

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of the Petition of :
Craftmark Homes : Case No. _____
for a Conditional Use to operate a :
Design For Life Townhouse Community :

**PETITIONER’S STATEMENT IN SUPPORT OF
APPLICATION AND STATEMENT OF OPERATIONS**

Petitioner, CM Muncaster LLC (“Petitioner”), hereby submits this Statement in Support of Application and Statement of Operations in connection with the Petition for a Conditional Use to develop townhouse units that comply with Design For Life construction standards and requirements (the “Petition”), at 7100 and 7106 Muncaster Mill Road, Derwood, Maryland (the “Subject Property”).

I. Subject Property/Existing Conditions

The Subject Property is comprised of parts of lots 13 and 14, Cashell Estates, depicted on Record Plat No. 1568 recorded among the Land Records of Montgomery County (“Land Records”) on July 22, 1943. It is classified in the R-200 zone within the Derwood Planning Area and the Rock Creek watershed. (See, Certified Zoning Map.) The Subject Property is within the boundaries of the Upper Rock Creek Master Plan, Approved and Adopted in April 2004. (See, Master Plan p. 2.)

The Subject Property is improved with two single-family dwellings with numerous outbuildings and structures. (See, Existing Conditions Plan.) The existing improvements are mainly situated in the southern portion of the Subject Property with the exception of one of the single-family dwellings, which is located in the Subject Property’s northernmost corner. *Id.* The site is mostly maintained lawn, but there are several trees throughout the site, most of which are located on the western property line. *Id.*

The Subject Property is approximately 194,216 square feet, or 4.46 acres in size. (See, Conditional Use Site Plan.) The Subject Property is trapezoidal in shape with a rear lot line approximately 389.75 feet long and the property is approximately 672.49 feet deep. *Id.*

The Subject Property has access, via two driveway aprons, to and from Muncaster Mill Road. (See, Existing Conditions Plan.) Muncaster Mill Road is a “country connector” with an 80-foot-wide right-of-way. (See, Land Use and Planning Report.)

The Subject Property slopes from southwest to northeast with approximately twenty (20) feet of elevation change. There are no wetlands, 100-year floodplains or historic features on or adjacent to the Subject Property. (See, Conditional Use Site Plan.)

Petitioner is the contract purchaser of the Subject Property pursuant to two Purchase and Sale Agreements dated November 10, 2022 and by and between it and the Subject Property’s owners.

II. Surrounding Properties and Adjacent Development

The surrounding area, identified for purposes of evaluating compatibility of the project, is defined by the boundaries of Horizon Terrace Road to the north, Redland Road to the south and west, and Applewood Lane to the east (the “Neighborhood”). The surrounding uses consist of a mix of townhouse, single-family dwellings, institutional uses and commercial uses. (See, Certified Zoning Map.) There are also townhouse communities in the RT-12.5 zone to the Subject Property’s immediate northwest and to the north and across Muncaster Mill Road. *Id.* Additionally, there are two churches located in the vicinity, both of which are in the R-200 zone. *Id.* Finally, there is a commercial center within the NR and CRT zones located at the intersection of Redland Road and Muncaster Mill Road, approximately 310 feet from the Subject Property. *Id.* The existing structures in the vicinity range from three-story townhomes and large church buildings to one- to two-story brick and wood-framed residential construction. (See, Existing Conditions Plan.)

III. Proposed Development

A. Proposed Use/Building Design

The Petitioner proposes to redevelop the Property with a Design For Life townhome community with forty-three (43) townhouses, seven (7) of which will be moderately priced dwelling units (“MPDUs”),

and associated amenities and infrastructure (the “Project”). The Project will significantly improve the visual appearance and environmental quality of the Subject Property and provide an opportunity to implement stormwater management and forest conservation strategies where there currently are none. Being a Design For Life community, the Project will also expand homeownership options for individuals with mobility challenges. Design For Life is a program in Montgomery County that increases the availability of accessible homes for disabled persons and to allow residents to live at home as they age. All homes will have a no-step front door and will meet the Design For Life standards for Level 2.

