





## Connecticut Avenue Culvert Replacement, Amended Forest Conservation Plan, 11993048A

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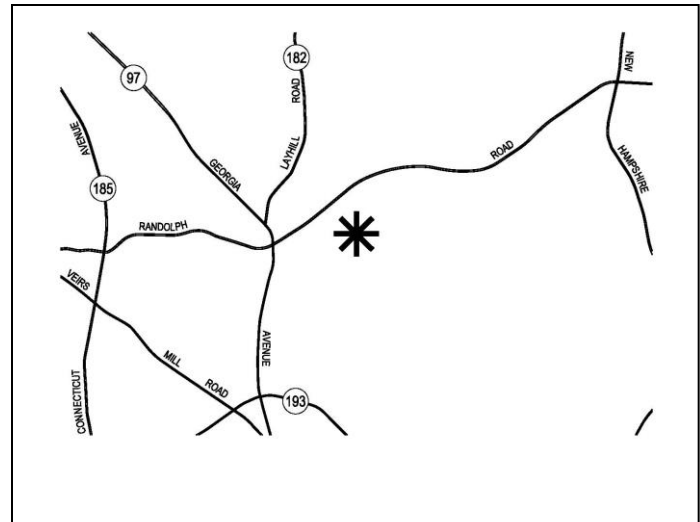
-  Amy Lindsey, Planner Coordinator, Area 2 Division, [amy.lindsey@montgomeryplanning.org](mailto:amy.lindsey@montgomeryplanning.org), 301.495.2189
-  Khalid Afzal, Supervisor, Area 2 Division, [khalid.afzal@montgomeryplanning.org](mailto:khalid.afzal@montgomeryplanning.org), 301.495.4650
-  Glenn Kreger, Chief, Area 2 Division, [glenn.kreger@montgomeryplanning.org](mailto:glenn.kreger@montgomeryplanning.org), 301.495.4653

Completed: 9/1/16

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### Description

- Request to Amend Final Forest Conservation Plan to allow disturbance within a Category I Conservation Easement for the replacement of the existing culvert under Connecticut Avenue;
- 13801 Georgia Avenue, Silver Spring, Maryland 20906;
- 127.47 acres, RE-2 Zone;
- *1994 Aspen Hill Master Plan*;
- Applicant: Montgomery County Department of Transportation;
- Filing date: 6/21/2016.



### Summary

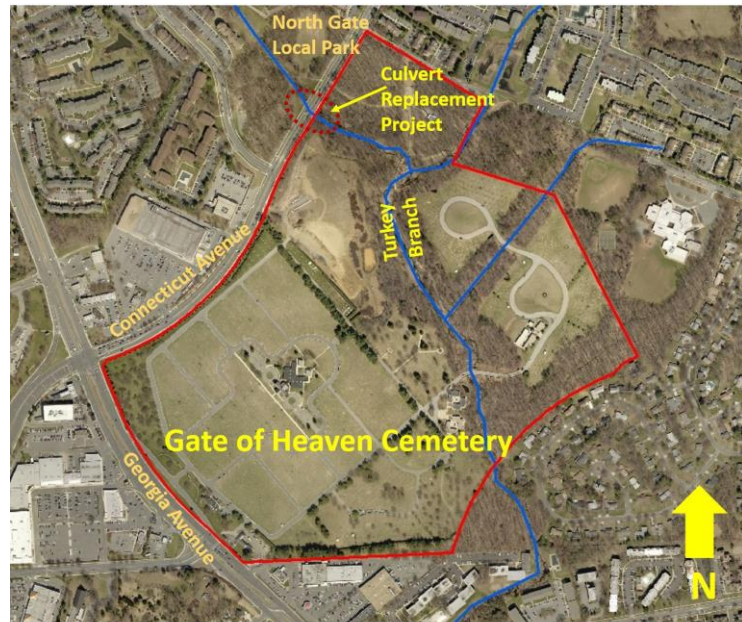
- Staff recommends approval with conditions.
- Pursuant to Chapter 22A of the County Code, the Board's actions on Forest Conservation Plans are regulatory and binding.

## Conditions

1. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.

## OVERVIEW

The Montgomery County Department of Transportation (DOT) proposes to replace an undersized culvert carrying a tributary of the Turkey Branch of Rock Creek under Connecticut Avenue. The culvert replacement will require temporary construction impacts on the east and west side of Connecticut Avenue. The disturbance on the east side of Connecticut Avenue occurs on the Gate of Heaven cemetery property, within a Category I Conservation Easement. Planning Board approval is required for any disturbance within a conservation easement and the proposed amendment covers the disturbance on the Gate of Heaven property only. The remainder of the disturbance associated with the culvert replacement will be handled through the sediment control process.



## ANALYSIS

### Forest Conservation

This Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The Planning Board approved a Preliminary Plan (Attachment 1) on December 2, 1993, showing an overall plan with conservation easements. Staff approved a Final Forest Conservation Plan (FFCP) (Attachment 2) that included limits of disturbance and construction details. The submitted FFCP amendment (Attachment 3) includes temporary disturbance on the Gate of Heaven property only. The culvert replacement disturbance will occur within a Category I Conservation Easement protecting stream valley buffer and existing forest. It will require the clearing of 0.03 acres of forest, which will be replanted.

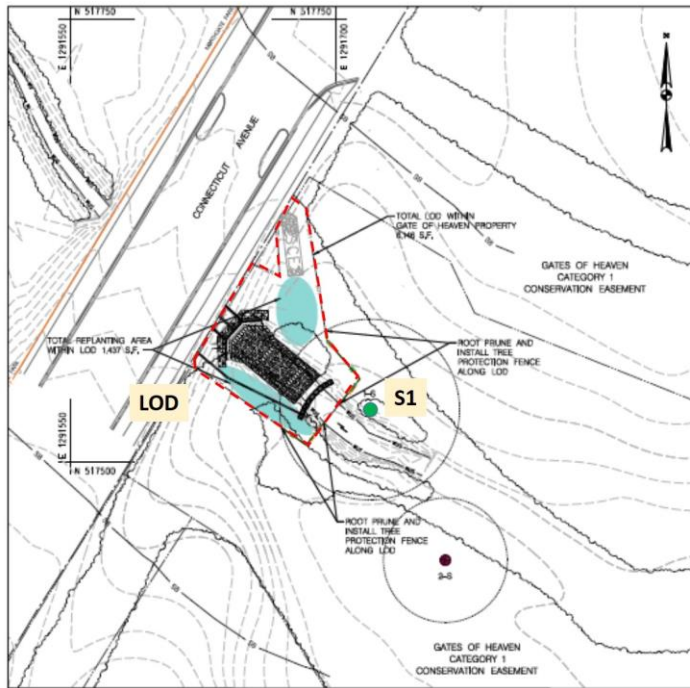
### Forest Conservation Variance

Section 22A-12(b) (3) of the County Code provides criteria that identify certain individual trees as high priority for retention and protection. The law requires a variance for any impact, including removal or disturbance within the tree's critical root zone (CRZ), to trees that are: 30 inches or greater Diameter at Breast Height (DBH); part of a historic site or designated with a historic structure; designated as national, State, or County champion trees; at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs and plants that are designated as Federal or State rare, threatened, or endangered species. 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 Applicant submitted a variance request for impacts to one high priority tree on June 21, 2016 that is considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law (Attachment 4). Tree S1 is a 34" diameter at breast height (DBH) green ash, which will be impacted, but retained.

