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I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS

This decision follows a review by the Hearing Examiner on a remand from the Board of Appeals (hereafter “Board”). The Applicant, CM Muncaster Mill, LLC (Applicant or CM Muncaster), filed an application seeking approval of a conditional use for a Townhouse Living

project on September 19, 2023. It proposes to develop 43 “Design for Life” townhomes, seven of which will be Moderately Priced Dwelling Units (MPDUs) under Zoning Ordinance §59.3.3.1.D.2.b. The subject property is zoned R-200 and is located at 780 and 7106 Muncaster Mill Road, further described as Part of Lots 13 and 14 in the Cashell Estates Subdivision. Exhibit 1.

Following a public hearing held on January 29, 2024, the Hearing Examiner¹ issued a Report and Decision dated March 7, 2024, denying the proposed conditional use. (HE Report).² The HE Report cited concerns presented by residents of the neighborhood surrounding the project regarding the project’s impact on traffic safety. On March 15, 2024, the Board received a timely filed request for oral argument on the Report and Decision from Scott Wallace, Esq., and Phillip Hummel, Esq., on behalf of the Applicant, CM Muncaster LLC. (Exhibit 50). The request for Oral Argument was opposed by Alicia Taylor who had appeared before the Hearing Examiner. The Board considered the request for oral argument and the opposition at its April 3, 2024 worksession and voted to grant oral argument.

The Board held oral argument on May 15, 2024, deliberated and decided to remand this matter to the Hearing Examiner for “...further analysis of the traffic safety issue only.” (Exhibit page 17).

The Hearing Examiner’s Report and Decision discusses in detail the evidence and testimony she reviewed regarding traffic safety. (HE Report pages 24-28). Hearing Examiner Robeson

¹ The Hearing Examiner who presided over the public hearing and rendered the HE Report, Ms. Lynn Robeson Hannan, has since retired.

² Refer to the Report and Decision of Hearing Examiner Robeson Hannan for a more comprehensive discussion of the factual background of the project and the testimony at the public hearing. This Report on remand is limited to the narrow issue of traffic impact of this proposed use on the surrounding neighborhood.

Hannan expressed concern about the project's impact on traffic safety. Among her considerations in denying the application for conditional use, she opined:

“After a careful review of all the evidence and testimony, the Hearing Examiner is not persuaded that additional traffic at this location will be safe. The Hearing Examiner finds the testimony and demeanor of those in opposition very credible because it was very consistent, documented, and earnest. She also finds that the individuals who testified are truly scared by the existing conditions, and their concerns are not merely a matter of convenience, as is sometimes the case. It’s undisputed that 15 reported accidents have occurred within 400 feet of Lisa Drive in the last nine years. There were 15 just last year in the general corridor. Different members of the opposition consistently testified to accidents that go unreported, and Ms. Taylor submitted a video of the sound of crash (post-hearing) outside her house.

“The record shows that the cause of the accidents include (1) driver’s negligence, (2) drivers using the turn lane in the middle of Muncaster Mill Road as a through lane to get to the light at Redland Road, and (2) drivers failing to yield to traffic using the merge lane provided for traffic turning right from Redland Road onto Muncaster Mill Road. The merge lane ends at Sabrina Court. T. 131.

“The stop sign delay study and the gap study submitted by the Applicant is not as reassuring to the Hearing Examiner as it could be. This is because both cover only a one a.m. hour in the peak period and one p.m. hour for only one day. The entire delay study captured only 7 trips—4 in the morning and 3 in the evening. While it’s true that the average evening delay was 30 seconds, the maximum delay was 77 seconds. The remaining two trips exited in between 4 and 8 seconds. This large difference in delay could be simply because the trips exiting that day turned right instead of left. The 77-second delay is more consistent with Ms. Taylor’s testimony that she must wait for the light at Redland Road to turn before she makes a left.

“The gap study does not fully explain how it reached its conclusion that there are adequate gaps to accommodate egress. In the evening peak hour, it includes gaps of 6-7 seconds. While these may be right turns onto Muncaster Road, conforming to the AASHTO standards, there are significantly fewer 8-second combined gaps (gaps in both lanes) for vehicles turning left. There are only 7 combined eastbound/westbound (or south and north) gaps in the evening. While 6-7 second gaps may be theoretically appropriate here because cars turning left need only cross one lane to get to the middle turn lane, sitting in the middle turn lane is the action consistently described as dangerous. Even if these observations are misplaced, the Hearing Examiner doesn’t find the single-day study persuasive because of the crash data.

“The credible testimony from those using the road every day demonstrates that there are crashes that go unreported, even crashes with property damage, that do not contribute to the statistics. The Applicant argues that it is up to SHA to determine whether to install safety improvements and defers the safety analysis to the access permit process. However, the record here shows that that SHA did install safety improvements (bollards at Lisa Drive) and may reinstall them at some point. Whether they are as effective as other safety measure

is not the question—the fact that SHA installed them at all is an indicator that they considered the situation unsafe at some level.

