



*** Consent Item – Trotters Glen, Site Plan Amendment No. 82013006D**

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RAW Richard Weaver, Acting Chief, Area 3, richard.weaver@montgomeryplanning.org, (301) 495-4544

Staff Report Date: 02/10/17

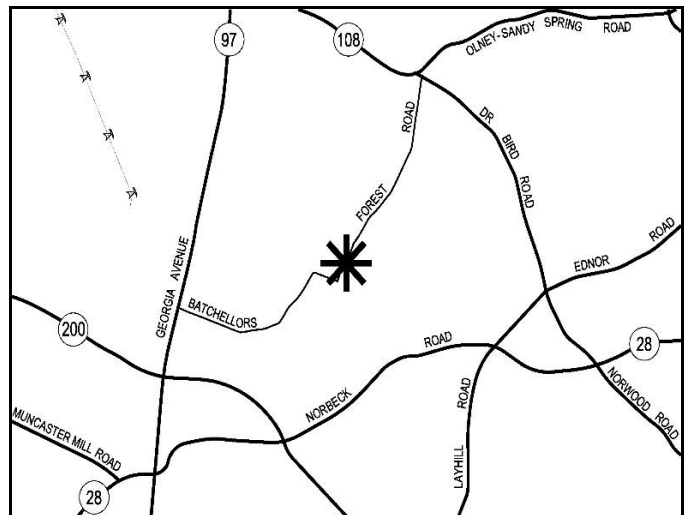
Description

Consent Item – Trotters Glen, Site Plan Amendment No. 82013006D

A request to amend the Final Forest Conservation Plan 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 onsite stream and wetlands; located on the east side of Batchellors Forest Road, approximately 1,000 feet east of the intersection with Georgia Avenue (MD 97); 175.4 acres, RNC Zone, 2005 Olney Master Plan.

Staff recommendation: *Approval with conditions*

Applicant: Toll Brothers
Submittal Date: 7/14/2016
Review Basis: Chapter 22A



Summary

The Application requests revisions to the approved Final Forest Conservation Plan 820130060 to comply with condition No. 2i of Preliminary Plan 120130050 contained in Resolution MCPB No. 13-91. This condition requires an amendment to the Final Forest Conservation Plan detailing the limits of disturbance for removal of the dam and onsite stream and wetland restoration prior to issuance of the 28th building permit. The limits of disturbance for the dam removal requires the removal of 0.53 acres of forest and a variance for impacts to two trees greater than 30 inches in diameter.

RECOMMENDATION AND CONDITIONS

RECOMMENDATION: All conditions of approval from Site Plan No. 820130060 and Site Plan Amendment No. 82013006A, No. 82013006B, and No. 82013006C remain valid, unchanged, and in full force and effect. Staff recommends approval of the amendment to Site Plan No. 82013006D with the addition of the following new conditions pertaining to the restoration work:

1. *Prior to the issuance of the 28th 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 48th building permit, the Applicant must complete Phase I and Phase II of the dam breach and restoration work.*

SITE LOCATION AND PROJECT DESCRIPTION

SITE LOCATION

The subject property ("Property") consists of 69 lots, and several open space parcels, recorded on record plat numbers 24839 – 24848, totaling 175.8 acres of land in the RNC zone. The Property is located on both sides of Batchellors Forest Road, approximately one mile east of Georgia Avenue (Figure 1). The northern Property boundary is defined by existing Emory Church Road and a section of unbuilt right-of-way. The eastern, southern and western boundaries are adjacent to existing residential dwellings.

