete and rejected.
September 22, 2009	Council approves Resolution 16-1126 adopting the Sector Plan
September 23, 2009	Montgomery College notified that an FCP Variance request will be required per MD State Law.
January 8, 2010	PFCP resubmitted for review.
February 1, 2010	PFCP reviewed & comments sent back. Plan was incomplete and rejected
February 25, 2010	FCP Variance request submitted to MNCPPC. FCP Variance request forwarded to County Arborist at DEP
March 11, 2010	County Arborist provides recommendation on FCP variance
March 30, 2010	PFCP resubmitted for review.
April 8, 2010	PFCP reviewed & comments sent back. A number of comments not addressed from the two previous reviews along with items that were changed from the last review thereby generating a set of new comments. A set of recommendations were included to assist Montgomery College to meet the 46 acre requirement.
April 14, 2009	Meeting with Montgomery College to discuss the PFCP and recommendations to meet the Germantown Master Plan requirements. College Facilities Manager requested hearing before the Planning Board.