“The Applicant attempts to address this by arguing that the predominate crash pattern is rear end collisions. According to its traffic expert, this type of crash pattern shows there is nothing wrong with the configuration of the intersection. He attributes the cause to driver negligence and violation of the traffic laws over which the Applicant has no control. That’s not the standard for approval of a conditional use. The standard requires a finding that access/egress will be safe at this location. This record does not provide enough evidence for the Hearing Examiner to make that finding.” (Id).

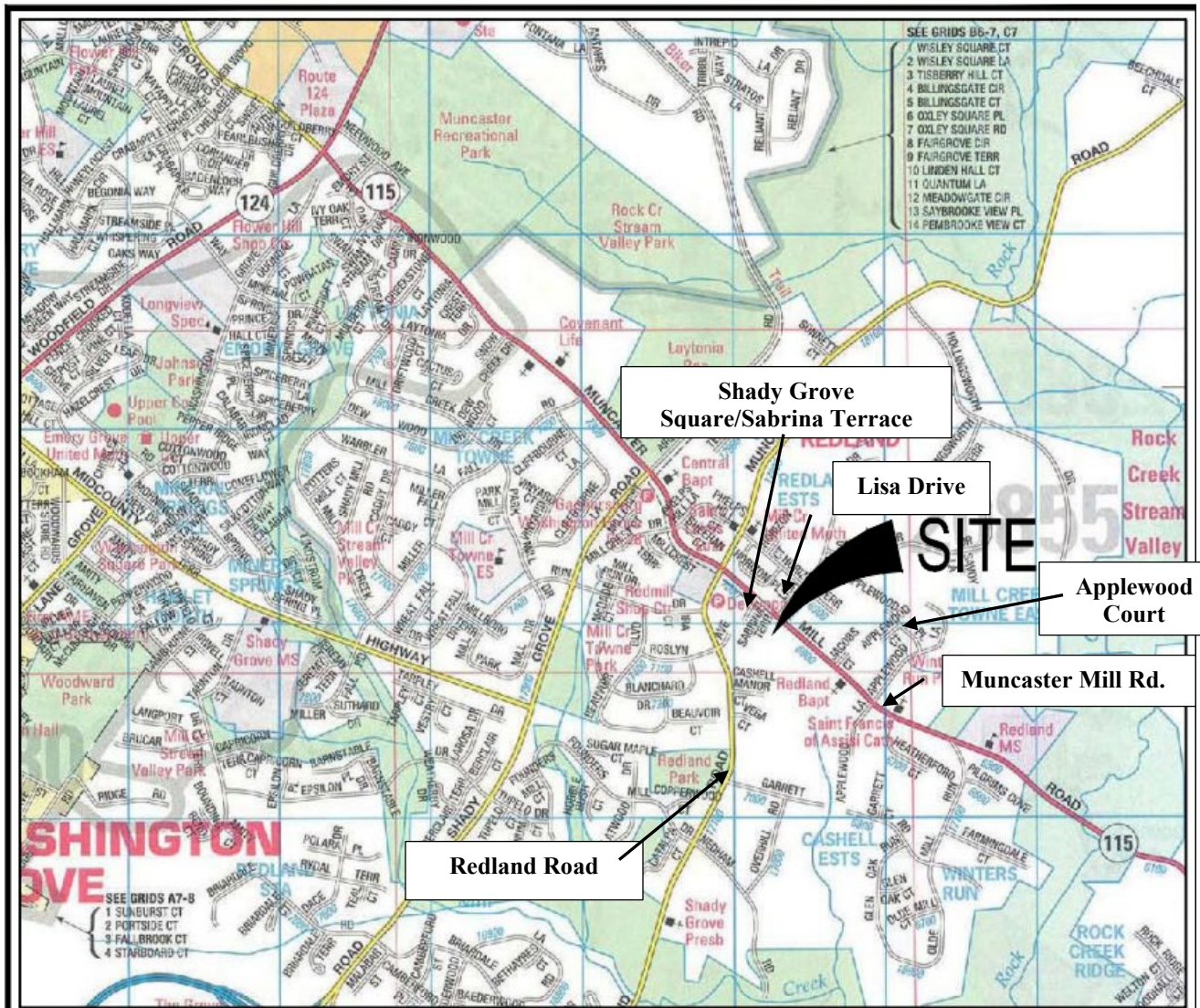
II. FACTUAL BACKGROUND³

A. The Subject Property

The property that is the subject of this conditional use application is located at 7100 and 7106 Muncaster Mill Road. The general location of the site is depicted on a vicinity map shown on the conditional use plan (Exhibit 45(d)), below):

[REFERENCED IMAGE IS ON NEXT PAGE]