The existing houses and the improvements associated with them will be demolished for construction of the Project. The two access driveways leading to Muncaster Mill Road will also be eliminated.

The development will be serviced by public water and sewer in Muncaster Mill Road. The Subject Property is in sewer category S-1 and water category W-1.

B. Site Access and Parking

Site access will be provided by a new private street off Muncaster Mill Road which will align with Lisa Drive. The private street into the site will be a 50’ right-of-way in width and will be constructed to MCDOT standards for a modified MC-210.02 standard detail.

A minimum of two parking spaces is required for each townhome, for a total of 86 spaces. Two parking spaces will be provided for each unit within the unit garages and driveways.

The streetscape along Muncaster Mill Road will be improved with a 10’-wide asphalt shared-use path and street trees. The streetscape will also be re-graded to allow for a standard curb and gutter and to match the typical MCDOT street section.

C. Open Space and Recreation

The townhouse community includes an on-site park with a playground that will be available both to residents and the general public through a Public Access Easement (“PAE”) that will be recorded by the

Petitioner. The PAE will be in a form approved by the Montgomery County Planning Board prior to recordation.

The townhouse community also includes a central lawn for more passive recreation. This lawn will be lined with townhomes to activate it and make it feel safe and inviting.

D. Operational Features

A homeowners association will be created to maintain the common areas and facilities within the proposed townhome community.

Deliveries and pick-ups at the Subject Property will include weekly trash pick-up. FedEx and UPS deliveries will be similar to those received at similarly sized townhouse communities.

E. Landscape, Lighting and Forest Conservation

All the trees on the site are noted on the approved NRI #420221860. Any trees to be removed will be shown on the Forest Conservation Plan.

Landscape and lighting will be provided in a manner compatible with the surrounding community as shown on the Landscape Plan and Lighting Plan included with this Petition.

F. Stormwater Management

Stormwater Management (SWM) is being met via landscaped micro detention facilities throughout the site. The goal of the SWM plan is to provide for no increase in runoff for a 10-year storm event.

IV. Summary of Proof

As detailed below, this Petition satisfies all of the requisite findings necessary for the Hearing Examiner to grant the proposed Design For Life townhouse community conditional use:

- 1. Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended. §59.7.3.1.E.1.a, Zoning Ordinance.***

The above-referenced Section is not applicable. There are no previous approvals for the Subject Property.

2. *Satisfies the requirements of the zone [Article 49-4], uses standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6. §59.7.3.1.E.1.b, Zoning Ordinance.*

The proposed Design For Life townhouse community development is permitted as a conditional use in the R-200 zone. §59.3.1.6, Zoning Ordinance. The Petition satisfies the TMD Zone Optional Method development standards set forth in §59.4.4.12.C of the Zoning Ordinance, as set forth below:

Table 1

DEVELOPMENT STANDARDS		
TMD Zone, Optional Method of Development		
	Existing	Proposed
Zoning	R-200	R-200
Gross Tract Area	194,216 SF (4.46 Acres)	194,216 SF (4.46 Acres)
Prior Dedications	0	0
Proposed Dedications	0	0
	Required /Allowed	Proposed/Provided
Tract Area	194,216 SF (4.46 Acres)	194,216 SF (4.46 Acres)
Density (Max Units/Usable Area)	12.1 DU/Acre	10.4 DU/Acre
Common Open Space	20% Min.	30% (57,350 SF)
Minimum Lot Area	800 SF	1300 SF
Lot Width at Front BRL	12 ft	12 ft
Lot Width at Front Lot Line	14 ft	14 ft
Frontage on Street or Open Space	Required	Provided
Coverage (Max.)	40%	39%
Building Height (Max.)		
Principal Building Height	40'	40'
Accessory Building Height	25'	25'
Building Setbacks (Min.)		
Principal Building Setback	F-10'/4' / S-5' / R-4'	F-5' / S-5' / R-4'
Accessory Building Setback	F-10' / S-4' / R-4'	F-10' / S-4' / R-4'
	Existing	Proposed
Moderately Priced Dwelling Units	12.5%	16.3%
Vehicle Parking		
	Min. 2 SP/DU; Max. No Limit	Min. 2 SP/DU
Residential (Townhouse Living)		86 Spaces (43 Proposed DU *2 SP/DU)