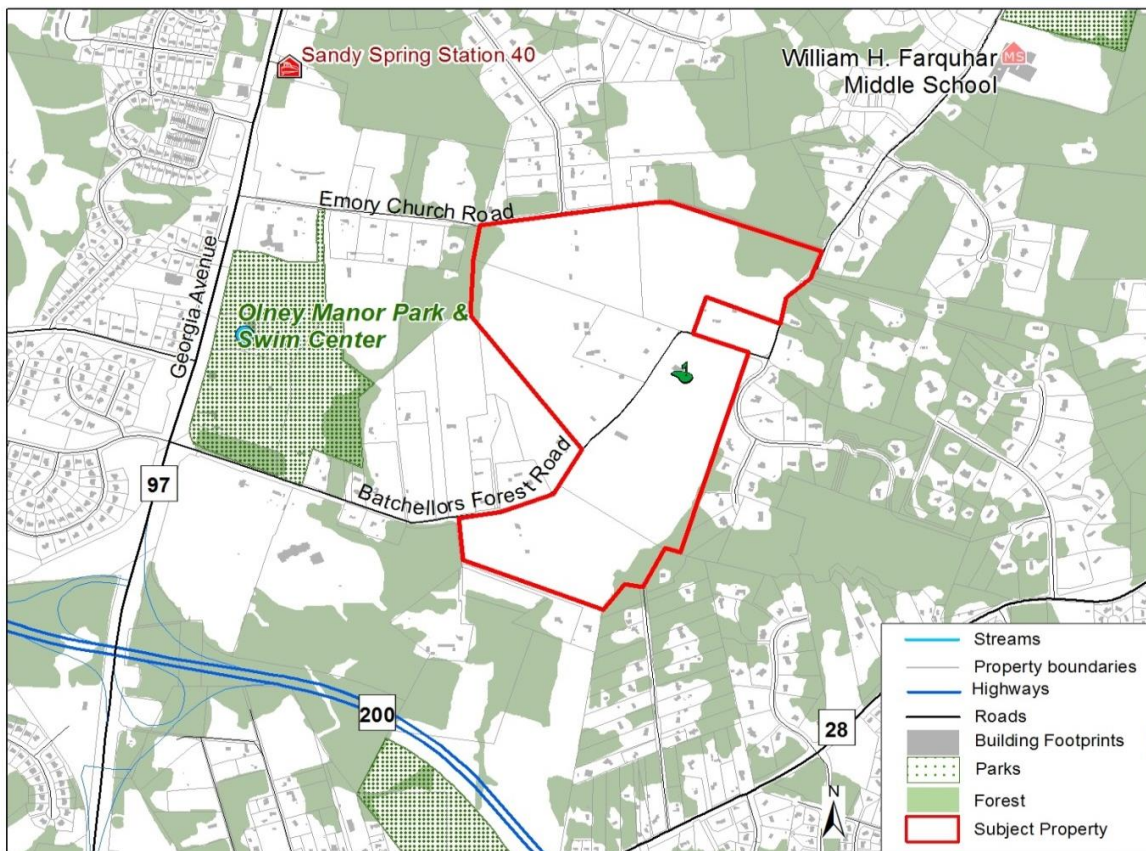


Figure 1 – vicinity map

The surrounding residential development is primarily large lot, located in a mix of RE-2 and RC Zones. Many of the surrounding properties are extensively covered with tree canopy, and some are maintained with open lawns or pastoral areas. The Olney Manor Park is located less than half a mile to the west of the Property and the interchange with Georgia Avenue and the Inter-County Connector is less than a mile to the southwest. The Property is located within the Batchellors Run portion of the Northwest Branch watershed, which is a Use Class IV stream.

SITE DESCRIPTION

The first phases of the project are currently being developed in accordance with the approved preliminary and site plans with one-family detached homes and associated open space amenities. Much of the approved open space on site has begun transforming into a meadow including tall grass and small shrubs. There are limited areas with existing forest cover in the southeast, northeast and western areas, and the Applicant will be planting additional forest in all stream valley buffers. Also on the Property is the existing owner's conservation lot that includes the original farm house, fenced in horse paddocks and stables (Figure 2).