³ Excerpts taken from HE Report pages 5-8

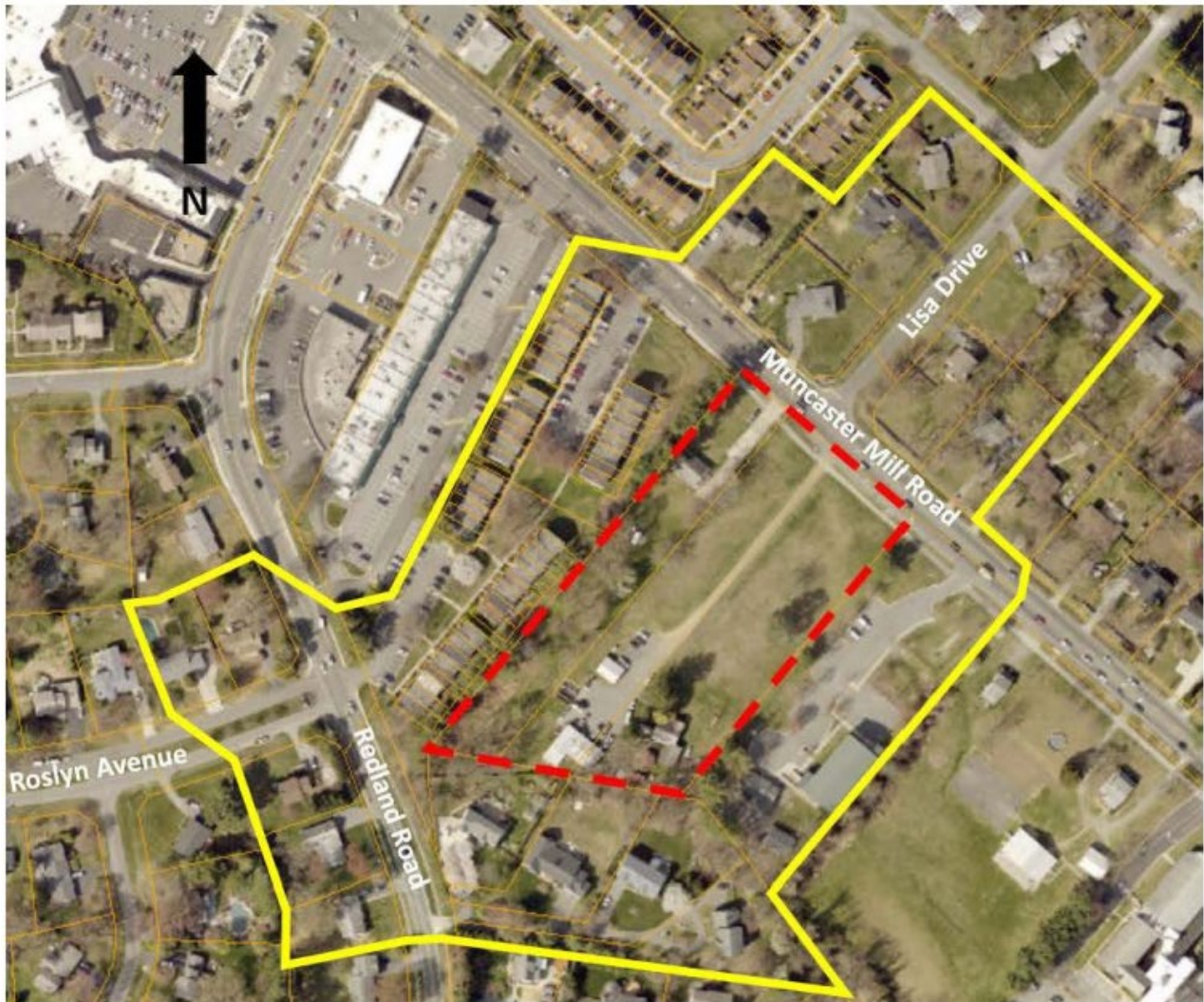


Planning Staff advises that the property consists of three unrecorded lots totaling 4.46 acres in the R-200 Zone. Exhibit 30, pp. 1, 5-6. Existing improvements include two single-family detached houses and garages, along with sheds. The property slopes downward from the western corner to the east. There are no streams, forests, or wetlands on the property. *Id.*, p. 6. An aerial photograph of the property, from the Staff Report, is shown below, outlined in red (Exhibit 30, p. 6, on the next page).



B. Surrounding Area

The Planning Staff recommended the following the boundaries of the surrounding area in its report (Exhibit 30, p. 5, shown below):



The Hearing Examiner agreed with Staff's delineation of the surrounding area and did not adopt the alternative delineation proffered by the Applicant's landscape expert Mr. Wolford .

The Hearing Examiner found that the area is characterized by a mix of moderate and high-density residential properties in the R-200 and RT-12.5 Zone with an institutional use immediately to the east.

C. Proposed Use

The Applicant seeks a conditional use to develop a “Townhouse Living” project consisting of 43 townhomes, seven of which will be Moderately Priced Dwelling Units (MPDUs). The Zoning Ordinance requires all the units conform to the “Design for Life” accessibility standards (*i.e.*, Level II Accessibility standards) defined in Section 59-107 of the County Code. (HE Report page 8).

