



Forest Conservation Plan Amendment MR2009720 Montgomery College Germantown Campus

October 7, 2011

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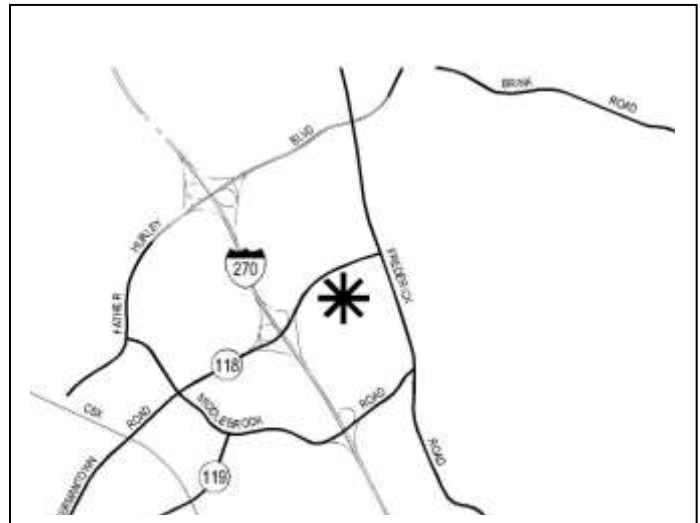


Description

***A. Forest Conservation Plan Amendment MR2009720: Montgomery College Germantown Campus for the East/West Extension of Observation Drive**

Revise the approved Forest Conservation Plan for the entire 224.13 acre Montgomery College Germantown Campus for the extension of Observation Drive, LSC Zone, Germantown Employment Area Sector Plan

Staff Recommendation: Approval



Summary

The forest conservation plan amendment is to revise the overall approved forest conservation plan to include final design and Limits of Disturbance for Observation Drive East-West (Goldenrod Lane).

This memorandum covers staff's review and recommendations on the forest conservation plan amendment.

The Board's actions on the forest conservation plan are regulatory and binding. The Planning Board must act on the forest conservation plan amendment before it can proceed to make recommendations on the mandatory referral for Observation Drive East-West (Goldenrod Lane).

RECOMMENDATIONS

APPROVAL of the forest conservation plan amendment MR2009720 Montgomery College Germantown Campus.

- a- Approval of the Variance for Trees #203 and #414 only.

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 include forests of varying age along with open fields.

The purpose of this forest conservation plan amendment is to revise the overall forest conservation plan for the 224-acre campus to include final design and Limits of Disturbance for Observation Drive East-West (Goldenrod Lane).



Figure 1: Vicinity Map

Environmental Guidelines

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

The Montgomery College Germantown Campus has a previously approved final forest conservation plan (FFCP) (MR2009720) which was associated with the master plan layout mandatory referral for the college. Both the preliminary plan (120110380) and the site plan (820110110) are in compliance with the previously approved forest conservation plan.

The application for Mandatory Referral MR2011308 includes a minor forest conservation plan amendment to FCP No. MR2009720 and a variance for the newly impacted 30" Diameter at Breast Height (DBH) trees. The FCP amendment was required because a portion of Observation Drive (east-west) was not shown on the original FCP; it was labeled as future roadway from the water tank to the connection with MD 118. The revised forest conservation plan now shows the Limits of Disturbance and final grading. Additionally, the revised FCP is in compliance with the Planning Board's previous ruling on retention of high priority forest on-site and retains the same easement areas as previous approved.

The submitted forest conservation plan meets all applicable requirements of the Chapter 22A of the County code (Forest Conservation Law) if a Variance, discussed below, is granted.

Forest Conservation Variance

Section 22A-12(b) (3) of the County Forest Conservation Law identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or any disturbance within the 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 County Forest Conservation Law. The law requires no impact to trees that measure 30 inches or greater, DBH; trees that are part of a historic site or designated with a historic structure; trees that are designated as a national, State, or County champion tree; trees that are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The applicant had submitted a variance request on June 13, 2011 for the impacts and/or removal of trees within and adjacent to the proposed limits of disturbance of the project (Attachment B). The applicant currently proposes to remove one tree that is 30 inches and greater, DBH, and to impact, but not remove, two others.

While the applicant has requested a Variance for three trees #203, #206, and #414, however, based upon the plans submitted to staff only trees #203 and #414 are subject to a Variance. Tree #206 and the CRZ are outside of the LOD and have no impacts shown, and therefore tree #206 is not subject to a Variance.