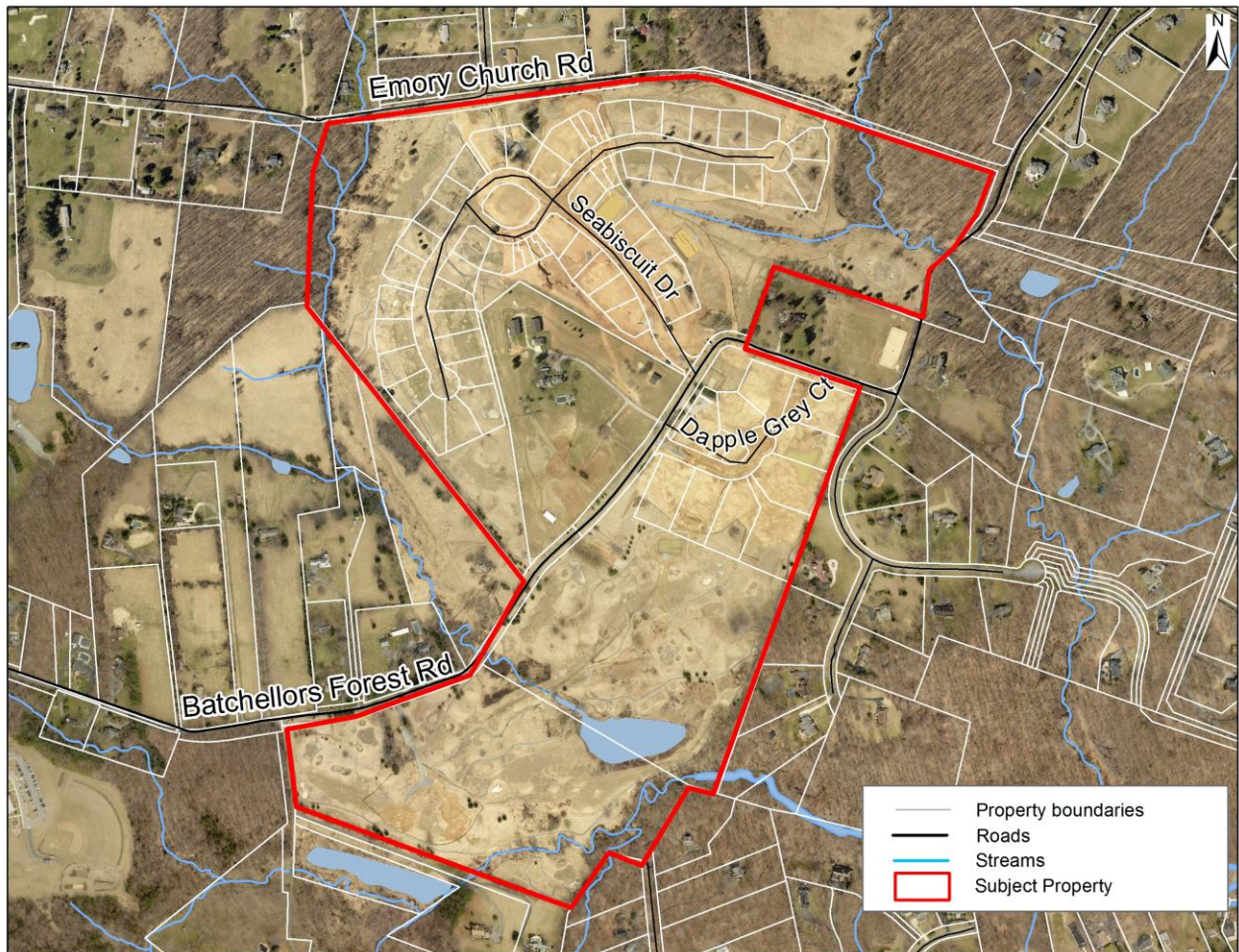


Figure 2 –aerial map

The Property has portions of three streams crossing through it, all generally flowing from the northwest to southeast. There are approximately fourteen acres of existing forest on the Property, located in the northeast, northwest and southeast corners, in stream valleys. Generally, the site is a mix of rolling uplands and stream valley lowlands, with the highest elevations near Emory Church Road, and the lowest elevations in the south, eastern and western edges in the stream valleys. There are wetlands in the northeastern portion of the Property that run into a culvert that drains into a stream, and again along the edge of a stream feeding a man-made pond (which will be removed) in the southeast. The stream valleys also contain 100-year FEMA mapped floodplains.

PROJECT DESCRIPTION

History

The site has been the subject of multiple previous Planning Board hearings and plan amendments.

Pre-Preliminary Plan 720120030

A Pre-Preliminary plan hearing was held on September 27, 2012 for non-binding advice on the lot layout as it related to providing open spaces, on the best alignment for the master planned bicycle facilities B-12 and B-13, and on whether a full street connection should be provided through the site between Batchellors Forest Road and Emory Church Road. The Planning Board and Staff engaged in a thorough discussion and the Applicant made final adjustments to their pending Preliminary and Site Plan submissions.

Preliminary Plan 120130050 and Site Plan 820130060

A Preliminary Plan and Site Plan public hearing was held on July 22nd, 2013 with subsequent resolutions approved on August 12, 2013. These plans created 69 lots (including the owner's conservation lot) on the Property. The lots and new roads were clustered on approximately 61 acres of the site, and the remaining 114.8 acres were placed in rural open space. The Final Forest Conservation Plan 820130060 was approved as part of the Planning Board's action on the plans.

12013005A and 82013006A

A Preliminary and Site Plan amendment was heard by the Planning Board on June 5, 2014 and approved by resolutions dated June 12, 2014 to modify the required timing for the removal of the two existing dwellings to be prior to first building permit, rather than prior to record plat.