1. Conditional Use Plan

The proposed conditional use plan (Exhibit 45(d), on page 11) shows the 43 rear-loaded, 3-story townhomes facing Muncaster Mill Road, an internal access street, and open space that will include a multi-age play area. It also shows a pathway that could connect through Shady Grove Square to Redland Road. Staff requested the Applicant to provide this pathway because the only full-service bus is located on Redland Road.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As outlined in the HE Report a conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Townhouse Living-“Design for Life” conditional use, under Zoning Ordinance §59.3.3.1.D.2.b.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concluded that the Applicant failed to meet its burden of proof that all standards for approval have been met. On remand, upon assessing the supplemental evidence supplied by the Applicant (through an Expert witness); Planning Staff and the State Highway Administration, this Hearing Examiner has determined that weighing the evidence on remand on a preponderance of the evidence the record supports a finding that the post-

remand traffic mitigation sufficiently address the traffic safety concerns that were the basis for the prior denial of the Conditional Use. Therefore, the Conditional Use is granted with conditions.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below. The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

The only one of these that is relevant on this remand is number 4 above which the HE Report further parsed into subcategories one of which was an assessment of traffic safety.

Compatibility with the Surrounding Area

* * *

Traffic Safety

The HE Report explained that several individuals testified at the public hearing that conditions along Muncaster Mill Road, and particularly surrounding Lisa Drive (opposite the Shady Grove Square townhomes) were dangerous. The Report elaborated:

“One reason is that drivers use a middle turn lane on Muncaster Mill Road to speed straight to reach the left-turn lane at the Redland Road/Muncaster Mill Road intersection. Ms. Alicia Taylor, who lives on Sabrina Terrace in Shady Grove Square, testified that pulling out of Sabrina Terrace takes much longer than the amount of time estimated by the Applicant’s gap study. T. 128. She usually must wait until the light at Redland turns red to safely turn left onto Muncaster Mill Road. T. 129. It’s dangerous because people use the center turn lane for through traffic to get to the light at Redland. It is a fight to make a left turn from Sabrina Terrace onto Muncaster Mill Road. Last week, they had a “road rage” incident near there. Someone was traveling past Lisa Drive using the center turning lane as a through lane because they wanted to go faster to get to the left turn lane at Redland Road. That is a daily occurrence for them. When she leaves to take her children to school at 8:45 a.m., she must wait for the light at Redland Road to turn red so no one’s coming over

Muncaster Mill Road from Redland Road to make the turn safely. She questions whether the Applicant's gap study is accurate. T. 129-130.

"Mr. Andrew Einsmann echoed Ms. Taylor's testimony. According to him, the Redland/Muncaster Mill intersection is already a failed intersection. He has lived and owned property on Applewood Court for 20 years. The County tried to alleviate rush hour traffic with the ICC, but there are times when that is a 20-minute wait going north on Muncaster Mill already. Any cars added to existing traffic will exacerbate existing congestion. His daughter tried to ride the Route 53 bus. He doesn't consider that reliable or accessible because it's only available during rush hour. He agrees with Ms. Taylor that the Sabrina Terrace/Muncaster Mill intersection is a blind intersection. It's almost four-way traffic because to make a left from the middle lane is so difficult and people use it as a through lane. He believes that the turn lane to this project will also be dangerous because people are going either to the right to merge or speed past people in the center lane or to the left due to the double turn lane at Muncaster Mill/Redland. T. 139. People fly down a hill to get to the intersection. T. 140.

"Mr. Einsmann testified that he can't get out of his street between the hours of 6:00 p.m. and 8:00 p.m. in the evening unless someone lets him out. People constantly block the intersection making the left turn in because they don't obey the laws against blocked intersections. This occurs even earlier with the school buses. These begin when they drop off children on Muncaster Mill and last until at least 7:00 pm. When school is not in session, there's a small reprieve and the back-up doesn't start until 5:00 or 5:30 pm. When school is in session, the road backs up completely. T. 141.

"Ms. Taylor testified that the State had installed bollards at Lisa Drive to stop drivers from using the middle turn lane as a through lane. The SHA removed the bollards when Muncaster Mill Road was resurfaced last year. T. 162. SHA has stated that the bollards would be reinstalled, but they haven't done so yet. She testified that she spoke with SHA representatives the morning of the hearing and was told that the bollards had to be fabricated, but SHA was "working on it." T. 164. Ms. Taylor submitted a video from December, 2023, of an accident in which a crash can be heard from her townhouse in Shady Grove Square. Exhibits 46(b). Ms. Taylor states, "These types of accidents are very common and are not reported to the police or the police do not issue a police report." Exhibit 46. Ms. Taylor also submitted a Public Information Act response from the Maryland State Police stating, "According to our Analytics & Data Management, there were 15 collisions in 2023 on Muncaster Mill Road between Redland Road and Bowie Mill." Exhibit 46(a).

"Ms. Kristy Helms lives directly across from the subject property. She testified that she has the "worse time" getting out of her house, especially when she tries to go southbound onto Muncaster Mill Road. She agrees that people use the middle turn lane to get to the double-left turns on Muncaster Mill Road. In the evenings, she uses the turn lane to try to get to her own house and she typically must sit in the middle lane at least once a week. She's scared to death that she's going to get hit head on. She believes that, if the townhomes are approved, a light should be placed at Lisa Drive and the intersection with the townhouses because someone is going to get killed. T. 147.

