




February 16, 2012

**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel  
301.495.4646 

RE: Deed of Dedication  
MCPB No. 11-50 - Site Plan No. 82008019A

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With this memorandum I forward for the Board's approval, a proposed Deed of Dedication of certain Rural Open Space property from Pulte Home Corporation to M-NCPPC to meet Condition No. 3.b of the referenced Site Plan approval.

**I. BACKGROUND**

At its June 16, 2011 meeting, the Planning Board approved the referenced Site Plan Amendment for Batchellor's Forest; a residential development on approximately 93.64 acres on RNC zoned land in the Olney Master Plan area. Under the optional method development standards for the zone, the Applicant is required to preserve 65% to 85% of the tract area for rural open space. Therefore, the Planning Board imposed Condition No. 3, which reads as follows:

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1, and uses as set forth in Section 59-C-9.572.

Although the Project is being developed under the optional method of development, Condition No. 3 erroneously referred to §59-C-9.573(c)(3) of the Zoning Ordinance, which sets forth the form of document to implement preservation of the rural open space under the standard method. The correct reference should have been §59-C-9.574(h)(4) which sets forth the form of document to implement preservation of the rural open space under the optional method development. In either provision, rural open space area must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form approved by the Planning Board. However, under §59-C-9.573(c)(3), that easement or covenant may also be by dedication as parkland.

The Maryland Court of Appeals has held a public dedication to be the same as an easement in that the grantor retains a fee interest, subject to an easement that restricts the use of the property for the purpose under which it was conveyed. *M-NCPPC v. Town of Washington Grove*, 408 Md. 37, 75, 968 A.2d 552, 575 (2008). Whether preservation is by deed of dedication, easement or covenant is immaterial, so long as the instrument is in a recordable form approved by the Planning Board.

### **III. RECOMMENDATION**

The Office of General Counsel recommends that the Board approve the proposed Deed of Dedication as required by the Zoning Ordinance.

### **IV. ATTACHMENTS**

Attachment 1 – Resolution

Attachment 2 – Proposed Deed of Dedication

# ATTACHMENT 1

AUG 9 2011



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

MCPB No. 11-50  
Site Plan No. 82008019A  
Project Name: Batchellor's Forest  
Hearing Date: June 16, 2011

**RESOLUTION**

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on July 26, 2007, the Planning Board approved with conditions Preliminary Plan No. 120060850 (MCPB No. 08-15, and corrected MCPB No. 11-21) for 37 lots;

WHEREAS, on July 30, 2009, the Planning Board approved with conditions Site Plan No. 820080190 (MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009) for 37 lots including 32 one-family detached dwelling units and 5 one-family attached MPDUs; and

WHEREAS, on February 22, 2011, SM Batchellor's Forest, LLC ("Applicant"), filed a site plan amendment application designated 82008019A, Batchellor's Forest (the "Amendment") for approval of the following modifications:

1. One market-rate unit converted into one MPDU
  - a) Lot 13, Block A, formerly shown on Street "A" (now labeled as Brompton Circle) with a one-family detached unit, was eliminated. The resulting 7 Lots surrounding the area of common open space were reconfigured and regarded to accommodate the loss of one lot. This change benefits the layout by providing greater setbacks for the corner units abutting Old Vic Boulevard.
  - b) One additional MPDU townhouse was added to the 2 MPDUs located on Victoria Place (formerly labeled as Street "B"). As a result, lots immediately adjacent to the MPDU's have been reconfigured and regarded to accommodate the new unit.
  - c) New lot configurations and layout have led to minor changes to several development standards including minimum lot areas for townhouses and one-family detached, rural open space and common open space. The Project Data Table below outlines these changes. Revised condition of

Approved as to  
Legal Sufficiency:

A handwritten signature in black ink, appearing to be "MNCPPC Legal Department".

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

- approval #3 captures the new designations for the rural open space parcels consistent with those proposed on the record plats.  
 d) Landscaping has been revised for each affected lot.