**Unwarranted Hardship for Variance Tree Impacts** - Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. In this case, the unwarranted hardship is caused by the need to work within and directly adjacent to the stream channel in order to replace the culvert.

**Variance Tree Location**



**Variance Tree Table**  
**Impacts**

ID	Species	Size	Condition
S1	Green ash	34"	Good

**Variance Findings** - Based on the review of the variance request and the proposed Amended Forest Conservation Plan, staff makes the following findings:

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

The disturbance to the specified tree is a result of the need to remove the existing culvert and replace it with a new one. Granting this variance request is not a special privilege that would be denied to other applicants.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The disturbance of the specified tree is unavoidable due to the location of the tree directly adjacent to the stream channel.

3. *The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the culvert replacement, and not a result of land or building use on a neighboring property.

4. *Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed project should improve water quality by replacing an undersized culvert with a modern double box culvert.

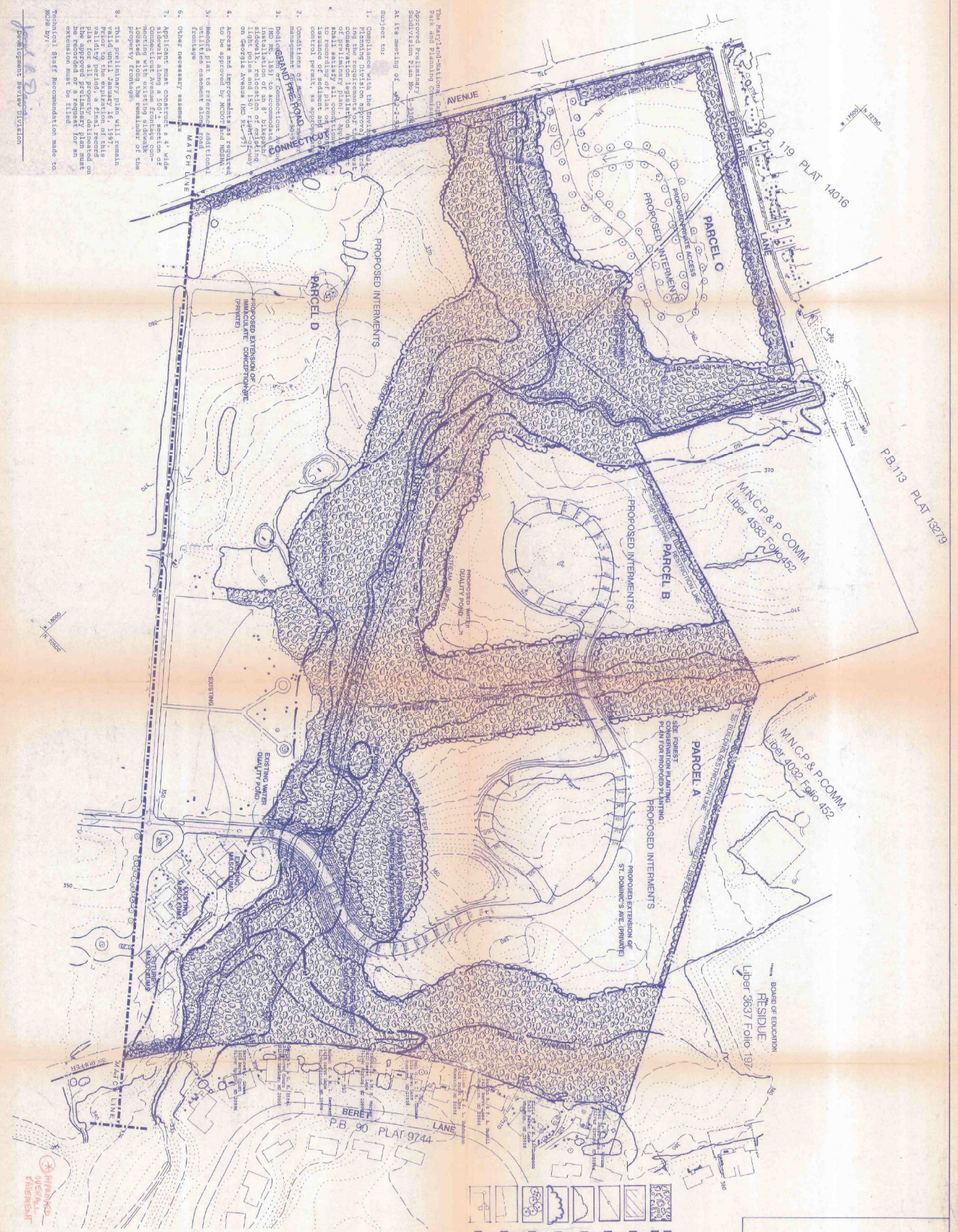
**County Arborist's Recommendation on the Variance** - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. A letter from the County Arborist (Attachment 5) has been received, recommending approval.

**Variance Recommendation** – Staff recommends the variance be granted.

**ATTACHMENTS:**

1. Preliminary Plan 119930480
2. Final Forest Conservation Plan 119930480
3. Proposed Amended Final Forest Conservation Plan
4. Variance Request
5. County Arborist letter

# ATTACHMENT 1



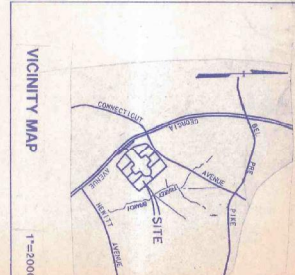
The Maryland-National Capital Park and Planning Commission has approved Preliminary Conservation Plan No. 2014-0001 at its meeting of 08-23-2014. Subject to:

1. Compliance with the provisions of the Planning Division regarding conservation easements, including the requirement that all interments be recorded in the Maryland State Land Title Records.
2. Conditions of approval as stated in the Conservation Plan.
3. Final design and construction of the interments to be consistent with the approved Preliminary Conservation Plan No. 2014-0001.
4. Access and improvements as required to be approved by MDCR and MDP.
5. Record plat to reflect additional interments.
6. Other necessary easements.
7. Applicant must construct a 4' wide Connecticut Avenue frontage easement with existing sidewalk and utility easement as shown on the attached site plan.
8. This preliminary plan will remain valid until January 16, 1997. After that date, this plan will be invalid unless a final record on the approved preliminary plan has been recorded or a request for an extension of time has been received.