"In the past, she witnessed a woman try to pull out of Lisa Drive to make a left onto southbound Muncaster. Someone was driving in the middle lane and hit the front of the car, spinning her around. This was because the other driver was using the turn lane illegally to get to the light. T.

146. *She and the other driver got into a loud fight but would not let Ms. Helms call the police. T. 146.*

“Mr. Tracy McAbee, the property manager for the Shady Grove Square, testified that he travels to the project described access and egress to Shady Grove Square as a “nightmare”. He visits during the week between 9:00 a.m. and 4:00 p.m. at least twice a month. T. 156.

“Mr. Joe Callogero, the Applicant’s expert in transportation engineering, testified that his firm performed a gap study and stop sign delay study at Sabrina Terrace where it accessed Muncaster Mill Road. The stop sign delay study calculates how long it takes a vehicle to leave the stop sign when accessing Muncaster Mill Road from Shady Grove Square. Their study concluded that it takes an average of approximately 10 seconds per vehicle to enter the road during the morning peak hour. In the evening, the average increased to 30 seconds per vehicle. T. 84.

“Mr. Callogero submitted the data supporting the gap study after the public hearing. Exhibit 45(a).

“At the request of the Hearing Examiner, he also submitted crash data and a speed study.

“The GAP study contains the following AASHTO (American Highway Transportation Officials) standard for acceptable gaps:

- Left turn from a minor street – 8.0 seconds (7.5 seconds + 0.5 seconds for multi-lane approaches)*
- Right turn from minor street – 6.5 seconds*

The study considered delays occurring during one hour in the morning and evening for one day. The number of gaps observed in the study is shown below (Exhibit 45(a):

[DATA CONTINUES ON THE NEXT PAGE]

Gap Study (Traffic Peak Hour 7:15 AM to 8:15 AM)**➤ Eastbound**

6 to 7 Second Gaps	11
8 to 29 Second Gaps	59
>29 Second Gaps	20

➤ Combined Westbound and Eastbound

6 to 7 Second Gaps	6
8 to 29 Second Gaps	14

Gap Study (Traffic Peak Hour 4:45 PM to 5:45 PM)**➤ Eastbound**

6 to 7 Second Gaps	13
8 to 29 Second Gaps	47
>29 Second Gaps	9

➤ Combined Westbound and Eastbound

6 to 7 Second Gaps	2
8 to 29 Second Gaps	7

“The study concludes that “there are more than adequate gaps available for the right turn maneuvers as well as the left turn maneuver by utilizing the two-way left turn lane, which is allowed per The Maryland Vehicle Law Annotated Book (2023-2024 Edition.” Exhibit 45(a), p. 3.

“The crash data submitted by the Applicant covers reported accidents within 400 feet in both directions at Lisa Drive. This data shows that there were 15 crashes within that area in the last 9 years. Twelve occurred during the day, 3 were injury related, and 4 were intersection related. The report notes that 12 crashes were with other vehicles while 3 were single vehicle crashes, and “overall, the highest Collision Type was “Same Direction---Rear End with 8.” Exhibit 45(a).

“The Traffic Report submitted post-hearing then concludes (apparently) that traffic safety is at acceptable levels because the only “crash pattern” is rear end collisions (Id.):

Based on this information, it does not appear that there is a Crash Pattern except for the Rear End Crashes. A Crash Pattern is a type of Crash that continues to occur over a period of time which allows the Traffic Engineer to determine if the Crashes are based on road factors or more human behavior. In this case, typically, Rear End Crashes can most be contributed to Human Factors such as Aggressive Driving (following too closely for example) or Driver inattention (Distracted Driving) and not the road condition itself.

“The Traffic Report also notes that location is not within a “high-injury” network or targeted for a “Vision Zero” project. Id. At the public Hearing, Mr. Calleggero discounted the effectiveness of bollards. In his opinion, the only thing that could remedy the problem of drivers using the middle turn lane as a through lane would be to install a median and change the access to right-in, right-

out. This means that proceeding north would require someone to turn right out of the driveway and do a U-turn at a break in the median. There are driveways up and down the Muncaster Mill corridor that require access. It would be up to the State Highway Administration to undertake those improvements. At present, it looks like they wouldn't do such a thing, but we don't know if they have been monitoring accidents. T. 160. The problem really is people driving irresponsibly and in violation of the law. T. 160. In his opinion, SHA will look at accident history when they issue their access permit. T. 160."

HE Report pages 24-28.

TRAFFIC SAFETY ANALYSIS ON REMAND

The Board specifically directed the Hearing Examiner to "... determine if, based on adequate evidence, the proposed development would contribute in a negative and material way to the existing traffic safety situation on this part of Muncaster Mill Road, including making access and egress more hazardous there". (Exhibit 51).