Tree #203 is a 32.5" DBH Chestnut Oak (*Quercus prinus*) is within the proposed LOD and also within area previously shown as forest clearing on approved FCP. The grading associated with the roadway will cause significant damage the CRZ and while the grading has been minimized it is not possible to safely retain the tree.

Tree #414 is a 37" DBH White Oak (*Quercus alba*) it is located well outside the LOD but has some minor impacts to the CRZ which could not be avoided due to forest save restrictions on the south side of the road, required roadway design, and associated grading.

Staff recommends the approval of the variance for trees #203 and #414 and requests tree #206 be removed from the variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a Variance to be granted.

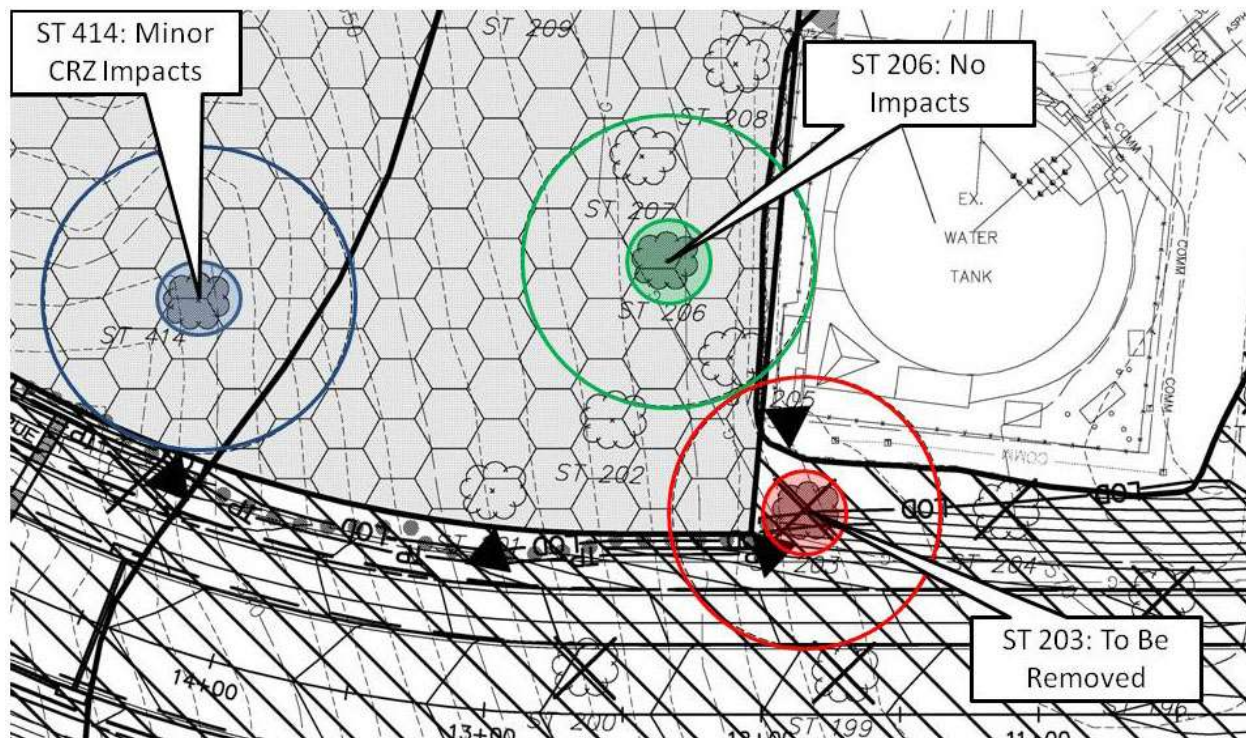


Figure 2: Variance Trees

Unwarranted Hardship Basis

The Germantown Master Plan calls first for the east-west extension of Observation Drive to connect with the north-south extension of Observation Drive and Goldenrod Lane; and second, the preservation of 46 acres of existing forest below the east-west roadway extension. The forest to be preserved contains wetlands, streams, and their buffers. It is also one of the last remaining large, contiguous tracts of forest in the upper portion of the Gunner's Branch watershed. The specimen tree that the applicant is seeking permission to remove is outside of forest conservation areas adjacent to the alignment of the east-west extension of Observation Drive. The unique requirements imposed on the College by the Germantown Master Plan and its use as a public college campus are special conditions peculiar to this site. Were the applicant to be denied the requested variance to disturb the critical root zone of tree #414 and the removal of tree #203, it would be unable to proceed with the necessary improvements to the campus and the County road network. As such, this would cause an unwarranted hardship to the College, as well as to the community that the roadway serves.

