

Area 3 Planning Chief
Montgomery County Planning Department
MNCP&PC
2425 Reddie Drive
Wheaton, MD.

Re: Preliminary Forest Conservation Plan – Muncaster Mill Property (F-20230500)
Request for Tree Variance

Dear Planning Board:

On behalf of our client, CM Muncaster, LLC (the "Applicant"), we hereby request a Tree Variance in connection with Preliminary Forest Conservation Plan No.F20230500, for the Muncaster Mill Property (the "Subject Property") pursuant to Section 22A-12 of the Montgomery County Code (the "County Code").

I. Background Information

The Applicant proposes developing a yield of 43 townhouse units on 4.46 acres based on Design for Life standards. The individual trees locations and impacts are all depicted on the approved Natural Resources Inventory/ Forest Stand Delineation (NRI-FSD) No.420221860 and the pending Preliminary Forest Conservation Plan (PFCP) for the subject property.

II. Tree Removal and Critical Root Zone Disturbance

The 43-unit development proposed by this subdivision application requires approval of a Tree Variance pursuant to Section 22A-21 of the County Code. Approval of the requested Tree Variance will allow the removal of Specimen Trees 3, 6, 8, 19, and 34 and the impacts to Specimen Trees 5, 9, 10, 16, and 26 as shown on the Preliminary Forest Conservation Plan.

III. The Variance Requirements

Section 5-1607 of the Natural Resources Article requires a variance for the removal or disturbance of trees having a diameter of 30 inches or greater when measured at 4.5 feet above the ground. Section 5-1611 of the Natural Resources Article authorizes a local jurisdiction to grant a variance:

"where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant."

Chapter 22A of the County Code specifies the circumstances when a Tree Variance, a variance from Chapter 22A, is required. Section 22A-21(a) of the County Code establishes the "minimum criteria" for securing a Specimen Tree Variance. Applicants seeking a variance from any Chapter 22A requirement must:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;

- (2) describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance; and
- (4) provide any other information appropriate to support the request.

A Tree Variance that meets the "minimum criteria" set out in Section 22A-21(a) of the County Code may not be approved 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 result from the actions by the applicant;
- (3) is based on 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

The following paragraphs illustrate the factual basis supporting the approval of this Tree Variance by the Planning Board. Technical information for this request has been provided by CPJ.

A. The special conditions that are peculiar to the Subject Property that would cause the unwarranted hardship are described as follows:

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, such as zero front door threshold and sidewalks with less than 5% running slope and 2% cross slope. These additional ADA accessibility requirements limit the flexibility of layout design and grading. In order for the site 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 to offsite trees adjacent to this area.

In the south-western portion of the site, Tree 10 is impacted by a proposed sidewalk connection to Redland Road. This area is bordered by existing town homes to the west and a proposed area of reforestation to the east. To maintain these areas, and create a pedestrian connection to Redland Road, Tree 10 must be impacted.

Along the western edge of the site, a number of trees are impacted by Alley 'C'. This alley is needed to facilitate rear loading units and to allow the proposed townhomes to front on Street 'A'. These streets and alleys must be at least 20 feet wide to avoid fire access related height restriction for the proposed townhouses and to allow fire truck access to all portions of the site. This requirement further limits flexibility for the design. Along with the alley and road restrictions, each dwelling unit must have two parking spaces for residents. This requirement means the driveways must be at least 20 feet long to accommodate a parked vehicle in addition to the garage space.

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 commonly enjoyed by virtually all other property owners in the community.

B. The following paragraphs describe how enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas.

If the requested Variance were denied, the Applicant would suffer unwarranted hardship and would be deprived of rights commonly enjoyed by other property owners in the R-200 (Residential 200 Zone), Optional Method Development Zone, and adjoining areas in a manner permitted by the zoning ordinance that is consistent with the development history of the approved zoning.