This Hearing Examiner on remand presented the traffic safety concerns to the Applicant, Planning staff and to the State Highway Administration (SHA) as follows:

1. **The Applicant** was asked to provide:
 - a) An updated traffic analysis that specifically addresses any negative impact that the proposed development would have on the existing traffic safety situation on this part of Muncaster Mill Road.
 - b) An analysis of motor vehicle crash data in this vicinity of Muncaster Road, specifically addressing the sources of the data and the types of crashes.
 - c) Safety of the traffic pattern specifically relating to the use of the center left turn between Bowie Mill Road and Redland Road addressing the traffic safety concerns raised in the email of Alicia Taylor which was marked as Exhibit 32 in this case. (Exhibit 52)

2. **The Planning Department** - Attention Mr. Beall and Mr. Butler were asked to provide:

- a) An updated staff report specifically addressing any negative impact that the proposed development would have on traffic safety in the area around the proposed development.
- b) Analysis of how much traffic would likely be generated by members of the public driving to the park space planned at the proposed development and what impact, if any, this traffic would have on traffic safety.

(Id.)

3. **The Maryland State Highway Administration (SHA)**⁴ was asked to provide:

- a) An explanation of what traffic safety measures, including bollards may have been planned, installed or removed along Muncaster Road in the vicinity of the proposed development in the last 5 years. Please provide a detailed explanation of why these were planned, installed or removed. If there are plans to reinstall any such measures, when and why?
- b) An explanation of what factors warrant installation of traffic control signals (traffic lights) at an intersection in Montgomery County, MD.

(Exhibit 53)

⁴ The request to the SHA was accompanied by some background information explaining the nature of the inquiry and providing to the SHA a copy of the HE Report as well as a copy of the Board's resolution.

IV. ANALYSIS OF APPLICANT ON REMAND.

In correspondence dated September 3, 2024, Mr. Joseph J. Caloggero, P.E., PTOE, PTP, of the Traffic Group⁵, on behalf of the Applicant, responded that it remains their professional and expert opinion based on objective data and multiple analyses that the Conditional Use will not contribute in a negative and material way to existing traffic safety in the segment of Muncaster Mill Road in the vicinity of the Subject Property and will not make access and egress more hazardous in this location. (Exhibit 55).

The Applicant's response elaborated that as part of Applicant's post-remand review, they conducted another examination of existing conditions along Muncaster Mill Road in the vicinity of the Subject Property, and that their field study revealed SHA has recently reinstalled the FlexPost delineators east of Lisa Drive, as well as installed new FlexPost delineators between Sabrina Terrace and Lisa Drive.

Mr. Caloggero explained that as illustrated in Figure 1 below, FlexPosts are now installed along Muncaster Mill Road in both directions from the Conditional Use's proposed access roadway. This effectively prevents any traffic generated by the Conditional Use (or any traffic for that matter) from using the existing two-way center turn lane as a through route to reach the traffic light at Redland Road. He says that this was the most frequent traffic safety concern identified by those parties of record who testified in opposition to the Conditional Use.

⁵ Applicant's expert.

Figure 2 – 5-Year Crash Data – Muncaster Mill Road

LIGHT	JUNCTION	COLLISION TYPE	REPORT TYPE	WEATHER	ACC DATE	ACC TIME	MAINROAD NAME	LANE DIRECTION	DISTANCE TO LISA DR (FEET)
<i>Year 2018 (4 Accidents)</i>									
Daylight	Non Intersection	Same Direction Rear End	Injury Crash	Cloudy	20180313	3:21 PM	MUNCASTER MILL RD	West	150 (East)
Daylight	Non Intersection	Same Direction Rear End	Injury Crash	Clear	20180905	5:36 PM	MUNCASTER MILL RD	West	80 (East)
Daylight	Intersection	Same Movement Angle	Property Damage	Raining	20180924	8:00 AM	MUNCASTER MILL RD	West	0
Daylight	Non Intersection	Same Direction Left Turn	Injury Crash	Raining	20181027	9:11 AM	MUNCASTER MILL RD	West	50 (East)
<i>Year 2019 (7 Accidents)</i>									
Dark No Lights	Non Intersection	Head On	Injury Crash	Clear	20190105	6:04 PM	MUNCASTER MILL RD	West	270 (West)
Dark No Lights	Non Intersection	Same Direction Rear End	Property Damage	Clear	20190126	7:01 PM	MUNCASTER MILL RD	West	325 (West)
Dark Lights On	Non Intersection	Single Vehicle	Property Damage	Clear	20190203	0:58 AM	MUNCASTER MILL RD	East	1320 (East)
Daylight	Intersection Related	Same Direction Rear End	Property Damage	Clear	20190626	5:21 PM	MUNCASTER MILL RD	West	20 (East)
Daylight	Non Intersection	Same Direction Rear End	Property Damage		20191006	11:08 AM	MUNCASTER MILL RD	West	20 (East)
Daylight	Non Intersection	Same Direction Rear End	Property Damage		20191007	3:18 PM	MUNCASTER MILL RD	West	300 (East)
	Non Intersection	Same Direction Rear End	Property Damage		20191117	4:15 PM	MUNCASTER MILL RD	West	30 (East)
<i>Year 2021 (3 Accidents)</i>									
Dark No Lights		Single Vehicle	Property Damage		20210305	7:49 PM	MUNCASTER MILL RD	West	650 (East)
Dark Lights On	Intersection Related	Single Vehicle	Property Damage	Clear	20210407	1:22 AM	MUNCASTER MILL RD	West	1500 (East)
Daylight	Non Intersection	Same Direction Sideswipe	Property Damage		20210729	6:33 AM	MUNCASTER MILL RD	East	20 (East)
<i>Year 2022 (2 Accidents)</i>									
Daylight	Intersection	Same Direction Rear End	Property Damage		20220518	6:21 PM	MUNCASTER MILL RD	East	0
Daylight	Non Intersection	Same Direction Rear End	Property Damage		20221005	5:45 PM	MUNCASTER MILL RD	West	170 (West)
<i>Year 2023 (3 Accidents)</i>									
Daylight	Intersection	Same Direction Rear End	Injury Crash		20230422	1:00 PM	MUNCASTER MILL RD	West	400 (East)
Daylight		Same Direction Rear End	Property Damage		20230509	4:02 PM	MUNCASTER MILL RD	West	1400 (East)
Dark Lights On		Single Vehicle	Property Damage	Clear	20231101	1:22 AM	MUNCASTER MILL RD	West	600 (East)