County Arborist's Recommendation

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on June 27, 2011. On July 5, 2011 the County Arborist issued a letter stating she was electing not to issue a recommendation on the Variance (Attachment C).

Variance Findings

The Planning Board must make findings that the applicant has met all requirements of Section 22A-21 of the County Code before granting the Variance. Staff has made the following determination on the required findings:

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

The use of this site for a public college campus is an established use, permitted in the R-60/I-3 zones, and operated in a manner consistent with that of the other public college campuses operated by Montgomery College. As such, this is not a special privilege to be conferred on the applicant.

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

As shown on the proposed plans, the grading for the site and the location of the storm water facilities seek to minimize the impacts to the existing forest specimen trees on the site. Impact/removal of specimen trees are the unavoidable result of the proposed development, not an inappropriate action taken by the applicant.

3. Is based on a condition relating to land or building use, either permitted or non-conforming on a neighboring property.

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

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

The proposed roadway construction has an approved Storm Water Management (SWM) Concept Plan, with final SWM Plans under-going review with MCDPS. The project will be developed in accordance with the latest state and local regulations for stormwater management designed to provide sufficient protection of the streams and not violate State water quality standards or cause measurable degradation in water quality

MITIGATION

Staff does not recommend that compensation be required beyond the requirements of the forest conservation plan for the proposed impacts to, or removal of, the two trees. Both of the affected trees are within the existing forest and as part of the forest conservation plan, the applicant is required to meet certain forest retention thresholds and compensate if these thresholds are not met. Staff believes specimen trees being removed or impacted from within existing forest are already accounted for through the forest conservation worksheet. Additionally, Staff believes such impacts are minimal, unavoidable, and due to necessary infrastructure improvements.

Attachments: Applicant's Variance Request, County Arborist's Recommendation



A. Morton Thomas and Associates, Inc.
Consulting Engineers



June 13, 2011

M-NCPPC Staff

Environmental Planning Division
Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Observation Drive East-West Extension
Plan No. **MR-2011307-1**
AMT File No. 108-202.009

Dear Sir or Madame:

On behalf of Montgomery College and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance to allow disturbance in the critical root zones and removal of the following specimen trees for the above-named construction project:

Tree #	Species	D.B.H (inches)	Tree Condition	Comments
203	<i>Quercus prinus</i>	32.5	Good	TO BE REMOVED
206	<i>Quercus prinus</i>	35	Good	TO REMAIN
414	<i>Quercus alba</i>	37	Good	TO REMAIN

Additional trees, adjacent to this project, were requested (letters dated 2010-02-16 and 2010-05-10) and approved for removal and disturbance of critical root zones in association with plan number MR2009720. This project is new construction on the Germantown Campus of Montgomery College and will involve the east-west extension of Observation Drive (previously known as Goldenrod Lane Extension) and associated stormwater management facilities.

These trees have been evaluated by two certified arborists who work for **AMT**¹. The east-west extension of Observation Drive will require disturbance in the critical root zone of tree 414. Root pruning will be performed and tree protection fencing installed to protect the remaining area of critical root zone for tree 414. Though the critical root zone of tree 206 is outside of the limit of disturbance, and no critical root zone disturbance is planned for this tree, due to the proximity of adjacent site work, we wish to take a conservative approach at this time and request permission to disturb the critical root zone of this tree.

In addition, the east-west extension of Observation Drive will require the removal of tree 203. Tree 203 is outside of the limit of disturbance, however, remedial arboriculture practices would not be practicable or sufficient to prevent the tree from experiencing intolerable levels of stress

¹Gregory Osband, ISA #MA4950A and Andrew Streagle, ISA #MA4826-A

due to adjacent earthwork associated with the east-west extension of Observation Drive, which would lead to its immediate decline and ultimate death. In its current location, the tree would constitute a serious hazard to the health, safety and general welfare of the college population and to the community members who would enter the area.

Section 22A-21(b) *Application requirements* states that the applicant must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

Pursuant to “(1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship* and “(2) *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas*” the attached “Exhibit 1” and “Exhibit 2” show the project site and its surroundings, which is further described as follows:

The site for the roadway extension is located in the central area of the campus south of the existing water tower and new Bioscience Building site. The roadway extension will connect to the new north-south extension of Observation Drive from Middlebrook Road, to the existing southern end of Goldenrod Lane.

