

PGCPB No. 2024-035

File No. CBP-2023-001

R E S O L U T I O N

WHEREAS, the subject properties consist of 1.41-acres of land in the 5th Election District of Prince George's County, Maryland, more specifically described as all or parts of the following properties: 400 Vista Way, Lot 20; Broad Creek Drive, Parcel 68; 401 Vista Way, Lot 21; 404 Vista Way, Lot 19; Broad Creek Drive, Parcel 32; 10535 Riverview Road - Riverview Community Park, Parcel 53; Riverview Road - Riverview Community Park, Parcels 52 and 81; and Battersea Lane - Riverview Community Park, Parcel A; and

WHEREAS, the subject properties are within the Chesapeake Bay Critical Area; and

WHEREAS, 400 Vista Way, Lot 20; Broad Creek Drive, Parcel 68; 401 Vista Way, Lot 21; 404 Vista Way, Lot 19; and Broad Creek Drive, Parcel 32, are within the Residential, Rural (RR) Zone and subject (in part) to the Limited Development Overlay (LDO) Zone and (in part) to the Resource Conservation Overlay (RCO) Zone; and

WHEREAS, 10535 Riverview Road - Riverview Community Park, Parcel 53; Riverview Road - Riverview Community Park, Parcels 52 and 81; and Battersea Lane - Riverview Community Park, Parcel A, are within the Reserved Open Space (ROS) Zone and subject (in part) to the Resource Conservation Overlay (RCO) Zone; and

WHEREAS, on March 13, 2024, the Prince George's County Department of the Environment filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the subject properties, also known as Conservation Plan CBP-2023-001 for Vista Way Phase II Drainage Improvements, for the purpose of installing storm drainage improvements on the subject properties to alleviate flooding conditions affecting several private residential properties; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan included a Variance to Section 5B-122(d) of the Prince George's County Code;

WHEREAS, the Chesapeake Bay Critical Area Conservation Plan was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on May 16, 2024, for its review and action in accordance with Zoning Ordinance, Subtitle 27, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on May 16, 2024, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Sections 5B-116(f) and 5B-112(n)-(o) of Subtitle 5B, Prince George's County Code, the Prince George's County Planning Board APPROVED a Variance to Section 5B-122(d) and further APPROVED Conservation Plan CBP-2023-001, Vista Way Phase II Drainage Improvements, with the following conditions:

1. Prior to certificate approval of the Chesapeake Bay Critical Area Plan, the following revisions shall be made, or information shall be provided:
 - a. Remove reference to the Residential Estate (RE) Zone on the plan, as the limit of disturbance does not cross into the RE Zone.
 - b. Revise the title block and any reference on the plans from CP-2023-001 to CBP-2023-001.
 - c. Remove “Tree Conservation Plan” from the title block.
 - d. Revise the riparian forest zone planting table to revise the spelling of credits in the tree credit column.
 - e. Show legible lot numbers and parcel numbers on the overall view of the cover sheet.
2. The applicant shall contact the Historic Preservation staff of the Prince George’s County Planning Department at least five business days prior to the commencement of any ground disturbance, to arrange for staff to monitor the work. If any cultural resources are identified during the ground disturbance, work shall be halted, and Historic Preservation staff shall be allowed to record the resources. After the cultural resources have been sufficiently recorded, the applicant’s contractor shall be allowed to continue work.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George’s County Planning Board are as follows:

1. **Request:** This Chesapeake Bay Critical Area conservation plan (CBP) approves installation of storm drainage improvements to alleviate flooding conditions affecting several private residential properties. This is a capital project by the Prince George’s County Department of the Environment (DoE), referred to herein as the applicant. The CBP also approves a variance to allow for disturbance to a nontidal wetland and its buffer, as required by Section 5B-122(d) of the Prince George’s County Code.
2. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	RR/LDO/RCO; ROS/RCO	RR/LDO/RCO; ROS/RCO
Use(s)	Residential/Public Park	Residential/Public Park
Gross Tract Acreage	1.41 *	1.41 *

Note: *The approved limit of disturbance (LOD) for this project is 1.41 acres.

