



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 17-010  
Site Plan No. 82013006D  
Trotters Glen  
Date of Hearing: February 23, 2017

MAR 10 2017

**RESOLUTION**

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on August 12, 2013, the Planning Board, by Resolution MCPB No. 13-92, approved Site Plan No. 820130060 for 69 dwelling units including 10 MPDUs on 175.8 acres of RNC zoned-land, located on both sides of Batchellors Forest Road, approximately one mile east of Georgia Avenue ("Subject Property"), in the Olney Policy Area and 2005 Olney Master Plan ("Master Plan") area; and

WHEREAS, on June 12, 2014, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 82013006A (MCPB No. 14-42), to add a condition of approval establishing when certain existing structures located on the Subject Property must be removed; and

WHEREAS, on November 23, 2015, the Planning Director administratively approved an amendment to the previously approved site plan, designated Site Plan No. 82013006B, to modify the site entrance features, modify landscaping and to add free-standing entrance signs on the Subject Property; and

WHEREAS, on October 20, 2016, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 82013006C, to raise the final grade and finished floor elevations on lots 31-46, and provide additional landscaping on the Subject Property; and

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Approved as to  
Legal Sufficiency: 

WHEREAS, on July 14, 2016, Toll Brothers (“Applicant”) filed an application for approval of an amendment to the previously approved site plans to comply with Preliminary Plan 120130050 condition of approval No. 2.i requiring the applicant to amend the Final Forest Conservation Plan to include the removal of the existing pond and dam and restore the stream and wetlands on the Subject Property; and

WHEREAS, Applicant’s application to amend the site plan was designated Site Plan No.82013006D, Trotters Glen (“Site Plan,” “Amendment,” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 23, 2017, the Planning Board considered the Application on its consent agenda; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 82013006D to remove the existing pond and dam and restore the stream and wetlands with the addition of the following conditions:<sup>1</sup>

1. Prior to issuance of the 28<sup>th</sup> building permit the Applicant must submit a financial security instrument to M-NCPPC Staff for all planting and maintenance associated with the onsite stream and wetland restoration, including 10.26 acres of forest planting.
2. Prior to the M-NCPPC inspector’s authorization to begin the work associated with Phase II of the onsite stream and wetland restoration, the Applicant must demonstrate appropriate approvals from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
3. Prior to the issuance of the 48<sup>th</sup> building permit, the Applicant must complete Phase I and Phase II of the dam breach and restoration work.

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<sup>1</sup> For the purpose of these conditions, the term “Applicant” also means the developer, the owner or any successor(s) in interest to the terms of this approval.

BE IT FURTHER RESOLVED that all other site plan conditions of approval for this project remain valid, unchanged and in full force and effect

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Site Plan No. 82013006D, Trotters Glen, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan as revised by previous amendments, and all findings not specifically addressed remain in effect.*
2. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The development is subject to the forest conservation law and meets all the applicable requirements for forest protection under Chapter 22A. The Subject Property had a Final Forest Conservation Plan that was approved as part of the Preliminary Plan for Trotters Glen, and included a condition requiring an amendment to the Final Forest Conservation Plan to include the removal of the pond and dam and restoration of the stream and wetlands on the Subject Property. The Application shows the removal of an additional 0.53 acres of forest, for a total of 0.96 acres of forest removal, retention of 12.93 acres of forest, and planting 27.24 acres of forest onsite, for a total of 40.17 acres of forest. All retained and planted forest is protected in a Category I conservation easement. The Application retains the maximum amount of forest possible; it is only the forest located within the right-of-way dedication areas and below the dam of the pond to be removed that will not be retained and/or protected in a conservation easement. In order to comply with Section 22A-12(f)(3), the Applicant must

provide 22.27 acres of forest planting onsite, which combined with the 12.93 acres of forest retention, results in the afforestation threshold and the minimum onsite forest required under Section 22A12(f), 35.20 acres. The forest conservation worksheet requires that the Applicant provide a total of 23.23 acres of planting. The Application provides 27.24 acres of onsite forest planting, thus satisfying Section 22A-12(f)(3).

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

The Amendment requires impact to the CRZ of two trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied the ability to meet a condition of approval of the Preliminary Plan without the Variance. The condition of approval of the Preliminary Plan resulted from recommendations in the Master Plan to remove the on-site pond, restore the area and create wetland habitat. The existing location of the pond proposed for removal and the associated restoration of the area is near the two trees to be impacted.

The Board made the following findings necessary to grant the Variance:

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

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to implementing the Master Plan recommendation and a Planning Board required condition to remove the existing pond, restore the area, and create wetland habitat. Granting a variance request to allow land disturbance within the portion of the Subject Property proposed for restoration is not unique to this Applicant. The Planning Board finds

that the granting of this variance 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions. The Planning Board finds that the granting of this variance is not based on conditions or circumstances which are the result of actions by the Applicant.

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

The need for a variance is a result of the existing conditions and the proposed pond removal and habitat restoration on the Subject Property, 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 variance will not violate State water quality standards or cause measurable degradation in water quality. The Application proposes disturbance within the stream buffer to remove an existing pond and restore the area, including the creation of wetland habitat. The removal of the in-stream pond will allow the stream to be restored to a natural condition, the creation of a variety of wetland habitat, and will likely reduce existing thermal impacts to the stream by discharge from the pond. The two Protected Trees will not have to be removed as a result of the impacts, so the benefits of their canopy will not be lost. In addition, the Application proposes 4.0 acres of forest planting above the minimum required under the forest conservation law. The combined reforestation and landscaping proposed on the site will more than offset any loss in the functions currently provide by the subject trees. In addition, Montgomery County Department of Permitting Services has found the stormwater management concept for the project to be acceptable. The stormwater management concept incorporates Environmentally Sensitive Design (ESD).

No mitigation is recommended for these trees. There is some disturbance within the critical root zone of two trees; however, they will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

The Site Plan is subject to Chapter 19 regarding water resource protection and stormwater management, and a stormwater concept was approved as part of the Preliminary Plan for Trotters Glen.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 10 2017 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, February 23, 2017, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board