If the variance were not granted for the trees identified on the attached chart, those trees would have to remain and be undisturbed and the Applicant would be unable to develop the property and would result in the disparate treatment of the Applicant in comparison to rights commonly enjoyed by others in the same area and in similar R-200, Optional Method Development zoned areas.

C. State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variances.

A Stormwater Management Concept Plan has been submitted for the Subject Property using environmental site design techniques to the maximum extent practicable and the proposed development will meet State water quality standards. The approval of the requested Variance will not result in any measurable degradation in water quality standards.

A copy of the approved Stormwater Management Concept Plan is included in the submission of the plan.

D. Other information that supports the requested variances:

The Approved and Adopted Trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Tree Variance. Generally, the Technical Manual recognizes that clearing is appropriate for street and driveway construction to provide access to new development and to create a building envelope for development.

The Technical Manual also acknowledges that well planned clearing balances the public policies of preserving forest and funneling development into appropriate locations. The Technical Manual provides that one factor to be considered.

"The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees."

The proposed Subject Property development of 43-units, utilizing the R-200, Optional Method Development Zone, fully complies with the specific regulations of the Zoning Ordinance and the land use recommendations and intentions of the Master Plan.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which 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;

Response: The development was specifically zoned R-200, as such, this is not a special privilege to be conferred on the applicant.

(2) Is based on conditions or circumstances which are the result of the actions by the applicant;

Response: The Property Owner has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on neighboring property; or

Response: The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

(4) Will violate State water quality standards or cause measurable degradation in water quality.

Response: Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

VARIANCE TREES TO BE REMOVED

The trees proposed to be removed are shown on the pending Preliminary Forest Conservation Plan (PFCP) for the subject project. The tree requiring a variance is as follows:

SPECIMEN TREE REMOVAL LIST							
TAG NO	COMMON NAME	SCIENTIFIC NAME	DBH	CONDITION	CRZ IMPACTED	STATUS	COMMENTS
3	Canada Hemlock	Tsuga canadensis	34.5"	Poor	100%	Remove	
6	Norway Spruce	Picea abies	38.0"	Poor	100%	Remove	
8	Red Maple	Acer rubrum	39.0"	Poor	92%	Remove	
19	Red Maple	Acer rubrum	43.0"	Poor	83%	Remove	
34	Tulip Poplar	Liriodendron tulipifera	33.5"	Poor	100%	Remove	

SPECIMEN TREE IMPACT LIST							
TAG NO	COMMON NAME	SCIENTIFIC NAME	DBH	CONDITION	CRZ IMPACTED	STATUS	COMMENTS
5	Eastern White Pine	Pinus strobus	35.0"	Fair	29%	Save	Off-Site
9	Black Cherry	Prunus serotina	33.0"	Poor	32%	Save	Partially Off-Site
10	Northern Red Oak	Quercus Rubra	36.0"	Poor	3%	Save	Off-Site
16	Eastern White Pine	Pinus strobus	32.0"	Poor	45%	Save	Off-Site
26	Eastern White Pine	Pinus strobus	31.0"	Fair	39%	Save	Off-Site

This variance request is for ten (10) specimen trees being impacted by the construction of proposed buildings, roads, alleys, and associated stormwater management infrastructure. Five (5) variance trees are proposed to be removed as indicated in the table above. Five (5) trees will be impacted but saved. The subject property is proposed to be developed using the R-200 Optional Method Development Zone. By clustering the

development, most of existing trees (including specimen trees) will be retained in open space areas and conservation easements.

Specific impacts for Specimen Trees 3, 5, 6, 8, 9, 10, 16, 19, 26, and 34 included in this variance request is as follows:

Tree 3, a 34.5" Canada Hemlock, is located in the south-eastern portion of the site. During a field assessment, the tree was deemed to be in poor health. Due to the lot layout and grading constraints, stormwater management (SWM) piping must be run directly adjacent to Tree 3. With the proximity of the tree to the SWM infrastructure and proposed sidewalk, it will be severely impacted by grading. Based on the poor condition of the tree and unavoidable impacts from site development, the removal of Tree 3 is necessary.