3. **Location:** The subject properties are within Planning Area 80 and Council District 8, in Fort Washington, Maryland. There are nine properties or portions of properties within the LOD. The property details are as follows:

- 400 Vista Way - Single family detached, Lot 20 – RR/LDO/RCO Zone
- Broad Creek Drive – Single family detached, Parcel 68 – RR/LDO Zone
- 401 Vista Way - Single family detached. Lot 21 – RR/LDO Zone
- 404 Vista Way - Single family detached, Lot 19 – RR/LDO/RCO Zone
- Broad Creek Drive - Single family detached, Parcel 32 – RR/LDO Zone
- 10535 Riverview Road - Riverview Community Park, Parcel 53 – ROS/RCO Zone
- Riverview Road – Riverview Community Park, Parcel 52 – ROS/RCO Zone
- Riverview Road – Riverview Community Park, Parcel 81 – ROS/RCO Zone
- Battersea Lane – Riverview Community Park, Parcel A – ROS/RCO Zone

The Vista Way residential properties are located approximately 400 feet from the intersection of Vista Way and Hill Top Drive. The main access to the work area will be located at Riverview Community Park, located on the north side of Riverview Road.

4. **Surrounding Uses:** The limit of disturbance is bound to the north by single-family detached dwellings in the Residential, Rural (RR) and Residential Estate (RE) Zones, and beyond by Broad Creek; to the east is parkland and single-family detached dwellings in the RE Zone; to the south by Riverview Road, and beyond by federally owned property in the Reserved Open Space (ROS) Zone; and to the west are single-family detached dwellings in the RR Zone.
5. **Previous Approvals:** Only Parcel A is subject to a Preliminary Plan of Subdivision (PPS) 4-85146. This PPS was approved with seven conditions, none of which are relevant to the approval of this CBP. None of the other lots or parcels included in this CBP have prior PPS approvals.

On February 29, 2024, the Prince George's County Planning Board voted to waive the filing fee for this application.

6. **Design Features:** The original Broadwater Estates subdivision was constructed from the late 1970's until the late 1980's. That construction included a stormdrain channel system to convey the stormwater from behind the lots to a piped stormdrain system. Over the years, several existing single-family dwellings have experienced stormwater flooding outside the existing channel structure. The lots located at 400, 401, and 404 Vista Way are affected during heavy rain events, with flooded rear yards and driveways. The existing stormwater channel currently has banks that are undercut and eroded. At the time this subdivision was built, on-lot stormwater management (SWM) was not required. An existing drainage channel currently runs from the park and between two residential buildings located at 400 and 404 Vista Way, before passing through a culvert under Vista Way. This channel is eroding, and the banks are undercut. The culvert outfalls to a concrete channel that ultimately flows into Broad Creek and the Potomac River.

The subject CBP approves drainage improvements to alleviate the flooding and property loss from erosion. The project involves installing a drainage swale along the lower portion of the park property, to collect runoff and keep it off the slope below. This approved swale design is called Regenerative Step Pool Storm Conveyance (SPSC). Flow will be diverted into the existing drainage channel. The channel will be restored to correct the erosion, and a step pool stormwater

system will be installed, to convey runoff downstream and treat water quality. A stormdrain will be installed to collect the flow from the channel and convey this past the residential building. An additional stormdrain will be installed to reduce flooding from offsite.

The CBP approves impacts to nontidal wetlands and the wetland buffer, as part of this application, for grading and creation of an engineered drainage swale. The requested impacts are for 2,935 square feet (0.07 acre) of temporary, nontidal wetland impact, 454 square feet (0.01 acre) of permanent wetland buffer impact, and 9,000 square feet (0.21 acre) of temporary wetland buffer impact. These impact areas are approved and permitted with the Maryland Department of the Environment (MDE) and the United States Army Corps of Engineers.

