

R E S O L U T I O N

WHEREAS, the Prince George=s County Planning Board has reviewed A-9955, requesting a rezoning from the R-E/R-C-O Zone to the R-E/L-D-O Zone in accordance with Subtitle 27 of the Prince George=s County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on January 9, 2003, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is a ten-acre site that is part of a larger 23.5-acre tract extending from the eastern shore of the Potomac River to Riverview Road. It is also located about 1,600 feet south of West Riverview Road. With the exception of a 60-foot-wide strip running to the water's edge, the subject site is located 300 feet east of the tidal waters and about 720 feet west of Riverview Road. The property consists of open fields, an abandoned house and swimming pool and a boat launching ramp.
- B. **History:** The zoning map for the area is the Subregion VII Sectional Map Amendment, adopted in 1984. At that time the property was rezoned from the R-R (Rural Residential) to the R-E (Residential Estate) Zone, permitting residential development at a density of one dwelling unit per acre.

In June 1984, the Maryland General Assembly adopted the Chesapeake Bay Critical Area Law (Subtitle 18) after finding that there exists a critical and substantial state interest in fostering more sensitive development along the shoreline of the Chesapeake Bay so as to minimize damage to water quality and natural habitats

The initial Chesapeake Bay Critical Area Overlay Zones were adopted and approved in September 1989. That portion of the applicant's property lying within 1,000 feet of the mean high tide of the Potomac River was placed in the R-C-O (Resource Conservation Overlay) Zone, permitting the development of one dwelling per 20 acres.

In 1989, this property was the subject of a rezoning application (A-9783) and, together with 78 adjacent acres, the site of a special exception application for a retirement community (SE-3826). The special exception application was approved; however, the rezoning application was denied.

- C. **Master Plan Recommendation:** The recommendation of the 1981 *Master Plan for Subregion VII* is for residential estate development at a maximum density of one dwelling unit per acre. The property is located in the Developing Tier as reflected in the adopted *General Plan* (2000).
- D. **Neighborhood and Surrounding Uses:** The neighborhood boundaries for this application are:

North – Broad Creek

East – Fort Washington Road

South – Swan Creek and Swan Creek Road

West – Potomac River

With the exception of the Federal Communications Center located in the eastern part of the neighborhood, the area is developed with a mixture of R-R zoned subdivisions such as Sero Estates and Tantallon North and more sparsely developed acreage in the R-E Zone along the riverfront.

Zoning Requirements:

- E. An amendment to the Critical Area Overlay Zone may be approved if the requested rezoning corrects a mistake in the original zoning (Section 27-213.13(a)) or if the request conforms to the requirements of Section 27-213.13(b). The proposed rezoning complies with Subsection (b) below; and therefore is not required to show mistake in the original zoning.
- F. **Section 27-213.13(b) Expansion of Intense Development and Limited Development Overlay Zones.**
 - (1) **The boundaries of the Intense Development and Limited Development Overlay Zones may be expanded within the Chesapeake Bay Critical Area only in accordance with the following:**
 - (A) **Acreage. The maximum area of future additional Intense Development or Limited Development Overlay Zones shall be five percent (5%) of the total area designated as Resource Conservation Overlay Zones at the time of adoption of the initial Chesapeake Bay Critical Area Overlay Zoning Map Amendment. A maximum of fifty percent (50%) of the permissible growth increment may be used to rezone a Resource Conservation Overlay Zone to another Chesapeake Bay Critical Area Overlay Zone.**

The applicant's request meets this criterion. Prince George's County had a total growth allocation (future L-D-O or I-D-O potential) of over 300 acres, of which half (over 150 acres) was available for conversion from the R-C-O Zone. Of this, at least 100 acres have not been allocated and are potentially available.