The Germantown Master Plan calls first for the east-west extension of Observation Drive to connect with the north-south extension of Observation Drive and Goldenrod Lane; and second, the preservation of 46 acres of existing forest below the east-west roadway extension. The forest to be preserved contains wetlands, streams, and their buffers. It is also one of the last remaining large, contiguous tracts of forest in the upper portion of the Gunner's Branch watershed. The specimen tree that the applicant is seeking permission to remove is outside of forest conservation areas adjacent to the alignment of the east-west extension of Observation Drive.

The unique requirements imposed on the College by the Germantown Master Plan and its use as a public college campus (a permitted use in the R-60/I-3 zones) are **special conditions peculiar** to this site. Were the applicant to be denied the requested variance to disturb the critical root zone of trees 206 and 414 and remove tree 203, it would be unable to proceed with the necessary improvements to the campus and the County road network. As such, this would cause an **unwarranted hardship** to the College, as well as to the community that the roadway serves.

As previously stated, the public college campus is a permitted use in the R-60/I-3 zones, and has occupied this site and served the surrounding community in this capacity for many years. It

is an established, integral element of the area, providing necessary and suitable benefits and services to the residents. Enforcement of a prohibition on disturbing the critical root zones of trees 206 and 414, and removal of tree 203, would **deprive the College and the public of rights commonly enjoyed by others** who are served by similar college campuses and roadways in commercial/residential areas that have many of the same features as the subject property.

Pursuant to "(3) *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance*" the specimen trees are not located near any perennial, intermittent or ephemeral streams, nor are they part of any environmental buffer, and the surrounding green space that is to remain will continue to provide water quality and quantity benefits comparable to existing conditions. Furthermore, the College will be planting additional trees along the roadway as part of this construction project. These young, vigorously growing trees will replace and provide supplemental environmental benefits in comparison to the specimen trees. For the above reasons, the disturbance of the critical root zone of these specimen trees **would not violate the aforementioned standards, nor would it result in a measurable degradation in water quality.**

Pursuant to "(4) *Provide any other information appropriate to support the request*" the proposed site layout is consistent with the Germantown Master Plan, including the roadway extension and preservation of existing forest.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which states that a variance must not be granted if granting the request:

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

Pursuant to "(1) *Will confer on the applicant a special privilege that would be denied to other applicants*, the use of this site for a public college campus is an established use, permitted in the R-60/I-3 zones, and operated in a manner consistent with that of the other public college campuses operated by Montgomery College. As such, this is not a **special privilege** to be conferred on the applicant.

Pursuant to "(2) *Is based on conditions or circumstances which are the result of the actions by the applicant* and "(3) *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property*, the applicant has taken no **actions leading to the**

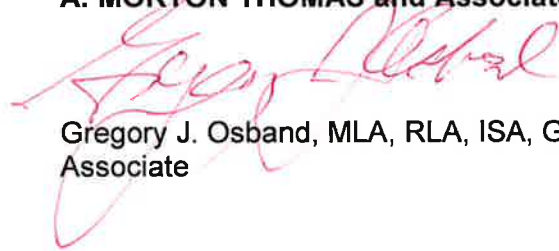
conditions or circumstances that are the subject of this variance request. Furthermore, the **surrounding land uses** (commercial buildings and residences) do not have any **inherent characteristics that have created** this particular need for a variance.

Finally, pursuant to "(4) *Will violate State water quality standards or cause measurable degradation in water quality*", the applicant cites the reasoning previously provided in response to requirement 22A-21(b)(3), and restates its belief that granting this variance request **will not violate State water quality standards or cause measurable degradation in water quality**.