COMPLIANCE WITH EVALUATION CRITERIA

7. Environmental Review and Conformance with Subtitle 5B

Natural Resources Inventory

The subject site has an approved Natural Resources Inventory Plan (NRI-183-2022), approved on December 7, 2022, which was included with the application package. The existing conditions (existing woodland limits, nontidal wetlands, and wetland buffer) of the site are correctly shown on the conservation plan.

Forest Conservation – Outside the CBCA

The site was issued a numbered exemption from the Woodland and Wildlife Habitat Conservation Ordinance (E-021-2023) because a portion of the LOD area is outside the CBCA. This exemption was issued because the site is a government project that proposes clearing less than 20,000 square feet of woodlands.

Chesapeake Bay Critical Area Conservation Plan (CBP)

The CBP shows the approved stormwater improvement project and the adjacent driveways, houses, and individual trees, as required, as part of the overall review of the CBP. It also shows the required information and tables. Included with the CBP is a lot-by-lot table of impervious surfaces for the application area. No new impervious surface will be added, and no old impervious areas will be removed.

The application proposes to install stormdrain improvements to alleviate flooding conditions affecting several residential properties. This work will utilize an existing stormdrain system and will improve and add various structures to reduce flooding.

As part of this drainage improvement project, 48 individual trees (20 outside of the CBCA and 28 inside the CBCA) are approved to be removed. These trees will be replaced at a 1:1 ratio with 45 trees, 48 minor trees, 3 evergreen trees, and 144 shrub species. The LOD outside the new drainage swale and the ground disturbance areas will be reseeded with a native wetland and wildflower mixture, and lawn mixture. All required planting will occur within the project area.

Technical revisions to the CBP are required, prior to certification, and therefore a condition has been included herein.

Chesapeake Bay Conservation and Planting Agreement

No Chesapeake Bay Conservation and Planting Agreement is required because this is a DoE project.

Chesapeake Bay Conservation Easement

No conservation easement will be required for this project because this is a DoE project.

Non-Tidal Wetland Protection and Variance

The approved drainage improvement project affects nontidal wetlands and, therefore, must comply with the nontidal wetland protection standards contained in Section 5B-122(c) of the County Code. The Planning Board found compliance with said standards, as follows:

Section 5B-122. - Non-tidal Wetlands.

- (c) **Standards for non-tidal wetland protection. In addition to the standards set forth in this Subtitle for protection of the Buffer and expansion of the Buffer for nontidal wetlands, development activity affecting nontidal wetlands shall comply with the following standards:**

- (1) **New development activity is prohibited in nontidal wetlands unless the development activity is water dependent and requires access to a nontidal wetland as a central element of its basic function, or is not water dependent, and has no practicable alternative;**

This application is not water dependent and has no practicable alternative. The project is to alleviate an existing flooding problem located in the application area. An existing stormwater swale was constructed with the development of the subdivision in the 1970s and 1980s. The stormwater drainage channel is now failing, causing erosion and flooding. A new stormwater channel and various other stormwater control structures are approved. The requested nontidal wetlands and wetland buffer impacts are adjacent to the exiting stormwater channel. This stormwater swale will be reengineered using a common industry SPSC design. This design method was not used at the time of the original channel construction. The SPSC design incorporates a step pool system, which increases the width of the channel that was previously constructed, thereby necessitating impacts to the adjacent wetland and its buffer. There is an existing stormwater inlet structure that is currently being used and the new drainage improvement project will continue to use this same structure to

capture the stormwater flow. This flooding issue is specific to the application area and there are no practical alternatives.