Section 59-3.3.1.D.2.b Townhouse Living

Where Townhouse Living is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- i. All buildings and structures must meet or exceed the Level II Accessibility Standards established by Section 52-82T and detailed in Section 52-18U.*

All units will meet or exceed the Level II Accessibility Standards established by Section 52-18T, detailed in Section 52-18U, prior to the issuance of building permits. Verification of compliance will be provided to the Montgomery County Department of Permitting services inspectors prior to issuance of Use & Occupancy Permits.

- ii. Public bus service must be available on a road abutting the site.*

Public bus service is provided along Muncaster Mill Road. Specifically, Montgomery County Ride-On Route 53 provides weekday rush hour service between the Shady Grove and Glenmont Metro Stations by way of Olney.

- iii. A Metro Station must be within 2 miles of the site.*

The Subject Property is located within two miles of the Shady Grove Metro Station and is accessible by both Ride-On bus and by private vehicle.

- iv. Public recreation or park facilities must be within 1,000 feet of the site.*

The on-site park, which includes a playground, will be available to the residents of the community and public through a PAE that will be recorded by the Petitioner. The PAE will be in a form approved by the Montgomery County Planning Board prior to recordation.

- v. A grading plan must demonstrate that the post construction site will have a slope less than 5%.*

The submitted grading plan with the Petition verifies that the maximum slope will be at or less than 5% post-construction of the Subject Property.

- vi. The minimum tract size is 2 acres.*

The tract area of the Subject Property is 4.46 acres as surveyed by the Petitioner.

- vii. The density limitations and the development standards of the TMD zone under the optional method (Section 4.4.12.C) apply in spite of any other limitation of this Chapter.*

As detailed in Table 1 above, the Petition meets the density limitations and development standards of the TMD zone under the Optional Method.

viii. *Reducing the number of required parking spaces through a parking waiver under Section 6.2.10 is prohibited.*

The Petitioner is not requesting a parking waiver and is providing the required minimum parking for townhouse dwellings.

ix. *A minimum of one parking space for each dwelling unit must satisfy the dimensional standards for handicapped-accessible vehicle parking and a minimum 8-foot-wide access aisle required by the state.*

Each dwelling is providing for one handicapped-accessible parking space, including an 8-foot-wide access aisle in each unit's integrated garage.

x. *As a condition of approval, any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e). This prohibition does not apply to additional accessibility features that are installed post-occupancy and for which a property tax credit is requested.*

As conditioned, the Petitioner will be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e) of the Montgomery County Code.

3. *Substantially conforms with the recommendations of the applicable master plan. §59.7.3.1.E.1.C*

The Subject Property is located within the 2004 Approved and Adopted *Upper Rock Creek Area Master Plan* ("Master Plan"), the most recent master plan for this area. The Master Plan does not make specific recommendations for the Subject Property, but as noted below, makes general land use and zoning recommendations for the area in which the Property is located.

The Master Plan also endorsed the County's Housing Policy, which "*stresses the provision of affordable housing, of assistance to those with diverse housing needs, such as the elderly, the physically disabled and those within mental illness, and of equal opportunity in seeking housing.*" (Master Plan, p. 35.) The Master Plan recognized that preservation of natural resources and low-density residential character limited the universe of housing options.

The proposed Design For Life townhouse community is a conditional use in the R-200 Zone. In general, conditional uses are considered appropriate when subject to an additional layer of regulatory scrutiny. In this case, the focus is on accessibility for broad ranges of residents. Within conformance to

the conditional use standards and recommended conditions of approval, this use can be consistent with the Master Plan's land use and housing goals. It will enable the integration of additional housing in Upper Rock Creek suitable for people with special needs, an important objective of the Master Plan.