82013006B

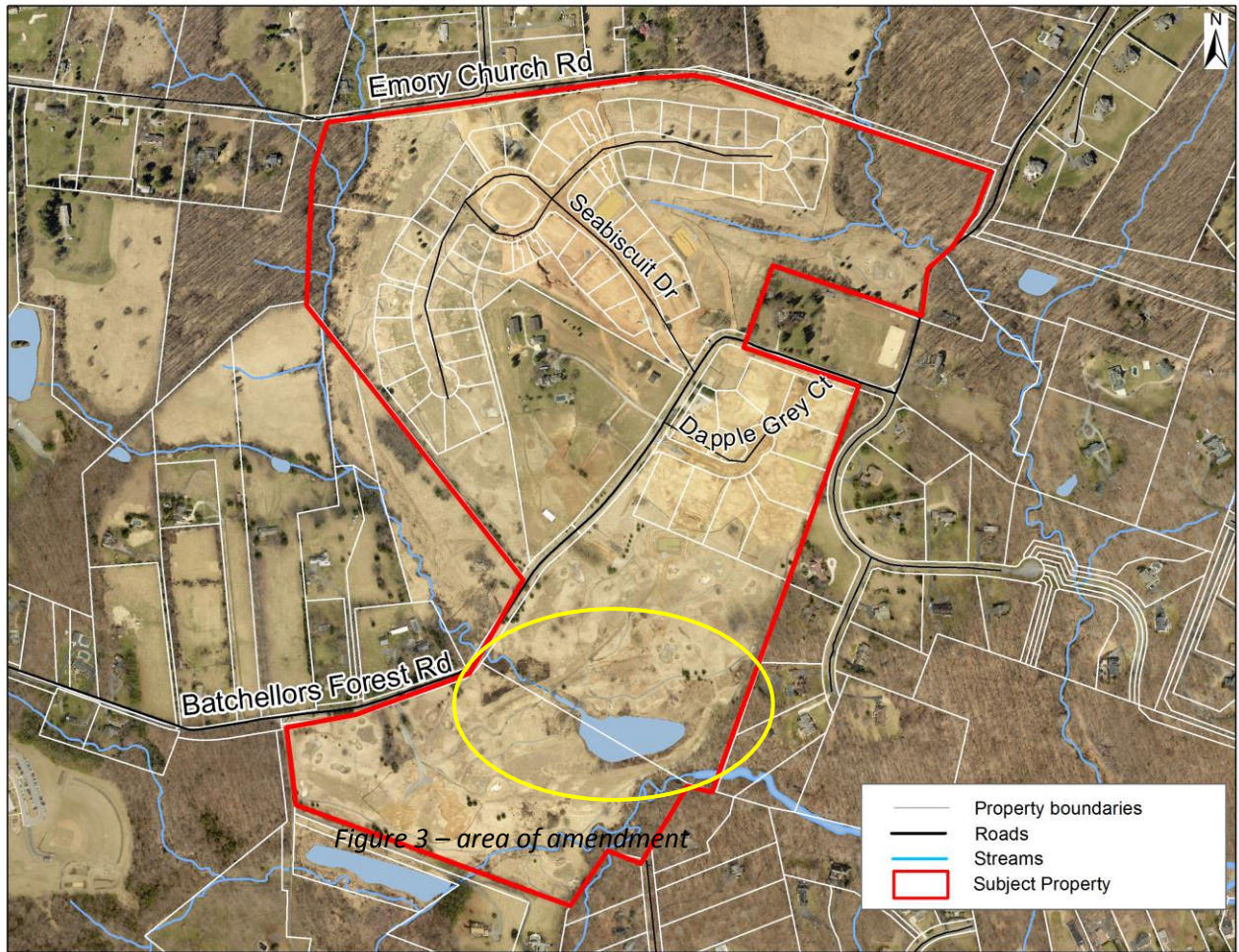
An administrative Site Plan amendment was approved by memo signed November 23, 2015 allowing minor modifications to the decorative signage, walls, fences and landscaping located at the community's two entrances on Batchellors Forest Road.

82013006C

A limited Site Plan amendment was heard by the Planning Board on October 13, 2016 and approved by resolution dated October 20, 2016 to raise the finished grade and the finished floor elevations of future homes on lots 31-46 as identified on the Site Plan drawings; which avoids the need to use grinder pumps and pressure sewer for those lots along Seabiscuit Drive. The amendment included additional landscaping to mitigate the visibility of the elevated dwellings from Batchellors Forest Road.

Current Amendment

The Applicant, Toll Brothers (“Applicant”) has filed for a Site Plan amendment, No. 82013006D, Trotters Glen (“Amendment”) to comply with Preliminary Plan 120130050 condition #2i, which requires an amendment to the Final Forest Conservation Plan detailing the limits of disturbance for the removal of the existing dam and onsite stream and wetland restoration (Attachment A). The Amendment is for forest conservation purposes only and requires the removal of an additional 0.53 acres of forest below the dam of the pond and impacts to the critical root zones of two trees subject to the tree variance provision of the forest conservation law. The forest conservation worksheet has been updated as part of the Amendment and additional forest planting provided onsite. All the changes proposed by this Amendment are located in the southern portion of the Property, in the area of the existing pond (See area encircled in yellow in Figure 3).