- (2) **A 25-foot buffer shall be established around all nontidal wetlands. A 100-foot-wide buffer shall be established around all wetlands of special state concern. Development activities or other activities that may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands;**

The on-site wetlands are not identified as wetlands of special state concern. This requested impact area is within a residential area and no livestock are associated with the application area. The requested impact area has nontidal wetlands with a 25-foot buffer shown on the conservation plan. The adjacent requested nontidal wetland and wetland buffer areas are sparsely wooded, and ground cover is comprised with invasive grass species. The construction of the redesigned stormwater channel will not adversely impact the wetlands, because the impacted nontidal wetland area and wetland buffer will be re-vegetated with native trees, shrubs, and seed mix. No other activities are approved within the nontidal wetland and 25-foot buffer other than what has been requested.

- (3) **The hydrologic regime and water quality of identified nontidal wetlands shall be protected by providing that development activities or other land disturbances in the drainage area of the wetlands shall minimize alterations to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland;**

The approved drainage improvement project will only temporarily affect the on-site nontidal wetlands. The nontidal wetland water quality will remain the same after construction and the impacted area will be revegetated with native plants and seed mix. This application has a joint permit for impacts to wetlands, their associated buffers, and waterways that has been issued from MDE and the United States Army Corps of Engineers. These agencies reviewed the drainage improvement project and determined that the approved drainage improvements to the existing system will not impair the on-site water quality.

- (4) **New development activity will first avoid and then minimize adverse impacts to the nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions;**

As mentioned above, this application is to alleviate the existing flooding issues caused by stormwater to several existing residential lots. This flooding issue is specific to the application area and no practical alternatives are feasible. The SPSC design incorporates a step pool system, which increases the width of the channel that was previously constructed. Due to the location of the nontidal wetlands adjacent to the existing failing stormwater channel, impacts could not be avoided. As noted above, the project will not adversely impact the wetland because the impacted nontidal wetland area and wetland buffer will be re-vegetated with native trees, shrubs, and seed mix. No new development is approved other than this drainage improvement project.

- (5) **New development activity affecting nontidal wetlands must be designed so that it does not cause or contribute to a degradation of ground waters or surface waters; and**

No new development or nontidal wetland and wetland buffer impacts are approved other than this drainage improvement project. This application is to improve surface water runoff and improve an existing failing stormwater channel. Therefore, the project will not cause or contribute to a degradation of ground waters or surface waters. Rather, it will improve the quality of these waters.

- (6) **Development activity permitted in accordance with these standards must be consistent with any comprehensive watershed management plan developed or approved by the Department under Environment Article, §5-908, Annotated Code of Maryland.**

This application has an approved joint permit for impacts to wetlands, their associated buffers, and waterways issued from MDE and the United States Army Corps of Engineers. The application is consistent with the watershed management plan and is part of the joint permit process.

VARIANCE REQUEST

As previously noted, the applicant is proposing disturbance to a nontidal wetland and its buffer, in conjunction with the approved drainage improvement project. Section 5B-122(d) of the County

Code requires a variance for disturbance within a nontidal wetland and wetland buffer. Pursuant to Section 5B-110(n) and (o), the Planning Board shall approve variances from Division 2 of Subtitle 5B in accordance with the required findings for the approval of variances contained in the Zoning Ordinance. The Prince George's County Planning Department received justification exhibits, in support of the variance, with the submission dated January 24, 2024.

Section 27-3613(d) and (e) of the Zoning Ordinance contain the required findings [text in **bold**] to be made before a variance can be granted. The plain text is the Planning Board's analysis of the approved variance request.

Section 27-3613(d) – Variance Decision Standards

A variance may only be granted when the review board or official, as appropriate, finds that:

- (1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);**

The subject properties are physically unique and unusual in a manner different from the nature of surrounding properties with respect to their environmental features. As noted above, an existing nontidal wetland and wetland buffer are located adjacent to an existing stormwater channel on the subject properties. As described above, there are drainage concerns on the properties at 400, 401, and 404 Vista Way. In particular, the existing stormwater channel floods the residences' backyards and driveways during heavy rainfall events. The existing channel's banks are undercut and eroding. This combination of features is not present on the surrounding properties.