Professional Staff Recommendation made to MDCR by: *[Signature]*  
 Development Review Division

**LEGEND**

- FOREST CONSERVATION EASEMENT
- EXISTING SEPTIC FIELD
- EXISTING SEWER
- EXISTING TREE LINE
- LIMIT OF CLEARING
- PROPOSED PLANTING
- EXISTING WATER
- EXISTING STORM DRAIN



PROPOSED DEVELOPMENT PROGRAM

Year	Development Parcel	Acres
Spring 1984	A/B	15.5
1986	D	5.8
2000	C	10.9
2014	E	2.5

**GATE OF HEAVEN**  
**PRELIMINARY PLAN**

MANZONI COUNTY, MD 13TH ELECTION DISTRICT

DAVE MCGRAW INC.  
 LANDSCAPE ARCHITECTS  
 1500 EAST PENNSYLVANIA AVENUE  
 WASHINGTON, DC 20002  
 TEL: 202-331-1000

Scale: 1" = 100'

JOB ORDER NO. 90093168

ISSUE DATE

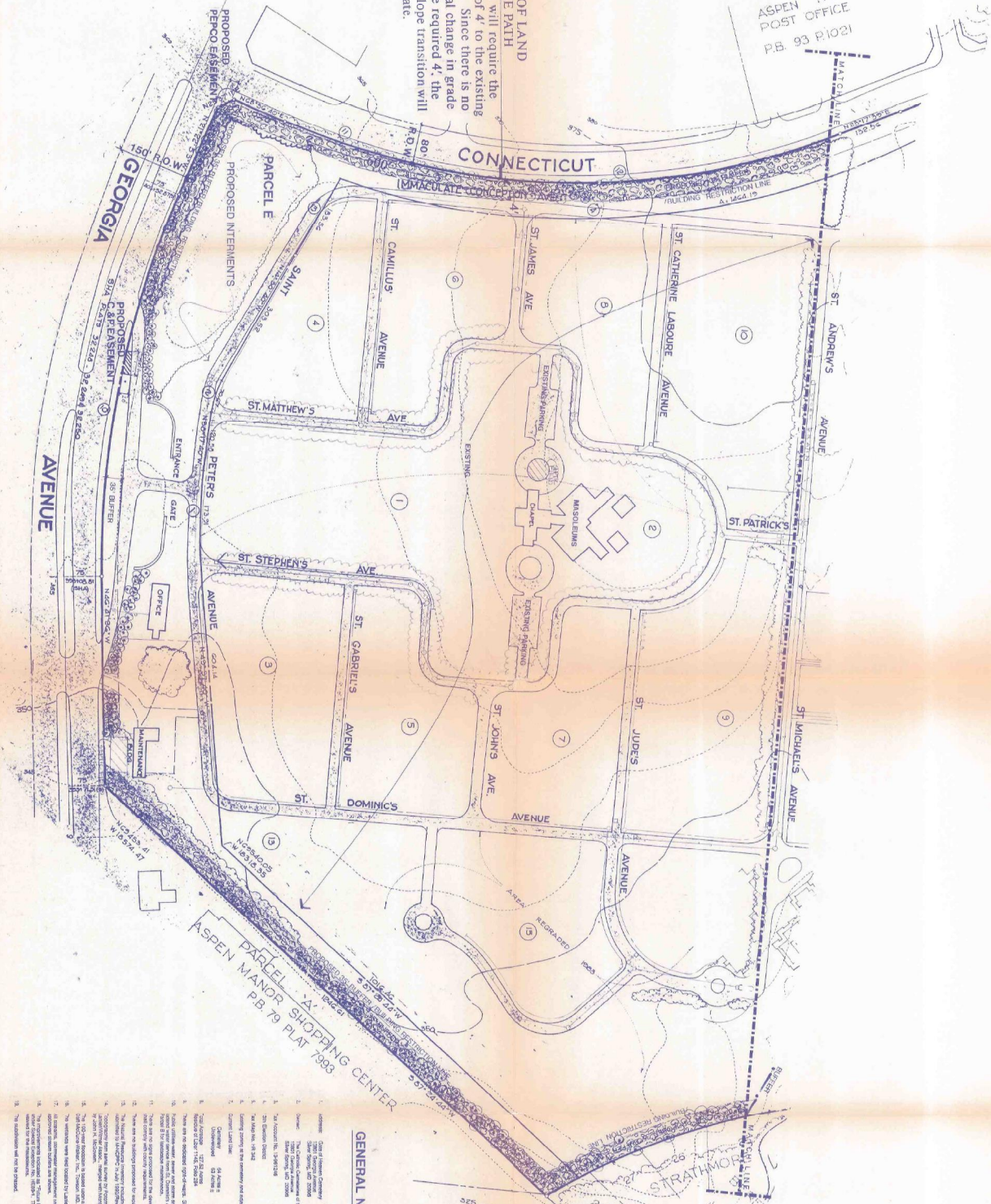
REVISION 15, 18, 20, 23

SHEET 1 OF 2

GRAND PRE ROAD

PARCEL A  
ASPEN HILL  
POST OFFICE  
P.B. 93 P1021

GRANT OF LAND  
FOR BIKE PATH  
Bike path will require the  
addition of 4' to the existing  
sidewalk. Since there is no  
substantial change in grade  
within the required 4', the  
existing slope transition will  
be adequate.



- GENERAL NOTES**
1. All work shall be in accordance with the specifications of the American Institute of Steel Construction, Inc., 1989 Edition.
  2. All work shall be in accordance with the specifications of the American Institute of Steel Construction, Inc., 1989 Edition.
  3. All work shall be in accordance with the specifications of the American Institute of Steel Construction, Inc., 1989 Edition.
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PROPOSED USE OF CEMETERY AREA

Area	51,512
Current Special Exception Use	50,525*
Proposed Special Exception Use	5,800
Total Area	127,200

\* Based upon approval of the Special Exception.

