



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

MCPB No. MCPB No. 19-007
Site Plan No. 82017016A
Mount Prospect
Date of Hearing: December 20, 2018

FEB 25 2019

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.1, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on, the Planning Board, by Resolution MCPB No. 18-017, approved Site Plan No. 820170160 to construct 186 new dwelling units including 121 one-family detached and 66 one-family attached units, and to retain one existing one-family detached dwelling, including providing 24 MPDUs and 17 TDRs on 170.77 acres of PD-2 zoned-land, located in the northwestern quadrant of the intersections of Quince Orchard Road, Dufief Mill Road and Travilah Road ("Subject Property") in the Rural West Policy Area and the 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on April 26, 2018, the Planning Board approved a corrective resolution to the previously-approved site plan, to correct the amount of required park dedication in the site plan data table; and

WHEREAS, on September 14, 2018, Toll Brothers ("Applicant") filed an application for approval of an amendment to the previously-approved site plan to modify site grading and retaining walls, the location of certain site amenities, the forest conservation worksheet and the location of off-site sewer and stormwater improvements in the stream valley park on the Subject Property; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 82017016A, Mount Prospect ("Site Plan," "Amendment," or "Application"); and

Approved as to
Legal Sufficiency

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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, dated December 6, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 20, 2018, Staff presented the Amendment to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Amendment subject to certain conditions, by the vote certified below; and

WHEREAS, on December 20, 2018 the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Dreyfuss, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 82017016A to modify site grading, the location of certain site amenities, the forest conservation worksheet and the location of off-site sewer and stormwater improvements in the stream valley park on the Subject Property by modifying the following conditions:¹

3. g) The required 3.74 acres of forest planting for Phase I must be completed within one year or two growing seasons after issuance of the 90th residential building permit.
- h) The required 3.47 acres of forest planting for Phase 2 must be completed within one year or two growing seasons after issuance of the 170th residential building permit.

BE IT RESOLVED that the Planning Board approves Site Plan No. 82017016A to modify site grading and retaining walls, the location of certain site amenities, the forest conservation worksheet and the location of off-site sewer and stormwater improvements in the stream valley park on the Subject Property by adding the following conditions:²

3. m) Mitigation must be provided on the Property for the removal of three additional trees subject to the variance provision. Mitigation for the removal of these three trees must be provided in the form of planting native canopy trees totaling 29.5 caliper inches, bringing the total amount of mitigation to 282.5 caliper inches. The mitigation must include trees with a minimum planting stock size of three caliper inches. The trees must be planted on the Property, in locations shown on the

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

² For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

approved Preliminary/Final Forest Conservation Plan, as amended, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.

21. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Right-of-Way Section in its letter of September 10, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Site Plan 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 Mount Prospect, Site Plan No. 820170160 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 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, and all findings not specifically addressed remain in effect.*
3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Location of Structures

The location of all proposed buildings and most structures remains the same, however the location of the fishing pier in the central farm pond is relocated from the dam face to the side of the pond for better structural soundness, and the size and length of retaining walls along the perimeter of the Subject Property are reduced with the modified grading. These changes do not impact the quality of the development and result in reduced future maintenance concerns.

Location of Open Spaces, Landscaping and Recreation Facilities

The location of open spaces, landscaping and recreation facilities is safe, adequate and efficient as approved by the Site Plan Amendment. The changes to the open spaces and site amenities are reactive to the changes in grading and stormwater management. The quantity and quality of recreation and site amenities remain the same, with the locations only being modified to address changes to stormwater management facility shapes, and to reflect the need to relocate the fishing pier off the dam embankment. The location and quantity of landscaping is also only being adjusted as necessary to accommodate the changed stormwater designs and does not change the purpose, form or function of the provided landscaping.

- 5. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable laws.*

The Site Plan Amendment, as conditioned, continues to meet the applicable requirements of Chapter 22A and Chapter 19. The net tract area for forest conservation purposes increased from 173.57 acres to 174.09 acres due to an expanded, off-site limits of disturbance necessary for the sewer outfall construction on Park property and road and utility improvements within the surrounding road rights-of-way. The proposed impacts to the Muddy Branch SVP for the sewer outfall result in an additional 0.02 acres of forest clearing. Proposed revisions to the stormwater management facilities, storm drain outfalls, and Department of Parks required stream restoration result in an additional 0.08 acres of forest clearing on-site within the proposed Park dedication areas, therefore a total of 15.08 acres of forest are now being cleared. The resulting reforestation requirement has increased from 0.25 acres to 0.46 acres, which is provided on-site within the unforested stream valley buffer. The proposed forest impacts are located on existing and proposed M-NCPPC Park property, therefore no changes to forest conservation easements are required. The amended Forest Conservation Plan protects a total of 15.13 acres of forest (retained and planted) through dedication to the M-NCPPC Department of Parks and 30.21 acres of forest through Category I conservation easements, for a total of 45.34 acres of protected forest on the Property.