- (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;**

The applicant is not seeking variance relief from a zoning provision, but rather Section 5B-122(d) of Subtitle 5B of the County Code (the CBCA Ordinance). However, this finding nonetheless remains applicable because Section 27-4402 requires properties within the CBCAO zones, including the subject properties, to comply with all provisions of Subtitle 5B.

The applicant is proposing drainage improvements to the existing failing stormdrain system. The denial of the variance request would result in hardship to the property owners at 400, 401, and 404 Vista Way in that the drainage improvements cannot be made without impacting the wetland and its buffer. Specifically, the requested nontidal wetlands and wetland buffer impacts are adjacent to the existing stormwater channel. This stormwater swale will be reengineered, using a common industry SPSC design, which incorporates a step pool system and increases the width of the channel that was previously constructed, thereby necessitating impacts to the adjacent wetland and its buffer. Not constructing the drainage improvement project would continue the flooding and drainage issues on the referenced properties. Thus, the strict application of the law would create peculiar and unusual practical difficulties for the property owners.

(3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;

As previously discussed, the drainage improvements, to alleviate flooding, require a variance to perform the necessary work. The LOD is the minimum reasonably necessary to complete this work.

(4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the General Plan or any Functional Master Plan, Area Master Plan, or Sector Plan affecting the subject property;

The project area is located within the planning area of the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment* (master plan). The Infrastructure Elements section in the master plan has an Environmental Infrastructure section. Within this Environmental Infrastructure section there are policies which must be met for master plan conformance. Policy 2 states “Restore and enhance water quality in areas that have been degraded and preserve water quality in areas not degraded.” The approved drainage improvement project will restore and enhance a failing stormwater drainage swale. The requested variance is for impacting on-site nontidal wetlands and the 25-foot wetland buffer, to construct a new drainage channel to improve water quality downstream. The land use will continue as residential and open space, in accordance with the *Plan Prince George’s 2035 Approved General Plan* (Plan 2035). Granting the variance would not impair the intent, purpose, or integrity of applicable general and master plans.

(5) Such variance will not substantially impair the use and enjoyment of adjacent properties; and

The project will not have any impact on adjacent properties. All work will be done within the LOD on the subject properties, as shown on the plan. As such, the variance will not substantially impair the use and enjoyment of adjacent properties.

(6) A variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

The flooding which is occurring on the subject properties is a result of stormwater runoff from upstream properties. The erosion of existing stormwater conveyance systems also was not inflicted by the owner of the subject properties.

Section 27-3613(e) –Variance in CBCAO

For any variance application located in the Chesapeake Bay Critical Area Overlay (CBCAO) Zone, the variance may only be granted when the appellant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance, and the Prince George’s County Planning Board finds, in addition to the standards set forth in Subsection 27-3613(d), Variance Decision Standards, above, that:

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;

State law defines “unwarranted hardship” to mean that “without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.”
COMAR 27.01.12.01.

This project will alleviate existing flooding issues due to a failing existing stormdrain system on the three subject properties. The subject drainage improvement project cannot be completed without impacts to the adjacent nontidal wetlands and wetland buffer system. Thus, literal enforcement of the CBCA Ordinance would result in an unwarranted hardship to the property owners at 400, 401, and 404 Vista Way, as their properties would continue to experience flooding issues that deny them reasonable and significant use of their lots.

- (2) **A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of the rights commonly enjoyed by other properties in similar areas within the Critical Area;**

The subject drainage improvement project cannot be completed without impacts to the adjacent nontidal wetlands and wetland buffer system. This project will alleviate existing flooding issues due to a failing existing stormdrain system on three properties. A literal interpretation of the CBCA Ordinance would therefore deprive the property owners at 400, 401, and 404 Vista Way the rights commonly enjoyed by the owners of other properties in similar areas that are not experiencing flooding issues that impact their property.