**DAVE MACHIE WAALKER INC.**  
LANDSCAPE ARCHITECTS  
1000 W. 10TH STREET  
DENVER, CO 80202  
TEL: 303.733.1111

**GATE OF HEAVEN**  
PRELIMINARY PLAN  
MONROE COUNTY, MD 13TH ELECTRIC DISTRICT

SCALE: 1" = 100'

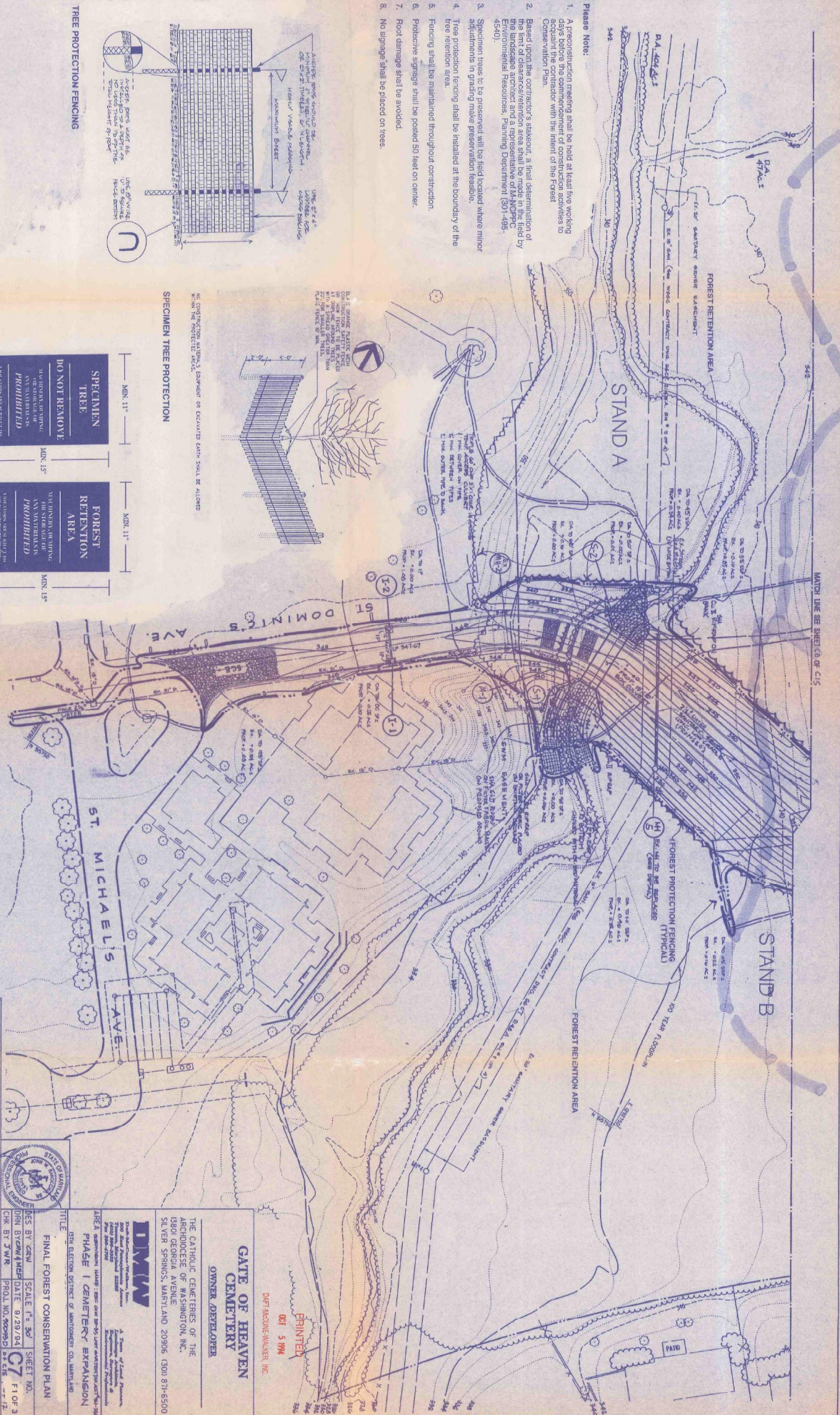
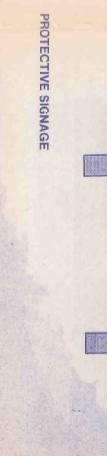
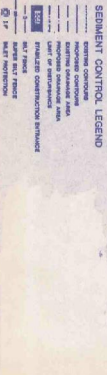
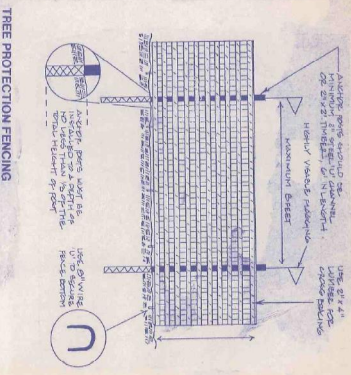
JDE OBER M.D.  
90095.5B

DATE: JUNE 15, 1993  
REVISED: 11/30/93

SHEET 2 OF 2

# ATTACHMENT 2

- Please Note:
1. A preconstruction meeting shall be held at least five working days prior to the start of construction activities to coordinate the contractor with the staff of the Conservation Plan.
  2. Based upon the contractor's statement, a final determination of the limit of cleared/retention area shall be made in the field by the landscape architect and a representative of MDC/DCP (807-485-4540).
  3. Specimen trees to be preserved will be field located where minor adjustments in grading may be necessary.
  4. Tree protection fencing shall be installed at the boundary of the tree retention area.
  5. Fencing shall be maintained throughout construction.
  6. Protective signage shall be posted 50 feet on either side.
  7. Flood damage shall be avoided.
  8. No signage shall be placed on trees.



**APPROVED**

THE DISTRICT OF COLUMBIA  
 DEPARTMENT OF THE ENVIRONMENT  
 ENVIRONMENTAL PLANNING DIVISION

File No. 1-2388  
 DATE 1/14/04  
 SIGNATURE [Signature]

**MONTGOMERY CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION APPROVED FOR:**

Government Management: [Signature] Date: [ ]  
 Submittal Control Technical: [Signature] Date: [ ]  
 Administrative Representative: [Signature] Date: [ ]