Project Data Table for the RNC Zone, Optional Method of Development

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Approved with 820080190</b>	<b>Approved by the Planning Board &amp; Binding on the Applicant</b>
<b>Min. Area of Development (acres) 59-C-9.575(a)</b>	10	93.64	93.61
<b>Max. No. of Dwelling Units</b>		37	37
One-family detached units	n/a	32	31
One-family attached units (MPDUs)	n/a	5	6
<b>Min. Lot Area (sq. ft.)</b>			
One-family detached units	4,000	10,700	14,580
MPDUs	n/a	3,500	2,684
<b>Rural Open Space</b>	65-85%	69.8%	70.5%
<b>Common Open Space (SF)</b>	n/a	82,023	81,979

2. Water and sewer service

In order to minimize water and sewer connections to Batchellors Forest Road, Lot 13 – Block A and Lot 10 – Block B will be connected to the internal roads for water and sewer service, as requested by WSSC.

- a) A 20-foot house connection easement has been added between Lots 1 and 2, Block B, in order to provide water and sewer service to Lot 10, Block B. This WSSC easement will overlap with the rural open space easement on HOA property.
- b) The LOD at Lot 13, Block A has been revised to accommodate water and sewer house connections from Victoria Place. This WSSC easement will overlap with the rural open space easement on Lot 13.

3. Coordination with DOT's review comments on the Storm Drain and Paving Plan

- a) Include curb returns at the entrance to Farquhar Middle School where the crosswalk from the proposed development crosses Batchellor's Forest Road.

- b) Provide a crosswalk on Old Vic Boulevard at the north leg of Brompton Circle with appropriate sidewalk connections on both sides of Old Vic Boulevard.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 2, 2011, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on June 16, 2011, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on June 16, 2011, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves the Site Plan No. 82008019A; and

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for preliminary plan 120060850 as listed in MCPB No. 08-15, and corrected MCPB No. 11-21, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DOT conditions, and DPS stormwater conditions.

2. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 820080190 as listed in MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009, as amended.

3. Rural Open Space

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as

private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication is to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1 and uses as set forth in Section 59-C-9.572.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that the proposed conversion of one market-rate unit to an MPDU is consistent with the approved preliminary plan and the Maryland Court decisions concerning this development. The Planning Board originally approved the preliminary plan on January 11, 2008. Two rounds of appeal ensued, first in the Circuit Court and then in the Court of Special Appeals. The appeals concerned how to calculate the number of MPDUs for this development. Ultimately, the Court of Special Appeals upheld the Board's decision to require the Applicant to build six MPDUs instead of the five the Applicant proposed. This amendment modifies the MPDU count for this project consistent with the Court of Special Appeals's ruling.

BE IT FURTHER RESOLVED that all site development elements as shown on Batchellor's Forest drawings stamped by the M-NCPPC on January 18, 2011 and May 6, 2011, shall be required, except as modified by the above conditions of approval; and

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

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

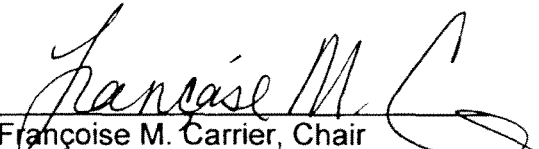
BE IT FURTHER RESOLVED, that the date of this written resolution is AUG 9 2011 (which is the date that this resolution is mailed to all parties of record); and

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 written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



SM BACHELLOR'S FOREST, LLC  
TEUETT YOUNG  
11111 SUNSET HILLS ROAD, SUITE 200  
RESTON, VA 20190

MACRIS, HENDRICKS & GLASCOCK  
RAY BURNS  
9220 WIGHTMAN ROAD, SUITE 120  
MONTGOMERY VILLAGE, MD 20886

Mr. Richard Brush, Manager  
MCDPS-Water Res. Plan Review  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Ms. Susan Scaly-Demby, Manager  
MCDPS-Zoning  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Hadi Masouri  
MCDP-Building Construction  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Christopher Anderson, MPDU Mgr.  
DHCA County Office Bldg,  
255 Rockville Pike  
Rockville, MD 20850

Ms. Gail Lucas, Manager  
MCDPS-Building Construction  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Lisa S. Schwartz  
Senior Planning Specialist  
Montgomery County Department of Housing  
and Community Affairs  
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Rockville, MD 20850