- (3) **The granting of a variance would not confer upon an applicant any special privilege that would be denied by Critical Area Program to other lands or structures within the Critical Area;**

The applicant is proposing drainage improvements to the existing failing stormdrain system for the property owners at 400, 401, and 404 Vista Way. This project will alleviate existing flooding issues, due to a failing existing stormdrain system, on the three properties. Impacting the nontidal wetlands and wetland buffer adjacent to the existing stormdrain swale is required to improve and maintain the existing stormwater swale. Any drainage improvement project impacting nontidal wetlands and wetland buffers in the CBCA, would be evaluated under the same criteria as the subject application. Granting this variance would not create a special privilege for the applicant.

- (4) **The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any conditions relating to land or building use, either permitted or non-conforming, on any neighboring property.**

The application is for drainage improvements to several properties on Vista Way. A nontidal wetlands and wetland buffer system is located adjacent to a failing stormdrain swale. This swale and surrounding area need to be impacted for the approved drainage improvements. The applicant did not cause the placement of the existing swale adjacent to nontidal wetlands. The variance request is not based upon conditions or circumstances which are the result of the applicant's actions and does not arise from any conditions relating to land or building use, either permitted or non-conforming, on any neighboring property.

- (5) **The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the**

Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;

The applicant has an approved SWM Concept Plan (37916-2022-0), which was reviewed and approved by the DoE. This SWM concept plan was reviewed to ensure that no on-site sediment or stormwater leaves the site or directly enters the adjacent Potomac River. The approved project will construct a new drainage channel, using SPSC design methods, to prevent flooding on the adjacent residential lots. In granting the variance, this application would be in harmony with the general spirit and intent of the applicable laws within the CBCA.

(6) The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;

The subject CBP incorporates SWM controls to address adverse impacts on water quality from pollutants discharged from structures, conveyances, or runoff from surrounding lands. This project proposes to improve the water quality of a failing stormwater swale and to alleviate the stormwater flooding conditions of several home sites.

(7) All fish, wildlife and plant habitat in the designated critical areas would be protected by the development and implementation of either on-site or off-site programs;

All fish, wildlife and plant habitat in the designated critical areas will be protected by the development and implementation of on-site programs. In particular, the existing stormdrain swale was subject to heavy rain events, which have caused failing banks and erosion. These rain events are creating downstream sediment runoff into the adjacent yards and existing stormdrain system, which eventually flows into the Potomac River. The approved drainage improvements will ameliorate this situation. In addition, the approved LOD for the drainage improvement project has been minimized to reduce the amount of vegetation clearing and ground disturbance. The project area will be replanted with native vegetation, and stabilized with native seed mixes, corresponding to the site's various hydrologic conditions. The newly planted native trees and seed mixes will provide important wildlife and habitat value and contribute to stormwater attenuation and pollutant reduction.

(8) The number of persons, their movements, and activities, specified in the development plan, are in conformity to establish land use policies and would not create any adverse environmental impact; and

The number of persons, their movements, and activities, specified in the development plan, are in conformance with existing land use policies and would not create any adverse environmental impact. This application is for a stormwater drainage improvement project, to remove current stormwater flooding to existing single-family residential dwellings, in a residentially zoned established community.

(9) The growth allocation for Overlay Zones within the County would not be exceeded by the granting of the variance.

No growth allocation is approved for this property.

The variance findings were met for the requested approved disturbance to nontidal wetlands within the CBCA.

In addition to the variance findings, Section 5B-122(d) of the County Code contains additional findings for disturbance or alteration to nontidal wetlands and their buffers. The required findings are in **bold** text, and the Planning Board's analysis is in plain text below.