In addition, the use is compatible with the Neighborhood as a result of its residential design, massing and incorporation of numerous residential architectural elements and materials.

4. *Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan. §59.7.3.1.E.1.d, Montgomery County Zoning Ordinance*

As described in detail in the Land Use Report, the design of the community promotes compatibility with the Neighborhood. The proposed setbacks and perimeter landscaping and fencing will provide an appropriate buffer from the adjacent single-family residential uses. Furthermore, the landscaping proposed along Muncaster Mill Road will substantially screen the townhouses from the street. The buildings are residential townhouses indistinguishable from typical residential structures, utilizing various materials, colors, recesses and projections to minimize any perceived bulk and massing of the buildings.

5. *Will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area; §59.7.3.1.E.1.e, Montgomery County Zoning Ordinance*

Approving the Petition will not increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. There is one approved conditional use within the defined Neighborhood¹ – S1560 for a retail nursery and garden center for the property located to the Subject Property's immediate southeast. However, the existing use of said property appears to be a religious institution. The Project, as proposed in the Petition, is also residential in character at a density higher than the underlying zoning generally allows as part of standard

¹ There was a Special Exception (CBA2151) for a filling station located in the southern quadrant of the intersection of Muncaster Mill Road and Redland Road. However, this was revoked as abandoned in 2016.

development. This request for a residential use will be a continuation of the predominantly residential Neighborhood, and the design, massing, and screening of the units helps minimize the visual impacts of the increased density.

6. Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities: If an adequate public facilities test is required and . . . if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage... §59.3.1.E.1.f, Montgomery County Zoning Ordinance

A Preliminary Plan of Subdivision will be filed subsequent to conditional use approval to create the necessary record lots and common area parcels. As such, the Montgomery County Planning Board ("Planning Board") will be responsible for determining whether Adequate Public Facilities ("APF") exist to support the proposed development of the Subject Property. As demonstrated by the Traffic Statement, existing transportation facilities are more than adequate to support and service the Project. The Project will generate 23 AM peak hour and 30 PM peak hour person trips; therefore, no Local Area Transportation Study is required per the 2021-2024 Growth and Infrastructure Policy ("GIP"). In terms of school capacity, the Subject Property is assigned to Sequoyah Elementary School, Redland Middle School, and Magruder High School. According to the GIP FY2023 School Test, capacity is adequate at all schools that serve the Subject Property. The GIP F2024 Preliminary School Test indicates that this will remain the case. Other public facilities and services – including police stations, firehouses and healthcare facilities – are operating in accordance with the Growth and Infrastructure Policy. The nearest police station serving the Project is the 6th District Police Station, located at 45 West Watkins Mill Road in Gaithersburg, Maryland. The nearest firehouse is the Rockville Volunteer Fire Department, located at 380 Hungerford Drive, Rockville, Maryland. The Petitioner's civil engineers have confirmed that the Project will be served by public water and sewer systems, as shown on the Utilities Plan; and a Hydraulic Planning Analysis will be submitted to

the Washington Sanitary Sewer Commission in conjunction with this Petition. Electric, gas and telecommunications services are also available.

7. Will not cause undue harm to the neighborhood as a result of the non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees. §59.7.3.1.e.1.g, Montgomery County Zoning Ordinance.

The Montgomery County Zoning Ordinance defines inherent adverse effects as adverse effects created by the physical or operational characteristics necessarily associated with the particular conditional use, irrespective of its physical size or the scale of its operations. The Zoning Ordinance is clear that inherent adverse effects alone do not constitute a sufficient basis for denial of a conditional use, and must be evaluated in combination with non-inherent adverse effects. Non-inherent adverse effects are defined as adverse effects that arise from physical and operational characteristics that are not necessarily associated with the particular conditional use, or adverse effects that are created by unusual characteristics of the site.