Preliminary Plan 120130050 included the approval of Final Forest Conservation Plan 820130060 and the following condition:

- 2i. *Prior to the issuance of the 28th building permit the Applicant must demonstrate appropriate approvals from Maryland Department of the Environment and Army Corps of Engineers and receive approval of an amendment to the forest conservation plan*

detailing the limits of disturbance for the removal of the dam and onsite stream and wetland restoration including submittal of a financial security instrument for any additional planting and maintenance associated with the onsite stream and wetland restoration by M-NCPPC Staff. Prior to the issuance of the 48th building permit, the Applicant must complete the dam breach and restoration work.

This condition satisfied the Master Plan recommendation that some existing ponds on the Property be converted into naturalized wetland areas. At the time of the preliminary and site plan approvals, the design for the restoration work was not complete and the approval was conditioned as noted above. The Applicant proposes to breach the dam of the pond, restore and stabilize the stream channel, and create wetlands. Staff has recommended that the restoration include a variety of wetland habitat (emergent, scrub shrub and forested), and the amended plans reflect that. The result will include planting a portion of the stream valley buffer with vegetation other than trees; however, the FCP includes planting the same number of trees as would be necessary to meet the density requirements for planting the entire stream valley buffer. The required trees will be planted in a clustered configuration that allows the varied habitat that is desired in this area. Staff believes that this site presents a unique opportunity to create a diverse ecological habitat because of the existing open landscape and the mapped hydric soils that are suitable for wetland restoration. The amended plans include the limits of disturbance for this work, which will be constructed in two phases as noted on the FCP. The Applicant has secured necessary approvals from the Maryland Department of the Environment (MDE) and the U.S Army Corps of Engineers (COE) for Phase I of this work and the remaining area (Phase II) is currently under review. As of the date of this staff report, 17 building permits have been issued for the Property.

The amended FCP requires 0.53 acres of additional forest clearing below the existing pond to allow the area to be graded, restored and replanted. The additional clearing results in a total forest planting requirement for the Property of 23.23 acres. Consistent with the approved FCP and Master Plan recommendations, the Amendment proposes to replant the entire stream valley buffer, resulting in approximately 4.0 acres more than the planting required per the forest conservation law. The 27.24 acres of forest planting and the 12.93 acres of forest retention result in a total of 40.17 acres of forest protected in a Category I conservation easement.

The Application is subject to Section 22A-12(f) of the forest conservation law, which requires any development in a cluster zone to retain or plant a specified percentage of the Property in forest. In this case, all onsite forest must be retained and additional forest planted onsite to reach a total onsite forest amount equal to 20 percent of the net tract area. For this Property, the Applicant must save and/or plant 35.20 acres of forest.

Section 22A12(f)(3) states that if the Planning Board finds that the required forest retention is not possible, the Applicant must meet the requirement by providing the maximum possible onsite retention in combination with onsite reforestation and afforestation, not including landscaping. The Property contains 13.89 acres of existing forest. The approved FCP included 0.43 acres of forest clearing, including 0.26 acres of forest located within the dedicated right-of-way of Batchellors Forest Road that cannot be protected in a conservation easement and must therefore be counted as cleared. The approved FCP also included 0.17 acres of forest clearing within the dedicated right-of-way of Emory Church Road for the construction of an off road multi-use trail and water main installation. The Amendment proposes an additional 0.53 acres of forest clearing for the removal of the pond and grading necessary to restore the area downstream of the pond. The result is a total of 0.96 acres of forest clearing.

The remaining 12.93 acres of onsite forest will be retained and protected in a Category I conservation easement. The FCP proposes to retain the maximum amount of forest possible; it is only the forest located in the right-of-way dedication areas and area proposed for pond removal/restoration that will not be retained. 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 22A-12(f), 35.20 acres. The total forest planting required by the Applicant per the forest conservation worksheet is 23.23 acres; however, the plan actually provides 27.24 acres of onsite forest planting. The proposed forest planting combined with forest retention results in 40.17 acres of forest protected in a Category I conservation easement, thus satisfying Section 22A-12(f)(3).

Tree Variance

Section 22A-12(b) (3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree, disturbance within the tree's critical root zone (CRZ), or pruning 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, diameter at breast height (DBH); are part of an historic site or designated with an historic structure; are designated as a 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.

Variance Request

The approved FCP included a variance to remove eight trees and impact, but not remove forty others that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. The Amendment includes a request for an additional variance to impact, but not remove, two trees that are 30 inches and greater, DBH (Attachment B). The disturbance proposed by the Amendment will impact the critical root zones of two trees, #22, a 32" DBH tulip tree and #170, a 30" DBH black gum (Figure 4). The proposed land disturbance will require less than 13 percent impact to the critical root zones of each of these trees.