V. ANALYSIS OF PLANNING STAFF ON REMAND

Planning technical staff provided a memo dated October 3, 2024 addressing the questions posed by the Hearing Examiner, requesting specific analysis of any negative impacts the development would have on traffic safety in the area. This memorandum from Planning Staff supplements the technical report submitted by Planning in connection with the underlying hearing. (Exhibit 30).

In response on this remand, Mark Beal, Zoning, Planning, Public Projects and Ag Initiatives Section Zoning Planner in the aforementioned October 3rd memo explained that Planning staff reviewed the supplemental traffic analysis submitted by the Applicant in response to the Hearing Examiner’s August 8th email, and concluded that there are no anticipated negative impacts on traffic safety that can be definitively attributed to the proposed development. (Ex 58 page 5).

Planning staff cited the Post Remand Traffic Analysis which noted that flex posts were originally installed within the center turn lane on Muncaster Mill Road to prohibit motorists from improperly using the center turn lane as a travel lane, as a means of bypassing any queuing due to

the traffic signal at Redland Road. They were removed when the road was resurfaced but have since been reinstalled, improving the safety within the vicinity of the Site.

Planning staff further explained:

“The Post Remand Traffic analysis also included an updated crash analysis spanning five years, covering 1,900 feet of Muncaster Mill Road between Sabrina Terrace and Applewood Lane. A total of 19 crashes were recorded. Eleven of the 19 crashes were rear-end crashes. Rear-end crashes are generally the result of driver error rather than design of the road network. While the Project will increase the number of vehicular trips in and out of the Site, during peak hour they are a relatively low number. Furthermore, an increase of vehicular trips is not a predictor for an increase in crashes.

“Finally, the Applicant also applied the Federal Highway Administration’s (FHWA) Highway Safety Manual to estimate crash frequency and severity using a Predictive Method. The factors considered in 5 this analysis address physical characteristics of the road, including the number of lanes, median, type, and intersection control, as well as Average Daily Traffic Volume (ADT) for the past five years, observed number of crashes over the same time period and the estimated increase in traffic volume generated by the Project. The resulting output of those factors shows that the percentage increases in predicted crashes range from 1.72% to 1.81% during the years of 2018-2023. The results of the analysis suggest that the construction of the Project will not result in an increase of crashes.”

Exhibit 58 pages 4-5.

The crash data referenced above is shown below:

Table 1: Highway Safety Manual Predictive Safety Method Results

Year	ADT: No Build	ADT: Build	Observed No. of Crashes per 1,900 ft	Predicted crashes per mile: No Build	Predicted crashes per mile: Build	% Increase Build vs. No Build
2018	16,780	17,089	4	10.543	10.724	1.72%
2019	16,781	17,090	7	18.451	18.768	1.72%
2021	16,033	16,342	3	7.903	8.046	1.81%
2022	16,134	16,443	2	5.238	5.332	1.79%
2023	16,384	16,693	3	7.897	8.037	1.77%

Source: Post-Remand Traffic Analysis prepared by The Traffic Group. Date Sept 3, 2024

VI. ANALYSIS OF SHA ON REMAND

In a memorandum to the Hearing Examiner dated October 3, 2024, SHA provided an analysis described as an evaluation of:

“...the existing capacity and safety conditions along a section of MD 115 (Muncaster Mill Road) between its intersection with Redland Road and Jacobs Court. The analysis is in response to a request from the Board of Appeals for Montgomery County and the Office of Zoning and Administrative Hearings (“OZAH”) for resolution of roadway safety related questions raised during consideration of an application for a conditional use application (CU 24-07, the “Conditional Use”) to develop 43 “Design for Life” townhouses at 7100 and 7106 Muncaster Mill Road in Derwood, Maryland.