The proposed townhouse community will be completely residential in nature comprising several sticks of townhouses along a private residential street with significant open space, recreational areas, landscaping, and sidewalks. As such, those inherent effects usually discussed with a conditional use, such as large building size, parking facilities, and traffic to the site by staff are not applicable. The remaining inherent effects are 1) outdoor amenity space, 2) street lighting, 3) traffic from residents, and 4) trash and delivery trucks.

This analysis finds each of these inherent effects of the Project will be acceptable and appropriate for the proposed location:

- Outdoor amenity space for use by residents and visitors. As noted, the proposed townhome community includes an on-site park, which includes a playground and will be available to the public. Significant traffic to the proposed park is not anticipated due to the proximity to larger park facilities, including Redland Local Park, Mill Creek Towne Local Park, and Laytonia Recreational Park. Furthermore the proposed park will be screened from adjacent single-family uses by the proposed Forest Conservation Area.
- Street lighting. As shown on the Photometric Plan, in conformance with the requirements of Section 6.4.4 of the Zoning Ordinance, lighting for the Project will fall to zero (0.0) footcandles well before approaching property lines abutting the residential uses. Special fixtures have been selected that eliminate glare to surrounding properties.
- Traffic to and from the site by residents. The Petitioner's traffic statement confirms that the Project is anticipated to result in 23 AM peak hour and 30 PM peak hour person trips – a minimal amount of traffic. Therefore, no Local Area Transportation Study is required per the GIP.
- Trash and delivery trucks. As stated above, only trash and recycling pick-up and deliveries to households, such as FedEx and UPS trucks, will occur on site. There are no communal or commercial-like facilities proposed requiring large, regular deliveries. Thus, the proposed use will be similar in nature to a typical residential community.

There are no additional inherent effects associated with townhouse living. Accordingly, as illustrated above, the Conditional Use will not result in adverse effects over and above the above-described inherent impacts.

In addition, there are no non-inherent adverse effects associated with the Conditional Use at the proposed location. This analysis, therefore, finds that the Conditional Use will not cause undue harm to the Neighborhood. There is no evidence that the Conditional Use will interfere with the use or enjoyment

of the surrounding properties; result in undue traffic, noise, odors, dust, illumination, or a lack of parking; or interfere in any way with the health, safety, or welfare of neighboring residents, visitors, or employees. Rather, as discussed in detail above, the Conditional Use will be compatible with the Neighborhood. The proposed Project, which is residential in nature, will complement the surrounding uses and improve Muncaster Mill Road to current standards along its frontage.

V. Development Schedule

The proposed facility will be constructed in a single phase. Below is the development phasing and construction sequence:

- Pre-construction meeting
- Installation of sediment control devices
- Demolition of existing improvements
- Clearing and grading
- Construction of retaining walls, structured parking and building
- Construct surface parking, stormwater management facilities, install landscaping and stabilize site
- Final inspections

VI. Written Reports

A traffic statement prepared by The Traffic Group has been submitted with this Petition, along with a Land Use & Planning Report prepared by Charles P. Johnson & Associates, Inc.

VII. Initial List of Witnesses

The Petitioner intends to call the following witnesses at the public hearing but reserves the right to call additional witnesses as necessary.

1. Mr. Chris Malm, with Craftmark Homes, Inc., will testify as to the proposed use and operations, as well as some planning and design aspects of the project.
2. Mr. Michael Loe, with Charles P. Johnson & Associates, Inc., will testify as an expert in land planning and landscape architecture on the Project's compliance with the requirements for forest conservation and environmental guidelines, the intent and requirements of the Zoning

Ordinance, the proposed landscape design, compatibility of the proposed development with the surrounding Neighborhood, and the Project's substantial compliance with the Master Plan.

3. Mr. Phil Hughes, with Charles P. Johnson & Associates, Inc., will testify as to the civil engineering requirements for stormwater management and utilities serving the site.
4. Mr. Joseph J. Caloggero, P.E., PTOE, PTP, with The Traffic Group, will testify as to traffic and transportation planning issues in accordance with the transportation statement prepared for the Conditional Use Application.

Date: _____

Respectfully submitted,

MILES & STOCKBRIDGE P.C.

By: _____

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