

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**DATE MAILED:**

**August 5, 2025**

MCPB No.25-093  
Forest Conservation Plan No. F20230500  
Muncaster Mill Property  
Date of Hearing: July 31, 2025

## RESOLUTION

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

WHEREAS, on April 2, 2025, CM Muncaster Mill, LLC (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120250130 (“Accompanying Plan”) on approximately 4.46 acres of land located at 7100 & 7106 Muncaster Mill Road (“Subject Property”) in the Derwood 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, Muncaster Mill Property (“Forest Conservation Plan” 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 dated July 21, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 31, 2025, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230500 on the Subject Property, subject to the following conditions:<sup>1</sup>

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<sup>1</sup> 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.

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff, as per Section 22A.00.01.10 of the Code of Montgomery County Regulations (“COMCOR”), Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan (FCP). The M-NCPPC Forest Conservation Inspection Staff may require tree save measures not specified on the Final Forest Conservation Plan.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for the Accompanying Plan, the Applicant must:
  - a. Record a Category I Conservation Easement over all areas of forest retention and forest planting as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel. It must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
  - b. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - c. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M- NCPPC Forest Conservation Inspection Staff.
  - d. Submit a cost estimate for the reforestation/afforestation and other FCP requirements, which includes but is not limited to trees and shrubs, variance mitigation trees, five years of maintenance including invasive species management controls, permanent easement posts and signage, natural surface trails, split rail fencing, mulching, staking, tree protection, and tree protection removal credited toward meeting the requirements as shown on the FCP. This cost estimate must be reviewed and approved by the M-NCPPC Planning Department Inspection Staff prior to the submission of financial surety to determine the amount of the financial surety.
  - e. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department Inspection Supervisor for the 0.28 acres of new forest planting, mitigation trees, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
  - f. Record an M-NCPPC approved Certificate of Compliance, in an M-NCPPC approved off-site forest bank within the Rock Creek watershed, or Priority Area to satisfy the

reforestation requirement of 0.66 acres of mitigation credit. If no off-site forest banks exist within the Rock Creek watershed or Priority Area, then the off-site requirement may be met by purchasing 0.80 acres of mitigation credits from a mitigation bank within Montgomery County, outside of the Rock Creek watershed or Priority Area, subject to Staff approval. If forest mitigation bank credits are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC for the appropriate mitigation credits outside of the same watershed or Priority Area.

5. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the afforestation/reforestation plantings as shown on the approved FCP.
6. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches, totaling 47 caliper inches, as shown on the approved FCP (14 3.5-inch caliper trees). Adjustments to the planting locations of these trees are permitted with the approval of the M- NCPPC Forest Conservation Inspection Staff.

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 the Land Use Table of the Trees 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 4.46 acres. The Subject Property contains 0.29 acres of existing forest, of which 0.29 acres will be cleared resulting in an afforestation/reforestation requirement of 0.94 acres either within the same watershed or Forest Conservation Priority Area or 1.08 outside the watershed or priority area.

As conditioned, the Applicant will partially meet the afforestation requirement by planting 0.028 acres of forest onsite and will meet the remainder of the requirement by purchasing forest mitigation bank credits from an offsite forest bank or by paying a fee-in-lieu into the Forest Conservation Fund if no forest mitigation bank credits are available.

#### 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 of five (5) Protected Trees and CRZ impacts to four (4) 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 43 lots for a proposed Townhouse Living project without the Variance.

The project is being developed with Design for Life standards to create a community with accessibility standards “which make it easier and safer to accommodate a person living with a temporary or permanent impairment, accommodate friends or relatives who have mobility limitations or even bring in a baby stroller or move in large furniture.” With the Design for Life accessibility standards, the entire site has been designed to meet ADA standards, including a zero front door threshold and sidewalks with a running slope of less than 5% and a cross slope of 2%. These additional ADA accessibility requirements limit the flexibility of layout design and grading. To accommodate traditional zoning standards and requirements, such as stormwater management and pedestrian circulation, along with Design for Life practices, specimen tree impacts are necessary.

To treat stormwater from the site, micro-bioretenion and landscape infiltration facilities are proposed for the lower elevations along the eastern portion of the site. The topography limits suitable locations for SWM facilities and necessitates impacts on offsite trees adjacent to this area. If the requested Variance were denied, it would cause unwarranted hardship, and the Applicant would be precluded from developing

the Subject Property for a reasonable and significant use of the property.

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 to the nine Protected Trees are due to the development of the Property, the location of the trees in proximity to the LOD, and necessary site design requirements for this development. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting of this variance is not a special privilege granted only to this Applicant and 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 upon the existing site conditions, development standards of the zone, necessary design requirements of this Application, and requirements of other governmental agencies. Disturbance has been minimized to the extent possible, taking into account the Design for Life standards applied to this project as further described above.

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 the proposed site design and layout of the Subject Property, and not because 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 Protected Trees being impacted or removed are not located within a stream buffer, wetland, or Special Protection Area. The Protected Trees being impacted but retained are fully expected to recover and to continue providing the ecological and water quality functions that the impacts of the Protected Trees may initially reduce. The trees to be removed are being mitigated for, and their removal will be offset by replacing any loss of water quality protection. Therefore, the Application

will not violate State water quality standards or cause measurable degradation in water quality.

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 per 4 inches DBH being removed. A total of 188 inches DBH of specimen trees will be removed (188 inches x .25 = 47 caliper inches). The Applicant will be utilizing 3.5-inch caliper trees. 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

**August 5, 2025**

(which is the date that this Resolution is mailed to all parties of record);

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.

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#### CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution approved and 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 4-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley necessarily absent, at its regular meeting held on Thursday, July 31, 2025, in Wheaton, Maryland and via video conference.



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Artie L. Harris, Chair  
Montgomery County Planning Board