**FINAL FOREST CONSERVATION PLAN**

DESIGN BY: CMW SCALE: 1" = 30'  
 DRAWN BY: JWR DATE: 9/29/04 SHEET NO. C7 OF 3  
 PROJ. NO. 02002001

**THE CATHOLIC CEMETERIES OF THE ARCHDIOCESE OF WASHINGTON, INC.**  
 SILVER SPRING, MARYLAND 20906 (301) 831-6500

**OWNER/DEVELOPER**

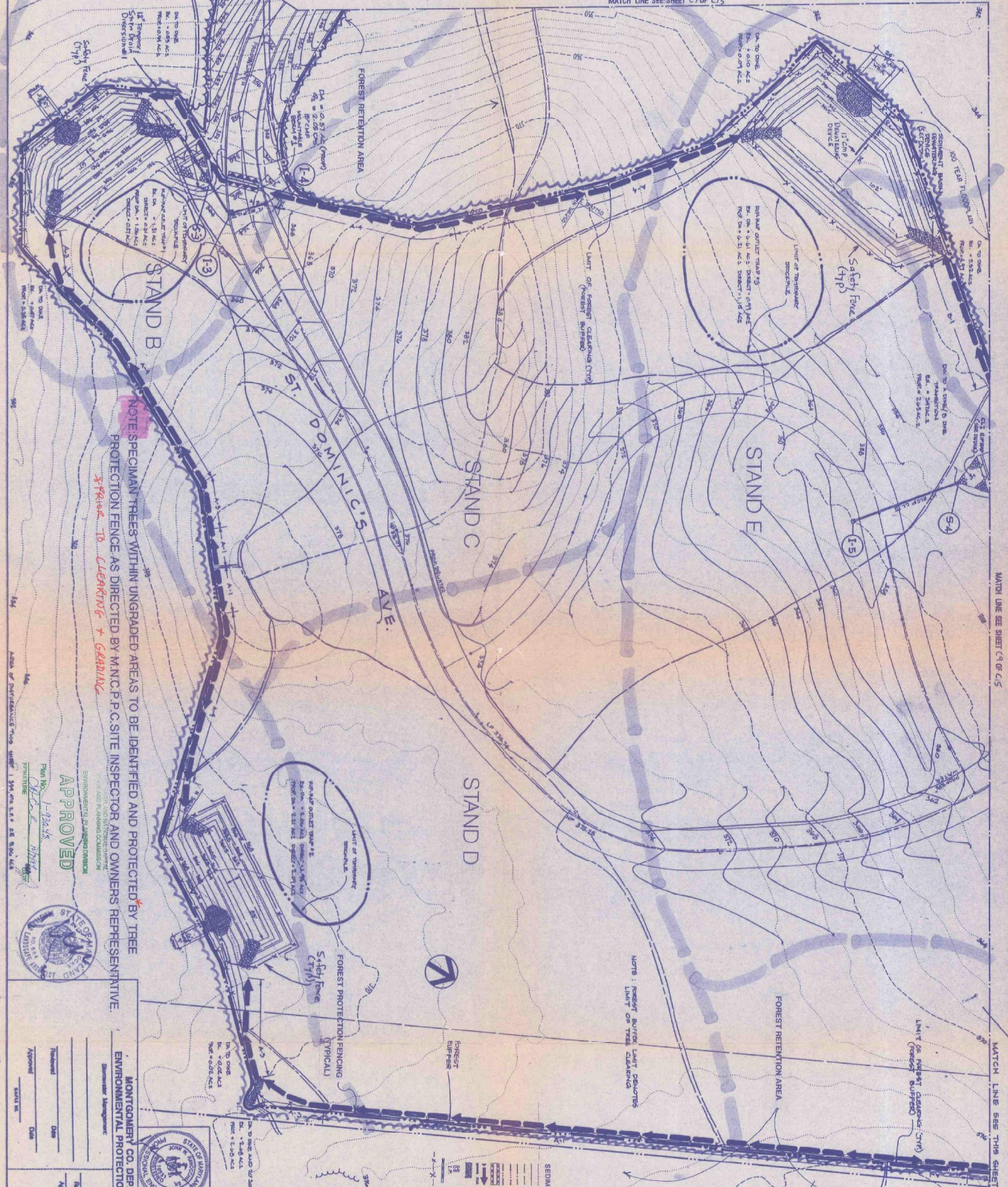
**CMW**  
 2000 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20036  
 (202) 462-2000

**GATE OF HEAVEN CEMETERY**

DEFINITIONS: [ ]  
 01 5 PM  
 PRINTED

**PHASE I CEMETERY EXPANSION**

DISTRICT OF COLUMBIA  
 DEPARTMENT OF THE ENVIRONMENT



NOTE: SPECIMAN TREES WITHIN UNGRADED AREAS TO BE IDENTIFIED AND PROTECTED BY TREE PROTECTION FENCE AS DIRECTED BY M.N.C.P.C. SITE INSPECTOR AND OWNERS REPRESENTATIVE.

ST. DOMINIC'S AVE.

APPROVED  
 DATE: 1-22-25  
 SIGNATURE: [Signature]



**MONTGOMERY CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
 Approved: [Signature]  
 Date: [Date]

**MONTGOMERY CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
 Approved: [Signature]  
 Date: [Date]



DES BY: [Name]  
 SCALE: 1" = 20'  
 SHEET NO.: C8  
 OF 3

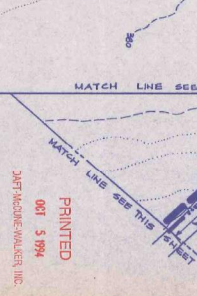
**FINAL FOREST CONSERVATION PLAN**

**GATE OF HEAVEN CEMETERY**  
 OWNER/DEVELOPER:  
 THE CATHOLIC CEMETERIES OF THE ARCHDIOCESE OF WASHINGTON, INC.  
 1800 GEORGIA AVENUE  
 SILVER SPRING, MARYLAND 20906 (301) 874-6500

**SEDMIMENT CONTROL LESBNO**

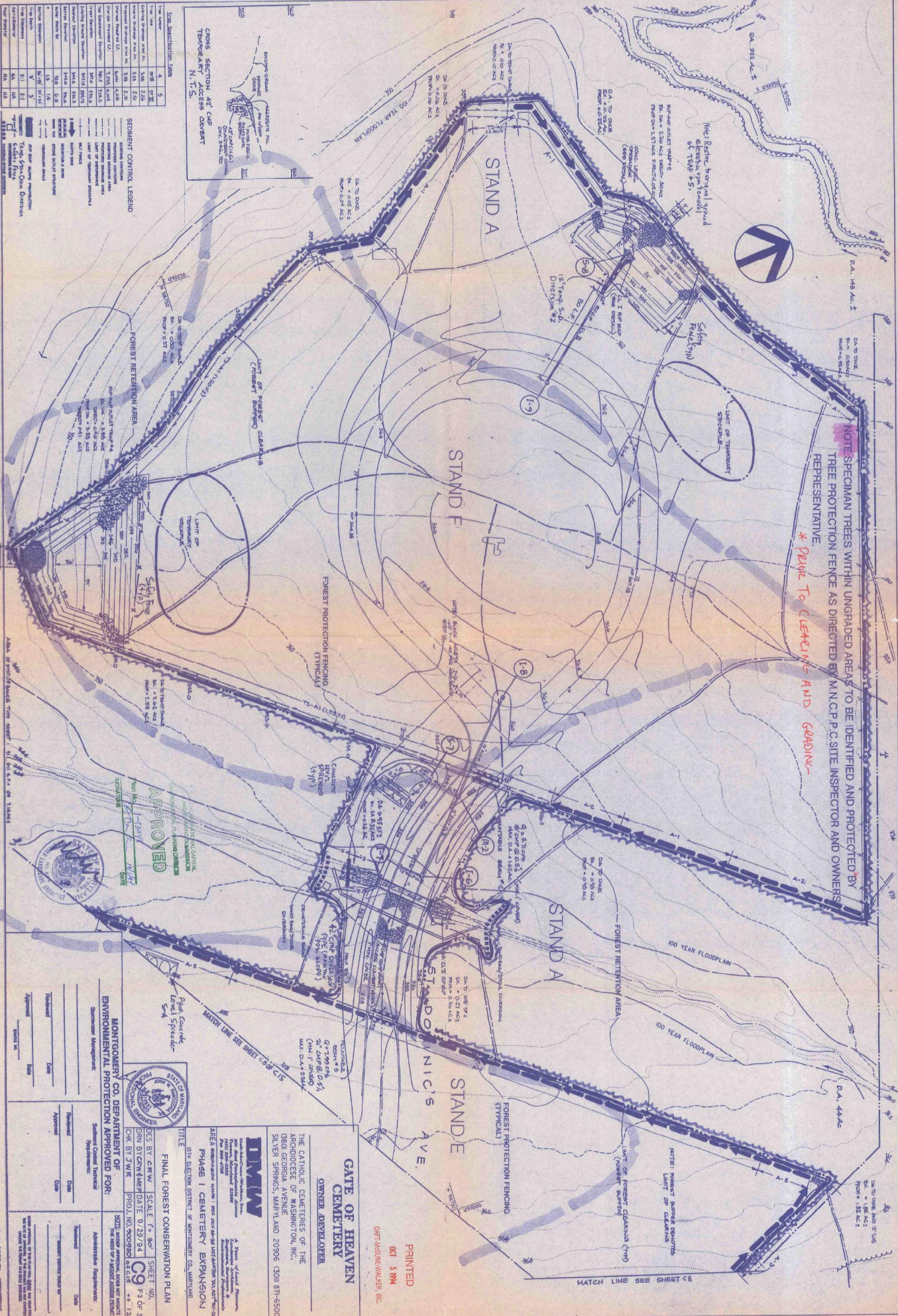
NO. OF LESBNO: [Value]  
 TOTAL AREA: [Value]