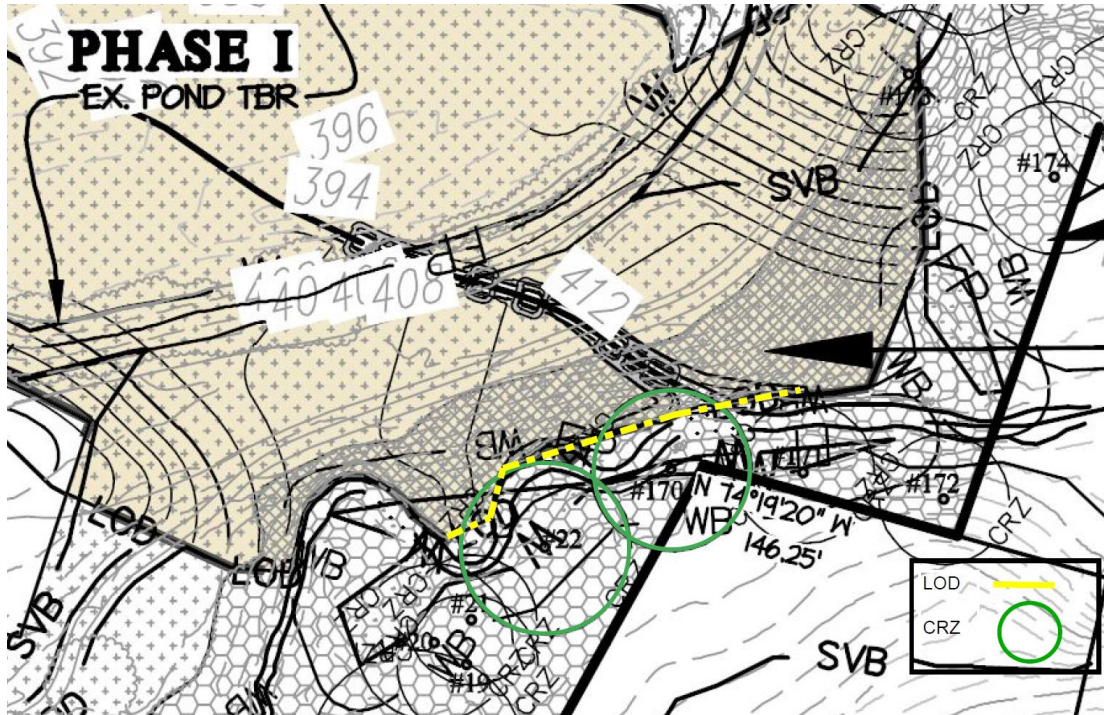


Figure 4 – tree variance exhibit

Unwarranted Hardship

As per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in an unwarranted hardship. The proposed Amendment requiring disturbance to the critical root zones of two trees subject to the variance provision is due to a condition of approval of the Preliminary Plan that resulted from recommendations in the Master Plan to remove the on-site pond, restore the area and create wetland habitat. The two trees to be impacted are located at the base of the dam near the outfall pipe. In order to breach the dam, remove the pipe, and restore this area, impacts to the critical root zones of these two trees is unavoidable. Staff has reviewed this variance request and finds that there would be an unwarranted hardship if a variance were not considered.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

Variance Findings

Staff has made the following determination based on the required findings that granting of the requested variance:

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 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 site proposed for restoration 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 site conditions.
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 pond removal and habitat restoration, 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. The Amendment 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 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 FCP proposes 4.0 acres of forest planting above the minimum requirement under the forest conservation law. The combined reforestation and landscaping proposed on the site will more than offset any loss in the functions currently provided by the subject trees. In addition, Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable. The stormwater management concept incorporates Environmentally Sensitive Design (ESD).

Mitigation for Trees Subject to the Variance Provision – There are two trees proposed to be impacted, but not removed in this variance request. There is some disturbance within the critical root zones of these two trees; however, they will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

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. The request was forwarded to the County Arborist on January 23, 2017. On February 3, 2017, the County Arborist issued a letter recommending that the variance be granted, with mitigation (Attachment C).

ANALYSIS AND FINDINGS – Chapter 22A

The original site plan was approved on August 12, 2013. The changes proposed by this Amendment are limited to a small portion in the southern part of the site, and only relate to forest conservation. Except as explicitly modified below, all previous findings made to the original site plan No. 820130060 and subsequent amendments remain valid.

The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The proposed development is subject to the forest conservation law and meets all the applicable requirements for forest protection under Chapter 22A. The Property has an approved Final Forest Conservation Plan that included a condition that the FCP be amended to include detailed limits of disturbance for the removal of the onsite pond and restoration of the area. The amended FCP is consistent with the conditions of approval.