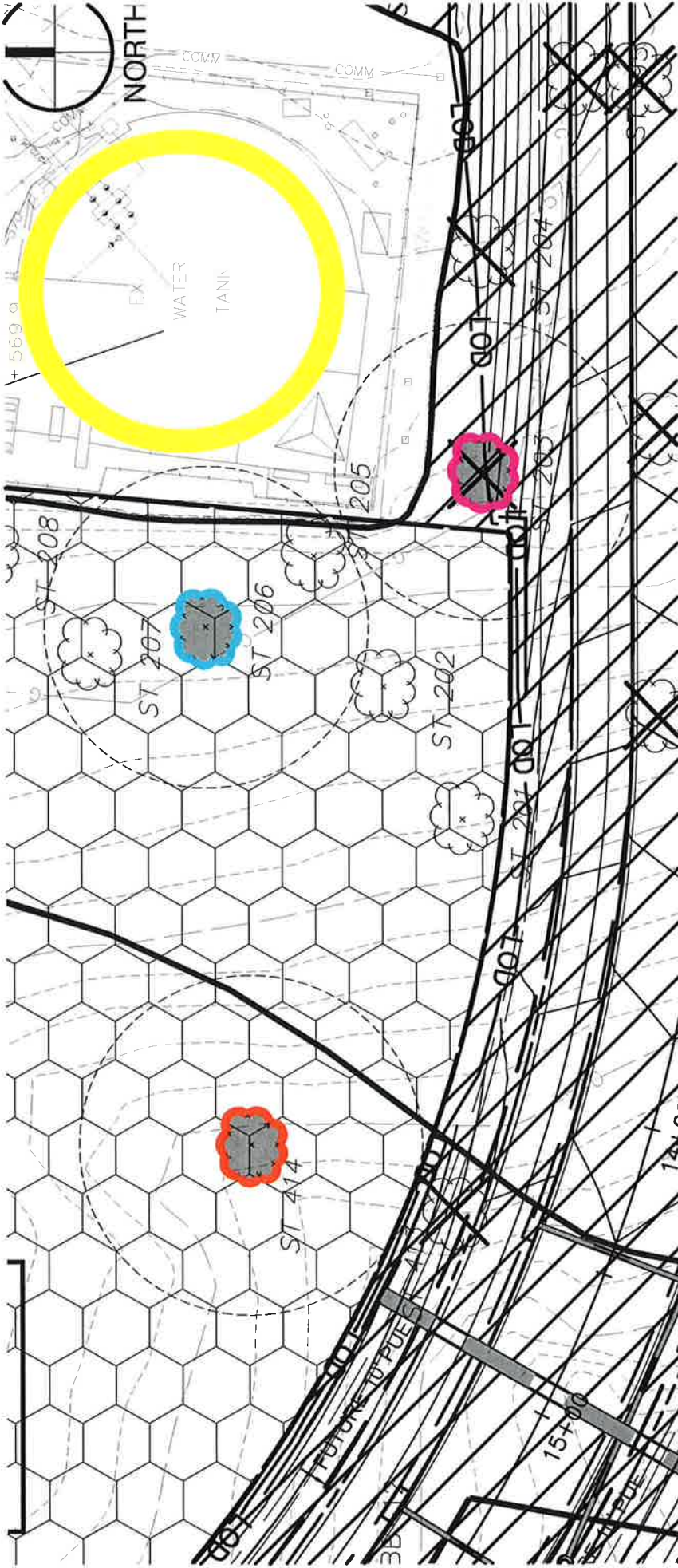
For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to disturb the critical root zones of specimen trees 206 and 414, and remove specimen tree 203, in order to allow construction of this project.

Sincerely,











A. MORTON THOMAS and Associates, Inc.



Gregory J. Osband, MLA, RLA, ISA, GRP
Associate



LEGEND

-  SPECIMEN TREE
 -  SIGNIFICANT TREE
 -  SIGNIFICANT/SPECIMEN TREE TO BE REMOVED
 -  SPECIMEN TREE WITH CRZ IMPACT
 -  SPECIMEN TREE WITH CRZ IN CLOSE PROXIMITY TO PROPOSED WORK
 -  FOREST TO BE RETAINED - FOREST CONSERVATION AREA
 -  FOREST TO BE CLEARED
 -  LOD
 -  CRZ (CRITICAL ROOT ZONE)
 -  EXISTING BUILDING/STRUCTURE
- GRAPHIC SCALE
 (IN FEET)
 1 INCH = 100 FT.
- 100 0 50 100 200

**EXHIBIT 1
 FOREST CONSERVATION VARIANCE REQUEST**



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

July 5, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Montgomery College – Observation Dr, MR 2011308, NRI/FSD recertification applied for on 12/19/2008

Dear Ms. Carrier:

Based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC), the application for the above referenced request is required to comply with Chapter 22A of the Montgomery County Code. As stated in a letter to Royce Hanson from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the specific provisions pertaining to significant trees in the State's Forest Conservation Act do not apply to any application that was submitted before October 1, 2009. Since this application was submitted before this date, I will not provide a recommendation pertaining to the approval of this request for a variance.

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

Sincerely,

Laura Miller
County Arborist

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