Type	1	2	3
Area	1,100	2,200	3,300
Volume	1,100	2,200	3,300
Cost	\$1,100	\$2,200	\$3,300
Notes			



**PRINTED 061 5 1994**  
 JMF/PhD/MS/W/MS/MS, INC.





NOTE SPECIMAN TREES WITHIN UNGRADED AREAS TO BE IDENTIFIED AND PROTECTED BY TREE PROTECTION FENCE AS DIRECTED BY M.N.C.P.C. SITE INSPECTOR AND OWNERS REPRESENTATIVE.  
 \* Drive To Clearing And Grading

**Tree Specification Table**

Tree Number	Tree Species	Tree Size
1	Red Oak	12" DBH
2	White Oak	12" DBH
3	Black Oak	12" DBH
4	Pin Oak	12" DBH
5	Short Leaf Pine	12" DBH
6	Long Leaf Pine	12" DBH
7	Live Oak	12" DBH
8	Water Oak	12" DBH
9	Swamp White Oak	12" DBH
10	Slender Red Oak	12" DBH
11	Scarlet Oak	12" DBH
12	Black Oak	12" DBH
13	White Oak	12" DBH
14	Red Oak	12" DBH
15	Black Oak	12" DBH
16	White Oak	12" DBH
17	Red Oak	12" DBH
18	Black Oak	12" DBH
19	White Oak	12" DBH
20	Red Oak	12" DBH
21	Black Oak	12" DBH
22	White Oak	12" DBH
23	Red Oak	12" DBH
24	Black Oak	12" DBH
25	White Oak	12" DBH
26	Red Oak	12" DBH
27	Black Oak	12" DBH
28	White Oak	12" DBH
29	Red Oak	12" DBH
30	Black Oak	12" DBH

**SEMI-ANNUAL CONTROL LEGEND**

- 1. 1" = 100' (Scale)
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- 27. 1" = 100' (Scale)
- 28. 1" = 100' (Scale)
- 29. 1" = 100' (Scale)
- 30. 1" = 100' (Scale)

**APPROVED**

STATE OF MONTGOMERY  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 MONTGOMERY COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION APPROVED FOR:

**OWNER DEVELOPER**  
 THE CATHOLIC CEMETERIES OF THE ARCHDIOCESE OF WASHINGTON, INC.  
 1801 GEORGIA AVENUE  
 SILVER SPRING, MARYLAND 20906 (301) 871-6500

**DMW**  
 Design, Monitoring & Construction Services, Inc.  
 10000 Rockville Pike, Suite 1000  
 Rockville, MD 20850  
 (301) 761-1000

**DESIGNED BY:** CRW  
**SCALE:** 1" = 50'  
**DATE:** 01/29/94  
**PROJECT NO.:** 20000990  
**SHEET NO.:** C9  
**PHASE:** I CEMETERY EXPANSION  
**TITLE:** FINAL FOREST CONSERVATION PLAN

**APPROVED:**  
 STATE OF MONTGOMERY  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 MONTGOMERY COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION APPROVED FOR:

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 Rockville, MD 20850  
 (301) 761-1000

PRINTED  
 01/29/94  
 DPM/MSM/WJS/ML

# ATTACHMENT 3



LOCATION OF PLAN AMENDMENT

**SHEET INDEX**

Filename	Title	Sheet Number
10-FCP-11993048A-001	Cover Sheet	1
10-FCP-11993048A-002	Final Forest Conservation Plan Amendment	2
10-FCP-11993048A-003	Final Forest Conservation Plan Amendment	3

THE WILSON T. BALLARD CO.  
CONSULTING ENGINEERS  
600 WEST MAIN STREET  
MIDDLETOWN, CT 06450

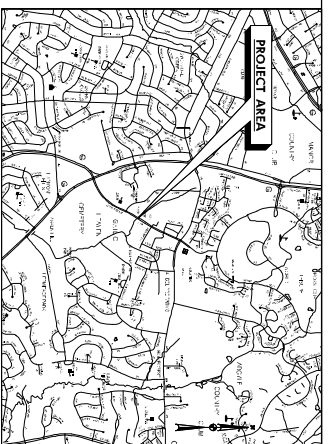
NO.	REVISION	DATE	BY

CONNECTICUT AVENUE  
CULVERT REPLACEMENT  
FINAL FOREST CONSERVATION PLAN  
AMENDMENT  
COVER SHEET AND SHEET INDEX  
DATE: JUNE, 2016