COMMUNITY OUTREACH

This Application was submitted and noticed in accordance with all Planning Board adopted procedures. As of the date of this report, Staff has not received any inquiries regarding the proposed amendment.

CONCLUSION

The proposed Amendment meets all requirements established in the Montgomery County Forest Conservation Law, substantially conforms to the recommendations of the Olney Master Plan, and complies with the conditions of approval of Preliminary Plan 120130050, including Final FCP 820130060. Therefore, Staff recommends approval to the Site Plan Amendment, as conditioned.

Attachments

- A – Amended Forest Conservation Plan 82013006D
- B – Tree Variance Request
- C – County Arborist Recommendation



AFFORESTATION #F2
132 AC

AFFORESTATION #F1
338 AC

AFFORESTATION #F5
0.59 AC

AFFORESTATION #I
0.82 AC

AFFORESTATION #F4
388 AC

FOREST CONSERVATION #4
CATEGORY I FCE
309 AC

FOREST CLEARING AREA
0.53 AC

AFFORESTATION #G
234 AC

AFFORESTATION #P3
343 AC

LEGEND

- FOREST RETENTION/CONSERVATION AREA
- FOREST CLEARING AREA
- REFORESTATION AREA
- SPECIMEN TREE AND CRITICAL ROOT ZONE
- TREE TO BE REMOVED
- LIMIT OF STREAM RESTORATION PLANTING PLANS. (PHASE 1 - SEE SHEETS 16-22) (PHASE 2 - SEE SHEETS 23-25)
- MATCHLINE

DEVELOPERS CERTIFICATE

The undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 82013006D including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: TOLL BROTHERS, INC.
Private Company Name

Contact Person or Owner: JOHN HARRIS
Printed Name

Address: 7164 COLUMBIA GATEWAY DRIVE, SUITE 230
COLUMBIA, MARYLAND 21046

Phone and Email: (410) 381-3141 jharris@tollbrothersinc.com

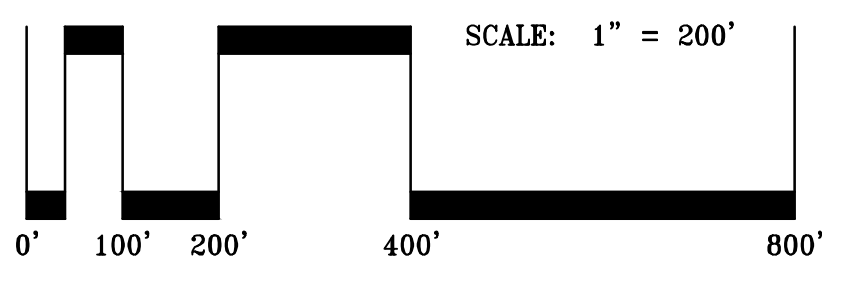
Signature: _____

Name/Title: JOHN HARRIS, VICE PRESIDENT

AMENDMENT NO. 82013006D:
REVISED LIMITS OF DISTURBANCE FOR REMOVAL OF THE EXISTING DAM AND ONSITE STREAM AND WETLAND RESTORATION.

GLW GUTSCHICK LITTLE & WEBER, P.A.
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS
3909 NATIONAL DRIVE - SUITE 250 - BURTONSVILLE OFFICE PARK
BURTONSVILLE, MARYLAND 20866
TEL: 301-421-4024 BAL: 410-880-1820 DC/VA: 301-989-2524 FAX: 301-421-4186

DATE	REVISION	BY	APPR.
12.13.2016	REVISED PER M-NOPPP COMMENTS	KAB	KAF
06.14.2016	REVISED LIMITS OF DISTURBANCE FOR REMOVAL OF EXISTING DAM AND STREAM AND WETLAND RESTORATION.	KAB	KAF
02.28.2013	REVISED PER PLANNING BOARD CONDITIONS	JRS	KAF
02.28.2013	REVISED PER DRC COMMENTS	JQJ	KAF



PREPARED FOR:
TOLL BROTHERS, INC.
7164 COLUMBIA GATEWAY DRIVE
SUITE 230
COLUMBIA, MD 21046
ATTN: MR. JEFFERY DRISCOLL

SCALE	ZONING
1"=200'	RNC
DATE	TAX MAP - GRID
NOV, 2012	HS-563

COMPOSITE FINAL FOREST CONSERVATION PLAN

TROTTERS GLEN
LOTS 1 THRU 12, BLOCK 'A', LOTS 1 THRU 57, BLOCK 'B'
PARCELS 'A'-'D'

LIBER 4745, FOLIO 122 & LIBER 7018, FOLIO 636

OLNEY ELECTION DISTRICT No. 08

MONTGOMERY COUNTY, MARYLAND

GLW GUTSCHICK, LITTLE, & WEBER, P.A.
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

July 11, 2016

Forest Conservation Program Manager
Maryland National Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Trotters Glen - Variance Request
Site Plan No. 82013006D

On behalf of our client, Toll Brothers Inc., we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:
 - (i) 30 inches or more; or*
 - (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.**

Section 5-1611 of the Maryland State Code grants the authority to Montgomery County (local authority) for approval of the variances, and Section 22A-21 Variance, of the Montgomery County Code establishes the criteria to grant a variance.