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater DBH; are part of an historic site or designated

with an historic structure; are designated as national, State, or County champion trees; 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. Any impact to high priority vegetation, including disturbance to the 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 Amendment to the Application includes changes to the LOD resulting in impacts to trees identified as high priority for retention and protection (Protected Trees), therefore, the Applicant has submitted an amendment to their original variance request for these changes in impacts. The changes are largely because of modified sewer connections and stormwater outfalls.

Variance Findings – 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, for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the forest conservation plan, and has determined that granting the amendments to the variance request:

1. *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 disturbance to the Protected Trees is due to the reasonable development of the Property. The Amendment increases impacts to the critical root zones of two trees (#17 and #155) that were previously granted a variance for slightly smaller impacts. The increased impacts are due to required revisions to stormwater management and grading. These two trees will receive adequate tree protection measures to minimize the disturbance during construction. Two trees that were previously undisturbed (#96 and #391) will be impacted by the Amendment with tree #96 being impacted due to the relocation of the fishing pier and tree #391 impacted to allow for the removal of existing surface gravel which will be reforested. Three trees that were previously approved to be impacted but retained will now be removed (#390, #520, and #562). Tree #390 was previously granted a variance for impacts to its CRZ; however, additional impacts to remove gravel result in removing the tree. Trees #520, #524, and #562 are located within the Muddy Branch Stream Valley Park. Tree #524 will now be saved because the location of the sewer has been revised resulting in only 18% of its CRZ being impacted. The result of the sewer realignment instead requires the removal of Tree #562. Tree #520 is also approved to be removed due to increased impacts related to the WSSC public

water and sewer easement but efforts will be made to save this tree. The requested removal of and impacts to Protected Trees are due to required road and utility connections that would be necessary under any similar-sized application for development of the Property, and disturbance within the anticipated developable area of the site. Granting a variance to allow land disturbance within the developable portion of the Property is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

- 2. 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 Property conditions, including the location of the Protected Trees within the developable area.

- 3. Is not based on a condition relating 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 design and layout of the Property, and 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 variance will not violate State water-quality standards or cause measurable degradation in water quality. Onsite mitigation for the removal of the Protected Trees and the proposed reforestation within the currently unforested stream buffers will ultimately replace the functions currently provided by the Protected Trees to be removed. In addition, the Montgomery County Department of Permitting Services (MCDPS) has found the stormwater management concept for the proposed project to be acceptable. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Protected Trees

Additional mitigation has been provided for the removal of Trees #390, #520 and #562 using the same standards as on the previously approved Forest Conservation Plan. The mitigation previously calculated for the removal of Tree #524 has been removed since this tree will now remain. The resulting mitigation requirement for

the removal of variance trees is planting 282.5 total caliper inches with minimum 3-inch caliper trees.

Stream Buffer Encroachment

The Application is subject to the *Guidelines for Environmental Management of Development in Montgomery County* dated January 2000 ("Environmental Guidelines"), which includes guidance for the protection of streams and their buffers. Section IV-A1 of the Environmental Guidelines allows for some encroachments within the stream buffer under certain circumstances, and when determined by staff that there are no reasonable alternatives and the impacts have been minimized as much as possible. The previously-approved plans included impacts to the stream valley buffer and the Amendment modifies these encroachments due to planned restoration work within the Muddy Branch Stream Valley Park, required revisions to a storm drain outfall, relocation of the proposed fishing pier, and revised grading within the unforested portion of the stream buffer. Some portions of the stream buffer that were previously proposed to be disturbed will remain undisturbed under the Amendment. The net increase in disturbance is 0.01 acres of stream valley.

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 ~~FEB 25 2019~~ (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).

* * * * *

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 Vice Chair Dreyfuss, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Patterson voting in favor, and Commissioner Cichy absent at its regular meeting held on Thursday, February 14, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board