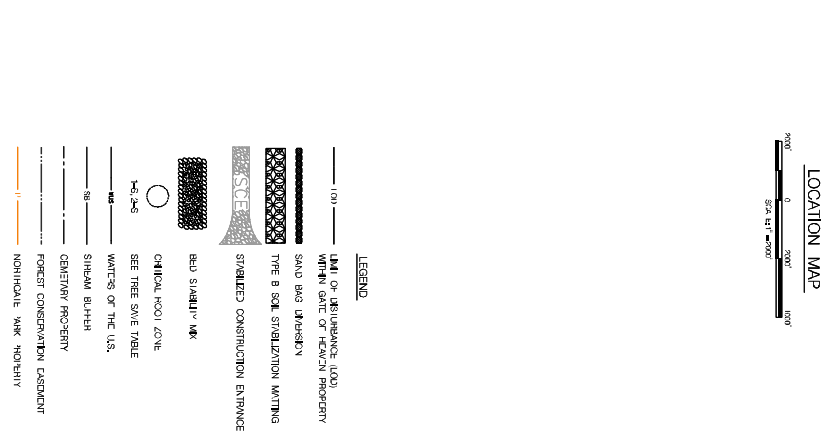
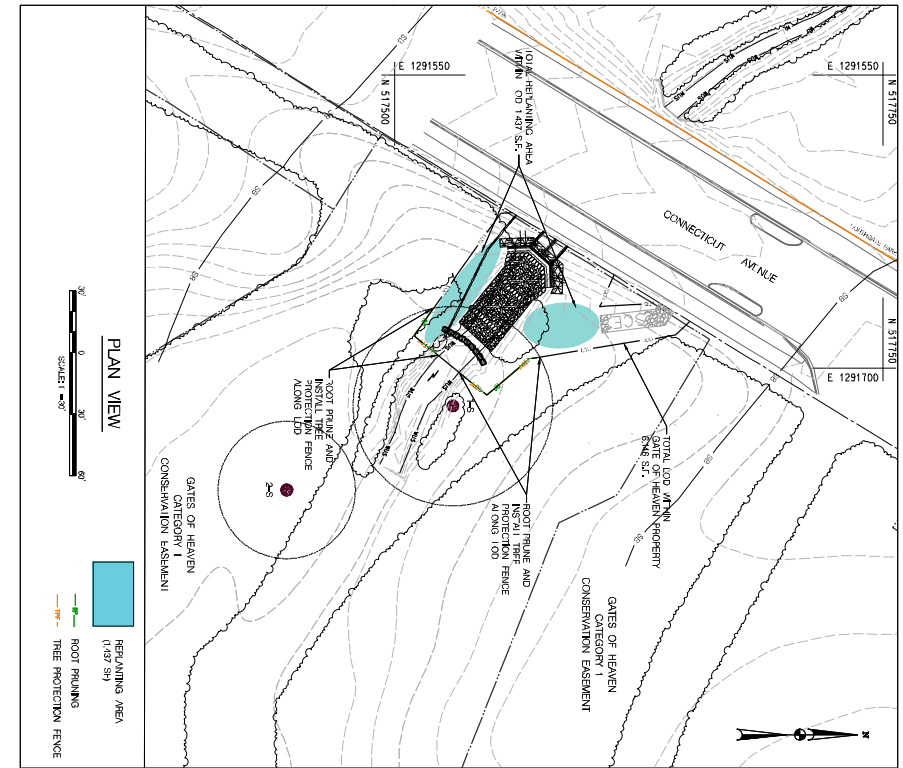
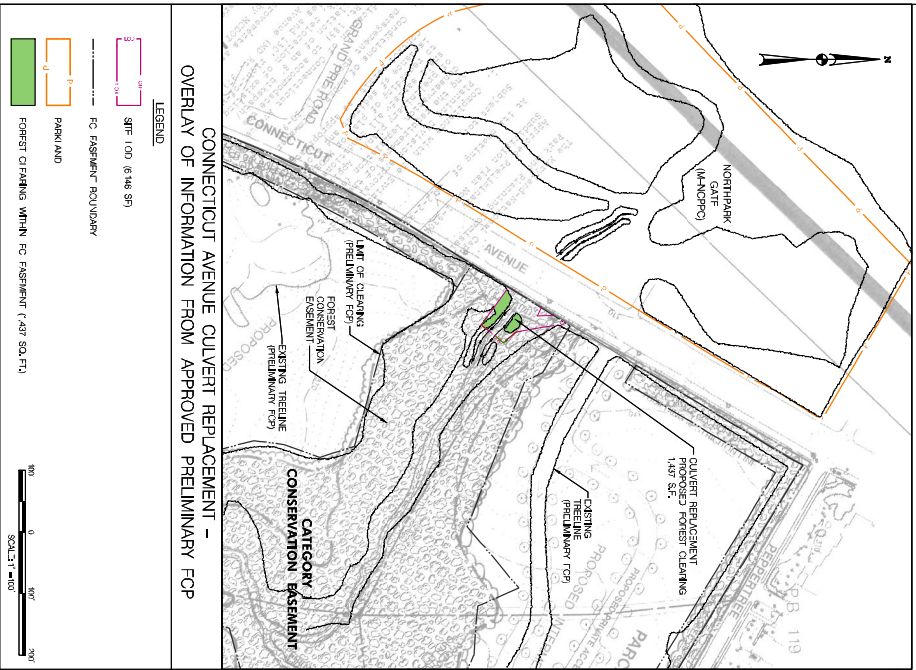
PROJECT No. 1  
SCALE: AS SHOWN  
SHEET 1 OF 3

TREE SAVE TABLE			
TREE #	SPECIES	SIZE (DBH INCHES)	STATUS
1	Green Ash	34	Save
2	Red Maple	23.4	Save

CRZ will be protected through root pruning and other protection  
CRZ outside LOD



LOCATION MAP  
SCALE: 1" = 2000'



CONNECTICUT AVENUE  
CULVERT REPLACEMENT  
FINAL FOREST CONSERVATION PLAN  
AMENDMENT  
"GATES OF HEAVEN"  
DATE: JUNE, 2016  
SCALE: AS SHOWN  
SHEET: 2 OF 3

**LEGEND**

- 3" SIF (100' @ 148 S.F.)
- FC FASHPANT BOUNDARY
- PARKLAND
- FOREST CLEARING WITHIN FC FASHPANT (437 SQ. FT.)

**SCALE: 1" = 100'**

**DEVELOPER'S CERTIFICATE**  
The undersigned agrees to construct all the features of the approved final forest conservation plan No. 13802684, including structural building, street parking, maintenance, and all other site-specific requirements.  
Developer's Name: MONTGOMERY COURT DEVELOPMENT  
Contact Person or Owner: MONTGOMERY COURT DEVELOPMENT  
Address: 100 EDITION DRIVE, SUITE 401, Lorton, VA 22079  
Phone and Email: (541) 777-2220, mont@montgomerycourtdev.com  
Signature: \_\_\_\_\_

**DEVELOPER'S CERTIFICATE**  
The undersigned agrees to construct all the features of the approved final forest conservation plan No. 13802684, including structural building, street parking, maintenance, and all other site-specific requirements.  
Developer's Name: GATE OF HEAVEN CONSERVATION INC.  
Contact Person or Owner: GATE OF HEAVEN CONSERVATION INC.  
Address: 13001 EDITION AVENUE, SILVER SPRING, MD 20906  
Phone and Email: (301) 321-4500  
Signature: \_\_\_\_\_

**PLAN PREPARED BY:**

DATE	REVISION	SIGNATURE

THE WILSON T. BALLARD CO.  
CONSULTING ENGINEERS  
6000 WILSON DRIVE, SUITE 100  
MCL  
REVISION  
DATE  
BY



# ATTACHMENT 4

WILSON T. BALLARD - 1968

RONALD W. RYE, PRESIDENT  
ROBERT N. BOND, SENIOR VICE PRESIDENT  
GLENN R. DETTER, VICE PRESIDENT  
MARK D. LOTZ, VICE PRESIDENT  
E. RICHARD FEUSTLE, JR., VICE PRESIDENT  
MARYANN BROWER, SECY.-TREAS.  
SERINA M. WEBSTER, ASST. SECY.-TREAS.