The subject property, Trotters Glen, is located approximately ½ mile east of the intersection of Georgia Avenue (MD Rte. 197) and Batchellors Forest Road in Olney, a community in Montgomery County, Maryland. The property is irregularly shaped and comprised of mostly gently rolling, open land with scattered specimen trees and mature woodland along its edges. It is currently maintained as a golf course with a club house, cart paths, and a large pond in the southeast corner. Three residences are located on the property, two of which will be removed. Batchellors Forest Road runs through the property and is designated a 'rustic road' by the Maryland National Park and Planning Commission. The neighborhoods surrounding the property are single family detached houses in the Batchellors Forest Estates subdivision to the south, the Anscroft subdivision to the west and Norbrook Village subdivision to the north and other single lot detached non-subdivision homes.

The applicant is requesting a variance to affect the following trees that measures 30” or greater in diameter at breast height (dbh):

Request to impact the critical root zones of the following trees 22 & 170:

Tree #22 – 32”dbh, Tulip poplar – Good Condition

Tree #170 – 30”dbh, Black Gum – Good Condition

<u>TREE #</u>	<u>TREE TYPE</u>	<u>% DISTURBED</u>	<u>REASON</u>
22	Tulip Poplar	4.4%	Grading for Stream & Wetland Restoration
170	Black Gum	12.4%	Grading for Stream & Wetland Restoration

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:

Great care has been taken by the applicant to minimize impacts to any of existing trees on the property. The property has been used principally as a golf course for the past several decades as well as a homesite for several residences, barns and outbuildings. During that time numerous significant specimen trees grew up around the houses and in select areas suited to a golf course. As part of the conditions of approval for Preliminary Plan #120130050, prior to approval of the 28th building permit, it is required that the limits of disturbance area be established for the removal of the dam and onsite stream and wetland restoration. As a result, the minimal disturbance of Trees 22 and 170 are virtually unavoidable. Proposed site grading has been adjusted to avoid other nearby trees with the result being that these two trees will be minimally disturbed.

Impacting Critical Root Zones (CRZ) of Tree # 22 & 170:

Tree #22 & 170 will both be minimally impacted on one side of their outer CRZ area to clear and grade for the stream and wetland restoration. Prior to construction, root pruning, temporary tree protection fencing and signage, and other protective measures deemed necessary by the arborist will be employed to minimize the effects of construction.

2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:

Not granting the variance would cause undue hardship on the applicant, because the inability to impact the subject trees would prevent the onsite and stream and wetland from being restored. This would deny the applicant full use of the property and is an unwarranted hardship to the applicant. The applicant has followed the requirements of the zoning regulations and by enforcement of this chapter it will ultimately deprive the applicant, ability to develop this site beyond the 28th building permit. Granting of the variance will ultimately allow the site to be developed in accordance with the Olney Master Plan.

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 variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities will require sediment control and or storm water management plan approvals by Montgomery County. This approval, of SWM Concept #241876, will confirm that the goals and objective of the current state and county water quality standards have been met for the proposed development, on site.

The slopes on the site will be graded at 3:1 to improve the stability of the existing steep slopes. This combined with the creation of micro-bio-retention facilities will improve the existing water quality on the site.

4. Provide any other information appropriate to support the request:

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the utility line easements, the steep slopes, or plant the trees. As mentioned above, granting of this variance will ultimately allow this property to be developed. The removal of the significant and specimen trees is practically unavoidable and will be remediated in an offsite forest bank. Special attention will be given to any construction work that may impact the critical root zones of specimen trees that can be saved. In particular:

The Applicant believes that the information set forth above is adequate to justify the requested variance to impact the critical root zone of four specimen trees on the subject property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. Loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Kevin Foster
Landscape Architect



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

February 3, 2017

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

RE: Trotters Glen, ePlan 12013006D, site plan amendment application accepted on 12/15/2016

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

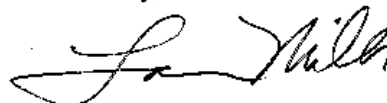
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 meeting 'conditions of approval' pertaining to variance trees recommended by Planning staff, as well as 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: Mary Jo Kishter, Senior Planner