If the requested rezoning is approved, Prince George's County is required to submit to the Chesapeake Bay Critical Area Commission (CBCAC) a request for approval of a growth allocation with a submission addressing the above requirements. Even though the application

only requests a rezoning of 9.97 acres of the subject property, 13.64 acres is actually located in the Critical Area. In accordance with the Growth Allocation Policy of the CBCAC, the entire area of the property in the Critical Area may need to be deducted from the County's growth allocation to permit flexibility in the lotting pattern ultimately approved during the subdivision of the property. Since the growth allocation must be requested prior to subdivision, the entire area of the property in the Critical Area should be included in the growth allocation request. If the approved subdivision does not require the use of the entire growth allocation, an amendment to the growth allocation can be submitted to the CBCAC.

(B) Location. Expanded Intense Development or Limited Development Overlay Zones may be approved subject to the following locational criteria:

(ii) New Limited Development Overlay Zones shall:

(aa) Be located contiguous to existing Limited Development Overlay Zones or Intense Development Overlay Zones;

This application meets the above requirement because the original zoning map amendment for the Chesapeake Bay Critical Area placed the abutting property to the north in the Limited Development Overlay Zone, (L-D-O).

(bb) Be located at least three hundred (300) feet from tidal waters or tidal wetlands if the land was originally designated in the Resource Conservation Overlay Zone, except for Water-Dependent Uses;

Because this property is currently in the Resource Conservation Overlay Zone, most of the proposed rezoning is for the portion of the property located between 300 feet and 1,000 feet from the tidal waters. There are no tidal wetlands on this property. A 60-foot by 300-foot-wide strip down to the water's edge for access to the boat ramp is also included because it is a water-dependent use. The required criteria of this subparagraph have been met because the land located between the head of tide and inland 300 feet, with the exception of the water-dependent facility access, will retain the current zoning of Resource Conservation Overlay Zone.

(cc) Minimize impacts on Habitat Protection Areas and land in Resource Conservation Overlay Zones in proximity to an expanded Limited Development Overlay Zone.

There are no Habitat Protection Areas on the subject property, abutting properties, or other nearby R-C-O zoned lands. Habitat Protection Areas are defined as containing Natural Heritage Areas; Rare, Threatened, or Endangered Species; Colonial Waterbird Nesting Sites; Forests with Interior Dwelling Bird Species; Waterfowl Staging and Concentration Areas; Anadromous Fish Propagation Areas; and/or Non-tidal Wetlands.

(C) Additional requirements. Prior to developing land in an expanded

Chesapeake Bay Critical Area Overlay Zone, the area shall be mapped and submitted to the Chesapeake Bay Critical Area Commission for informational purposes only. This submission shall include an analysis of:

- (i) The manner in which the proposed expansion conforms to the locational criteria;**
- (ii) How the proposed expansion affects the total growth allocation; and**
- (iii) How the proposed expansion will accommodate the growth needs of municipalities impacted by the Chesapeake Bay Critical Area Overlay Zones.**

If the requested rezoning is approved, Prince George's County will submit to the Chesapeake Bay Critical Areas Commission (CBCAC) a request for approval of a growth allocation deduction with a submission addressing the above requirements. The first two criteria have been addressed in subsection (1) (A) and B) above. The remaining criterion (iii) is satisfied in that the requested rezoning will permit development in conformance with the underlying zone and in a similar manner to that for the adjacent property located immediately north of this application.

- G. This rezoning is subject to the approval of the Chesapeake Bay Critical Area Commission pursuant to Title 8 of the Natural Resources Article, Annotated Code of Maryland and Section 27-213.12(a)(3) of the Prince George's County Code. The Zoning Map for Prince George's County can only be amended after the rezoning has been approved by both the District Council and the Chesapeake Bay Critical Area Commission.

H. Conformance with the Purposes of the Zone Requested:

The purposes of the L-D-O Zone are to:

- (A) Maintain, or if possible, improve the quality of runoff and groundwater entering the tributaries of the Chesapeake Bay;**
- (B) Maintain existing areas of natural habitat; and**
- (C) Accommodate additional low- or moderate-intensity development in accordance with the *Conservation Manual*.**

Although the western property line is the Potomac River, the portion of the property which is the subject of this application does not include streams, wetlands, floodplains or the associated buffers to these features. No areas of steep slopes with highly erodible soils or areas of severe slopes have been found to occur on the property. No adverse noise impacts have been identified

in the vicinity of the property, and the proposed development is not a noise generator. The soils found to occur according to the Prince George's County Soil Survey include Aura gravelly loams, Elkton silt loam, Galestown loamy sand, Keyport fine sandy loam, and Sassafra sandy loam. The most significant limitations associated with these soils include high water tables and impeded drainage which would have the greatest impact on sites requiring septic systems; however, public water and sewer are proposed. The sewer and water service categories are S-3 and W-3. Marlboro clay is not found to occur in the vicinity of this property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program publication, entitled Ecologically Significant Areas in Anne Arundel and Prince George's Counties, December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property.