Mr. Greg Leck  
100 Edison Park Dr, 4<sup>th</sup> Fl  
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255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Greg Nichols, Manager  
MCDPS-Land Development  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Michael Reahl, Manager  
MCDPS-Sediment/Stormwater  
Inspection and Enforcement  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Ehsan Motazedi  
MCDPS-Site Plan Enforcement Mgr.  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, Md 20850

Mr. Jay Beatty, Manager  
MCDPS-Well and Septic  
255 Rockville Pike, 2<sup>nd</sup> Fl  
Rockville, MD 20850

Mr. Leroy Anderson, Manager  
MCDPS-Right of Way Development  
Inspection and Enforcement  
255 Rockville Pike, MD 20850

# ATTACHMENT 2

Parcel I.D. # \_\_\_\_\_

DEED OF DEDICATION

THIS DEED OF DEDICATION (“Deed”), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Pulte Home Corporation, a Michigan corporation, hereinafter referred to as the Grantor, and The Maryland-National Capital Park and Planning Commission, a body politic, hereinafter referred to as the Grantee.

WHEREAS, the property, as more particularly described below, which is the subject of this Deed (“Property”) is located in the Rural Neighborhood Cluster (RNC) zone, in the Olney Master Plan area; and

WHEREAS, on June 16, 2011, the Planning Board approved Site Plan Amendment 82008019A (MCPB Resolution No. 11-50) for Grantor to develop approximately 93.64 acres of property for residential use, of which this Property is a part, subject to a condition that Grantor must dedicate this Property for use as rural open space (“ROS”) consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Montgomery County Zoning Ordinance (the “Zoning Ordinance”) and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance.

WITNESSETH:

Grantor does hereby dedicate unto the Grantee, its successors and assigns, for use as rural open space consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Zoning Ordinance and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance, all of that piece or parcel of land, situate, lying and being in the Olney (8<sup>th</sup>) Election District of Montgomery County, Maryland, and more particularly described on Exhibit “A”, attached to and made a part of this Deed.

TOGETHER WITH all and singular the buildings, improvements, ways, easements, rights, waters, privileges, covenants, and appurtenances to the same belonging, benefitting or in any way appertaining, and all the estate, title, right, interest and claim, either at law or in equity or otherwise of the Grantor, of, in or out of the Property for so long as the Property is used for the purposes intended by this conveyance.

TO HAVE AND TO HOLD said Property above described or mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit forever of the Grantee, its successors and assigns.

SUBJECT, HOWEVER, to all easements, covenants, conditions, encumbrances, and restrictions of record affecting the Property intended to be conveyed by this Deed.

AND, the Grantor covenants that it will warrant specially the property hereby conveyed and that it will execute further assurances of said lands as may be requisite.

THE Grantor hereby certifies and makes affidavit under the penalties of perjury that there is no consideration paid or to be paid for the foregoing conveyance and that there are no mortgages or deeds of trust assumed by the Grantee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written and states that it is authorized to execute this Deed on behalf of the Partnership.

WITNESS:

**GRANTOR:**

**PULTE HOME CORPORATION,**  
a Michigan corporation

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE/Commonwealth of \_\_\_\_\_

\*

\*

to wit:

COUNTY OF \_\_\_\_\_

\*

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for the State/Commonwealth and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the \_\_\_\_\_ of PULTE HOME CORPORATION, a Michigan corporation, and that such person, being authorized so to do, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public

My term of office expires on the \_\_\_\_ day of \_\_\_\_\_.

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney at law, duly licensed to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
Carol S. Rubin

Property Address:     Batchellors Forest Road  
                                  Olney, Maryland 20832

Grantor:                     Pulte Home Corporation  
                                  10600 Arrowhead Drive  
                                  Suite 225  
                                  Fairfax, Virginia 22030  
                                  Attn: Stephen Collins

Grantee:                    The Maryland-National Capital Park  
                                  and Planning Commission  
                                  9500 Brunett Avenue  
                                  Silver Spring, Maryland 20901

ID#:                         Part of #08-501-01959272

Title Insurance:         N/A

**After Recordation, Return to:**  
Land Acquisition Specialist  
M-NCPPC  
9500 Brunett Avenue  
Silver Spring, Maryland 20901