

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

January 31, 2024

MCPB No. 24-007

Forest Conservation Plan No. F20230500

CM Muncaster

Date of Hearing: January 11, 2024

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on September 20, 2023, CM Muncaster, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 4.46 acres of land located at 7100-7106 Muncaster Mill Road (“Subject Property”) in the Upper Rock Creek Policy Area and *2004 Upper Rock Creek Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230500, CM Muncaster (“Forest Conservation Plan” or “Application”);¹ 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 dated December 22, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions, and in conjunction with an accompanying Conditional Use application CU202407 (“Staff Report”); and

WHEREAS, on January 11, 2024, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick and Linden voting in favor.

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board’s action is with regard to the preliminary Forest Conservation Plan.

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230500 on the Subject Property, subject to the following conditions:²

1. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 67 caliper inches. Planting locations to be shown on the Final Forest Conservation Plan (“FFCP”). The Applicant must submit a Final Forest Conservation Plan (“FFCP”) for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
2. The Applicant must submit a Final Forest Conservation Plan (FFCP) for review and approval by Planning Department Staff before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property.
3. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.
4. The Applicant must provide ISA Certified Arborist Report and Tree Protection Measures at the time of the FFCP for all off-site or co-owned trees impacted by the project.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as 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. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Subject Property is zoned R-200 and is assigned a Land Use Category of High Density Residential (“HDR”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the Trees

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

Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The Net Tract Area for forest conservation purposes is the 4.46 acres. There is a total of 0.29 acres of existing forest on the Subject Property with the Applicant proposing to remove all 0.29 acres of forest. This results in a total afforestation/reforestation requirement of 0.96 acres within the same watershed/Priority Area or 1.10 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement offsite.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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.

This Application will require the removal or CRZ impact to 10 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for a Townhouse Living community without the Variance.

The Board makes 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 impacts are due to necessary development requirements of the site. These impacts cannot be avoided. Therefore, 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 requested Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based on existing site conditions and the requirements to meet development standards.

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 requested Variance is a result of the existing conditions and proposed improvements, not as 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 five (5) Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The five (5) Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4-inch DBH removed. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is

January 31, 2024

(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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

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 Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, January 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board

Chris Malm
1355 Beverly Road, Suite 330
McLean, VA 22101

Phil Hughes
1751 Elton Road, Suite 300,
Silver Spring, MD 20903

Joe Caloggero
9900 Franklin Square Drive, Suite H,
Baltimore, MD 21236

Scott Wallace
11 N. Washington Street
Suite 700, Rockville, MD 20850

Justin Caruana
17531 Applewood Ln
Derwood, MD 20855

Marilyn Madden
17509 Applewood Lane
Derwood, MD 20855

Defence Lalawgn
Chairman
P.O. Box 5763
Rockville, MD 20855

Forest Conservation Plan No.
F20230500