Development of the property will be subject to the Prince George's County Stormwater Management Ordinance. Furthermore, the Chesapeake Bay Critical Program Conservation Manual will require the applicant to provide additional woodland cover of at least 15 percent of the site. Based on the above information, the development of this property in the L-D-O Zone will not lower the quality of runoff and groundwater entering this tributary of the Chesapeake Bay nor will it threaten the existence of natural habitats. It will accommodate additional low-density development in accordance with the underlying R-E Zone.

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- I. The Chesapeake Bay Critical Area Overlay Zone was created to foster more sensitive development along the shoreline of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats. Balancing these environmental interests with the interests to use and enjoy the scenic and recreational opportunities offered in these areas of critical state concern has led to a program that provides for a limited amount of development opportunities. A maximum five percent growth factor was built into the program to allow for some expansion of the development envelope, as long as this expansion occurred in logical locations. These locations were limited to an extension of existing L-D-O or I-D-O (Intense Development) zoned lands and to areas not known to contain significant natural habitats.
- J. Rezoning the subject property to the L-D-O Zone will permit a logical extension of the L-D-O Zone located north of the subject property into an area that contains neither wetlands nor animal habitats. It will provide for single-family residential development on one-acre lots, which is compatible with development in the surrounding neighborhood. It is furthermore noted that the proposed rezoning will have no adverse effects upon the surrounding transportation system.
- K. The subject property is part of a parcel on which a special exception for a retirement community was approved in 1989. It is therefore recommended that the applicant petition the Department of Environmental Resources to initiate revocation proceedings for SE-3826.
- L. The applicant's revised concept plan shows single-family residential development of the 23.5-acre parcel, of which the subject property occupies the central 9.96 acres. The plan also shows a 300-foot wide buffer along the Potomac River, a proposed residential street, and a 60-foot-wide strip providing access to an existing boat ramp and/or future pier.

Historical and Archeological Significance

- M. The historical and archeological significance of the entire 23- acre tract is currently the subject of an appeal before the Zoning Hearing Examiner. The Planning Board is cognizant of the potential archeological importance of the larger site based on the testimony of area residents, oral tradition and prior reports. The site is known to have contained artifacts of a multi-component Native American base camp with cultural manifestations ranging from the Late Archaic to the Late Woodland periods (circa 4000 B.C. to 1600 A.D.). It may also be the burial site of slaves who worked on the 500-acre plantation within which the property was once included. When the Preliminary Plan of Subdivision is reviewed by the Planning Board, the relevance and importance of the archeological investigations will be considered.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George=s County Code, the Prince George=s County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George=s County, Maryland that the above-noted application be APPROVED, subject to the following conditions:

1. Prior to the approval of the Preliminary Plan of Subdivision, the owner shall forward a letter to the Director of the Department of Environmental Resources stating that it does not intend to develop the property in accordance with SE-3826, and requesting that the Director initiate a petition to revoke the special exception.
2. The growth allocation request submitted to the Chesapeake Bay Critical Area Commission shall include 13.64 acres, the entire area of the applicant's property located in the Critical Area. If the subsequently approved subdivision does not require the use of the entire growth allocation, an amendment to the growth allocation shall be submitted to the Chesapeake Bay Critical Area Commission.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Lowe, seconded by Commissioner Scott, with Commissioners Lowe, Scott and Hewlett voting in favor of the motion, and with Commissioner Eley voting in opposition at its regular meeting held on Thursday, January 9, 2003, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 16th day of January 2003.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:CW:rmk

(Revised 8/9/01)