“Key roadway traffic conditions were evaluated. These includes: i) traffic volumes, ii) roadway capacity, iii) travel speeds, iv) crash history, v) crash projections, and vi) traffic signal control. Section 2 of this memorandum presents a summary of findings. Section 3 presents a summary of the analysis and discussions. Section 4 presents a description of the roadway segment and the primary adjacent intersection.”

The memo from the SHA included an exposition of vehicle volume during peak hours of 7 AM to 8 AM; whether the Lisa Lane intersection with MD 115 operates acceptably; the posted and actual speed limits on this roadway; crash data; the criteria used by SHA to determine whether a traffic control device is required at an intersection (SHA concluded that the criteria for such an installation are not met at this intersection); and confirmation for why the ballards along the section of MD 115 with the project limits had been removed and confirmed that not only have they been re-installed but they have been reinstalled on a larger portion of the road than before. Exhibit 56. The SHA memo explained that the speeds and volumes near the intersection of MD 115 and Lisa Drive were measured over a seven-day period from September 7, 2024 to September 13, 2024. (*Id.* at page 3)

VIII. CONCLUSION AND DECISION

A. Traffic Safety

Upon reviewing the supplemental evidence from the Applicant, the Planning Staff and the SHA this Hearing Examiner is satisfied that the record on remand contains sufficient evidence to allay the traffic safety concerns cited in the prior HE Report.

The HE Report stated that the record showed that the cause of the accidents in the area around this location include (1) driver’s negligence, (2) drivers using the turn lane in the middle of Muncaster Mill Road as a through lane to get to the light at Redland Road, and (2) drivers failing to

yield to traffic using the merge lane provided for traffic turning right from Redland Road onto Muncaster Mill Road. The merge lane ends at Sabrina Court. (HE Report page 30 citing T. 131).

The fact that the FlexPosts are now installed along Muncaster Mill Road in both directions from the Conditional Use's proposed access roadway, effectively preventing any traffic generated by the Conditional Use (or any traffic for that matter) from using the existing two-way center turn lane as a through route to reach the traffic light at Redland Road is significant. The configuration of this center lane was the most frequent traffic safety concern identified by those parties of record who testified in opposition to the Conditional Use.

In addition, the Applicant's supplemental crash study for the period 2018 to 2023 shows an increase in predicted crashes without this conditional use and predicted crashes with this conditional use at between 1.72% and 1.81%. While any crashes upward of zero are a source of distress, the task at hand as charged by the Board of Appeals is for this Hearing Examiner to assess what the evidence in the record shows regarding whether this conditional use would materially worsen the traffic safety of the surrounding area. This Hearing Examiner finds persuasive and convincing the supplemental evidence supporting the conclusion of the Applicant's expert that these projected increases are *de minimis and not material* especially since these do not take into account the post hearing installation of the Flex Posts which significantly enhance the safety of this area. The conclusion of the Applicant's expert that such a minimal increase between the build and no build scenarios suggests that the build scenario is unlikely to result in any increase in actual crashes, is a reasonable one.

Based on the foregoing findings and conclusions and a thorough review of the entire record, including the Findings of Fact made by the Board of Appeals which are incorporated by reference into this Decision, the application of CM Muncaster LLC (CU 24-07) for a conditional use under Section 59.3.3.1.D.2.b. of the Zoning Ordinance to construct a "Design for Life" Townhouse Living

Community, at 7100 and 7106 Muncaster Mill Road, Maryland, is hereby ***GRANTED with the following conditions:***

- 1. The use is limited to Townhouse Living and must meet all the Use Standards as defined in Section 59.3.3.1.b, with a maximum of 43 dwelling units.**
- 2. A Preliminary Plan will be required prior to implementation of the Conditional Use, and it will include consideration of the following:**
 - a. As part of the Preliminary Plan, the Applicant will provide a public access easement to accommodate non-vehicular bike and pedestrian movement along a paved trail to the northwest corner of the Subject Property to support to option of a future connection to Redland Road.**
 - b. As part of the Preliminary Plan, the Applicant will provide public access easements to accommodate future connectivity to the adjacent property to the southeast via alleys A and B as well as along sidewalks parallel to Alleys A and B.**
 - c. As part of the Preliminary Plan, the Applicant will upgrade the existing side path along Muncaster Mill Road to 11 ft. in width with a minimum 6-foot-wide street buffer.**
 - d. As part of the Preliminary Plan, all proposed intersections must provide crosswalks and ramps across all four legs of the intersection.**
 - e. As part of the Preliminary Plan process, the Applicant will continue to explore options with Planning Staff to extend a paved trail connection to Redland Road.**
 - f. The Applicant must enter into a Public Access Easement (PAE) at the time of Preliminary Plan (or Plat approval).**
 - g. The Applicant must comply with Forest Conservation Plan F20230500.**

Issued this 26th day of November, 2025.



Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board's Worksessions can be found on the Board's website and in the Board's office. You can also call or email the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the Worksession.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex-parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600, emailing BOA@montgomerycountymd.gov, or visiting the Board's website: <http://www.montgomerycountymd.gov/boa/>.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>
BOA@montgomerycountymd.gov

NOTIFICATION OF DECISION SENT TO:

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