THE WILSON T. BALLARD COMPANY  
CONSULTING ENGINEERS  
17 GWYNNS MILL COURT  
OWINGS MILLS, MARYLAND 21117  
TELEPHONE 410-363-0150  
FAX 410-363-7811

SHAWN T. BURNETT, SENIOR ASSOCIATE  
DALE F. TOPPER, JR., SENIOR ASSOCIATE  
JOHN J. WEBSTER, SENIOR ASSOCIATE  
JEFFREY S. ZIEGENFUSS, SENIOR ASSOCIATE  
BRYAN C. DUSZA, ASSOCIATE  
JONATHAN E. MARTIN, ASSOCIATE  
JENNIFER L. ROHRER, ASSOCIATE  
TIMOTHY M. RYE, ASSOCIATE  
KRISTA M. ZIEGENFUSS, ASSOCIATE

June 14, 2016

Ms. Amy Lindsey  
Maryland National Capital Park and Planning Commission (M-NCPPC)  
Area 2 Planning Division  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Attn: Ms. Lindsey  
Senior Planner

Re: Connecticut Culvert Replacement  
Request for Specimen Tree Variance  
File: 100-274.07

Dear Ms. Lindsey:

On behalf of the Montgomery County Department of Transportation (MC DOT), the Wilson T. Ballard Company is preparing plans to comply with the Montgomery County Forest Conservation Law for the Connecticut Avenue Culvert Replacement project.

Pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance, we are writing to request a variance to impact the Critical Root Zone of S1, a 34-inch DBH Green Ash specimen tree identified on the Amended Final Forest Conservation Plan (FFCP) for the above-named MC DOT construction project.

## **Project Description:**

The proposed culvert replacement project located at the 14100 Block of Connecticut Avenue, in Aspen Hill, 0.4 miles East of Georgia Avenue (MD 97). The project lies within County Rights-of-way and within a Category I Forest Conservation Easement in the Gate of Heaven cemetery property (Approved FFCP 119930480).

The Limit of Disturbance within the Category I Conservation Easement is approximately 0.17 acres. The site contains an existing culvert with a concrete apron with displaced riprap below it, and an incised channel. The adjacent floodplain of Turkey Branch contains forest canopy (elm, red maple and green ash) with an open understory. The project will replace a structural plate pipe arch culvert running under Connecticut Avenue. The existing 121" x 85" structural plate pipe arch culvert will be replaced by a double box culvert, one being 6'x5' and the other 5.25'x 5'. The cells will not be depressed due to existing utilities running under the culvert. Riprap will be installed in the upstream and downstream channel, endwall hand rails will be replaced, the roadway approaches will be resurfaced, and the roadway over the culvert will be reconstructed to a full depth paving section.

The Limit of Disturbance (LOD) includes the Critical Root Zone (CRZ) of the specimen tree, with the center of the tree located approximately 85 feet downstream of the existing culvert headwall. Protection of the tree during construction will include stress reduction measures (root pruning) and tree protection fence and signage.

**Requirements for Justification of Variance:**

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.

**Justification of Variance:**

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

**Response:** The project is to replace the existing culvert which is failing; a culvert failure would endanger motorist and pedestrian safety on Connecticut Avenue. A variance is needed for construction access to the culvert, equipment movement, installation of erosion and sediment control (E&SC) measures, and stream channel stabilization which lies within the CRZ of a 34-inch specimen tree located on the south side of Connecticut Avenue. The majority of the work within the CRZ will be for E&SC measures and stream stabilization work. The erosion measures are required to meet MCDPS and MDE standards. The stream stabilization will repair the channel degradation at the outfall and minimize future embankment erosion that is encroaching on the 34-inch specimen tree.

- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

**Response:** If the County were required to keep all construction operations outside the Critical Root Zone of the specimen tree, the roadway culvert will not be replaced and roadway failure at this location may result. The LOD shown on the plans is required to install the erosion and sediment control measures in the downstream channel, the project could not be constructed without installation of proper E&SC measures.

- (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;

**Response:** Water quality standards will not be violated, as this project will comply with the water quality standards required through Clean Water Act Section 401 water quality certification as part of the permit requirements for impacts to Waters of the U.S. The U.S. Army Corps of Engineers and the Maryland Department of the Environment issued a permit to the Montgomery County Department of Transportation (MC DOT) for these impacts on February 5, 2016, Authorization # 201561732/15-NT-3319.

In addition, water quality standards will not be violated because the proposed tree replacement will occur at a higher standard than is required. Larger stock (2-inch caliper rather than 0.75 to 1-inch caliper) will be used for the replanting. The replanting will be conducted within the remaining area of the limit of disturbance (6,048 SF) after the proposed culvert replacement.

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

Maryland National Capital Park and Planning Commission (M-NCPPC)  
Area 2 Planning Division  
June 8, 2016  
Page 3

(4) Provide any other information appropriate to support the request.

**Response:**

The specimen tree will not be removed and all precautions will be taken to protect the health of the tree.

**Conclusion:**

For the above reasons, the applicant respectfully requests that the county arborist approve this request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to work within the critical root zone of the specimen trees to allow the construction of this County DOT culvert replacement project.

Very truly yours,

**THE WILSON T. BALLARD COMPANY**

By 

JCP/eb

cc: Mr. Michael Mitchell, Montgomery County Department of Transportation  
File

# ATTACHMENT 5



## DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
*County Executive*

Lisa Feldt  
*Director*

August 2, 2016

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

RE: Connecticut Avenue Culvert, ePlan 11993048A, revised application to amend FFCP received on 7/27/2016

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law 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.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the

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255 Rockville Pike, Suite 120 • Rockville, Maryland 20850 • 240-777-7770 • 240-777-7765 FAX  
[www.montgomerycountymd.gov/dep](http://www.montgomerycountymd.gov/dep)





variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

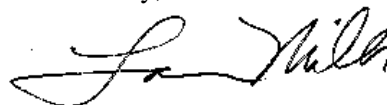
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

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

Sincerely,



Laura Miller  
County Arborist

cc: Amy Lindsey, Planner Coordinator