Tree 5, a 35.0" Eastern White Pine, is located adjacent to the south-eastern portion of the site. During a field assessment this tree was deemed to be in fair condition. A proposed SWM facility and the required grading is located within the CRZ and will impact the tree. Grading for this facility will be completed in a manner to minimize impacts to the tree and limit the disturbance to 29% of the CRZ. Additional tree protection measures to be determined by inspector at time of construction.

Tree 6, a 38.0" Norway Spruce, is located in the southern portion of the site, adjacent to proposed Alley 'B'. During a field assessment, the tree was deemed to be in poor health. Tree 6 will be impacted by proposed driveways and townhouse units and their associated grading. Based on the poor condition of the tree and unavoidable impacts from the proposed development and grading, the removal of Tree 6 is necessary.

Tree 8, a 39.0" Red Maple, is located in the southern portion of the site. During a field assessment, the tree was deemed to be in poor health. Due to the site layout constraints, Tree 8 will be impacted by a proposed sidewalk, seating area, and townhouse units. Based on the poor condition of the tree and unavoidable impacts of proposed construction, the removal of Tree 8 is necessary.

Tree 9, a 33.0" Black Cherry, is located on the western boundary of the site and will be impacted by the construction of a multi-age play area. The play area is located to minimize impact to the tree and allow for it to be preserved through root pruning and tree protection fence. Additional tree protection measures to be determined by inspector at time of demo of existing structures.

Tree 10, a 36.0" Red Oak, is located in the south-western portion of the site. During a field assessment, the tree was deemed to be in poor health. Sidewalk construction will impact approximately 3% of the CRZ but the tree will be preserved.

Tree 16, a 32.0" Eastern White Pine, is located in the western portion of the site, adjacent to the property boundary. During a field assessment, the tree was deemed to be in poor health. Due to the construction of Alley 'C' and an associated retaining wall, Tree 16 will be impacted during construction. A critical root zone impact of 45% is necessary to accommodate the construction efforts.

Tree 19, a 43.0" Red Maple, is located in the western portion of the site. During a field assessment, the tree was deemed to be in poor health. Due to the poor condition, impacts from the construction of Alley 'C' and associated retaining wall, and impacts from proposed driveways, the removal of Tree 19 is necessary.

Tree 26, a 31.0" Eastern White Pine, is located in the north-western portion of the site, adjacent to the property boundary. During a field assessment, the tree was deemed to be in fair health. Due to the construction of Alley 'C' and an associated SWM infrastructure, Tree 26 will be impacted during construction. A critical root zone impact of 39% is necessary to accommodate the construction efforts.

Tree 34, a 33.5" Tulip Poplar, is located in the northern portion of the site. During a field assessment, the tree was deemed to be in poor health. Due to the poor condition, impacts from the construction of Alley 'C' and Street 'A', and impacts from proposed driveways, the removal of Tree 34 is necessary.

Critical Root Zone Impacts

There are two (2) specimen trees whose critical root zones will be disturbed by the development and are proposed for preservation. While these trees will have impacts to their critical root zone, the applicant will attempt to preserve them using tree protection fence and root pruning per MNCPPC Standards prior to construction activities.

Mitigation

The client will provide additional tree plantings to mitigate for the removal of specimen trees at a rate 1" caliper per 4" DBH being removed. A total of 268 inches DBH of specimen trees will be removed.

$268" \cdot (.25) = 67" \text{ Cal. To be planted at } 3 \frac{1}{2}" \text{ cal. Trees} = \mathbf{19.14 \text{ Mitigation Trees.}}$

Conclusion:

For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact/remove the variance trees in order to allow the construction of this vital project.

Sincerely,

A handwritten signature in blue ink that reads "Amy J. Sommer". The signature is written in a cursive, flowing style.

Amy Sommer, PLA