(d) Review process. Applicants for approval of development projects that involve disturbance or alteration to nontidal wetlands or the 25-foot buffer shall require a variance and shall demonstrate:

(1) That proposed impacts are unavoidable;

The project is to alleviate an existing flooding problem located in the application area. An existing stormwater swale was constructed with the development of the subdivision in the 1970s and 1980s. The stormwater drainage channel is now failing, causing erosion and flooding. A new stormwater channel and various other stormwater control structures are approved. The requested nontidal wetlands and wetland buffer impacts are adjacent to the exiting stormwater channel. This stormwater swale will be reengineered using a common industry SPSC design. The SPSC design method was not available at the time of the original channel construction. As part of this design, the existing channel will be expanded to create a series of step pools to reduce the concentrated flow of stormwater. The adjacent nontidal wetlands and wetland buffer will be impacted as part of this expanded step pool design. Impacts to these regulated systems are unavoidable.

(2) That alternative proposals were evaluated; and

The application is due to flooding issues specific to the subject area. There is a nontidal wetland and wetland buffer system adjacent to a failing stormwater channel. This existing channel will be reengineered

and expanded to handle stormwater flows. This project is site specific, and no practical alternatives are feasible.

- (3) That mitigation measures will be provided. Mitigation measures shall provide water quality benefits and plant and wildlife habitat equivalent to those of the wetland destroyed or altered and shall be accomplished, to the extent possible, on site or near the affected wetland.**

The overall drainage improvement project will provide planting mitigation as required for vegetation removal with the CBCA. The application proposes the removal of 48 individual trees (20 outside the CBCA and 28 inside the CBCA). These trees will be replaced at a 1:1 ratio with 45 trees, 48 minor trees, 3 evergreen trees, and 144 shrub species. The LOD outside the new drainage swale and the ground disturbance areas will be reseeded with a native wetland and wildflower mixture, and lawn mixture. All required planting will occur within the project area and within and near the affected wetland area.

Chesapeake Bay Critical Area Commission (CBCA) Review

The applicant received a letter from the Critical Area Commission (CAC) dated August 29, 2023, in response to the drainage improvement plans.

The CAC letter does not oppose the requested variance and states that “this office agrees that the project is generally consistent with Prince George’s County Critical Area Program for the following reasons:

- “1. The project will not cause disturbance to the 100-foot Critical Area Buffer.
- “2. The project will not result in any additional lot coverage.
- “3. The project has received local approval of SWM; local sediment and erosion control approval is pending.
- “4. The project will clear 28 trees in the Critical Area that will be replaced at a 1:1 ratio. Please note, trees in the Critical Area with proposed root pruning should be included in the monitoring period for survivability and if necessary, replaced at a 1:1 ratio.
- “5. No impacts to tidal wetlands.
- “6. The project has received approval for impacts to nontidal wetlands (MDE # 22-NT-0246/202261660).
- “7. The project will not impact any HPAs or RTEs.”

It should be noted that HPAs stands for “habitat protection area” and RTEs means “rare, threatened, and endangered” species.

Prince George’s County Department Of Permitting, Inspections, And Enforcement (DPIE)

This application has not been reviewed by DPIE. The approved application is a DoE project and falls under DoE review and approval of the SWM requirements. Copies of the approved SWM Concept Plan (37916-2022-0), approved on December 19, 2023, were submitted with the subject application. The approved SWM concept plan shows stormwater directed to newly constructed grass swale, and a step pool design swale, conveying water to several new stormdrain pipes, with an inlet into the existing stormdrain system. This design will alleviate stormwater flooding from crossing the existing residential lots. The CBP is consistent with the stormwater concept plan.

8. **Prince George’s County Zoning Ordinance:** Since no buildings are proposed with this CBP, the requirements of the RR and ROS Zones are not applicable.
9. **2018 Prince George’s County Landscape Manual (Landscape Manual):** This application is exempt from the Landscape Manual as it is a public capital project by the DoE and does not propose any new buildings or change of use. However, the CBP does include a 4.9-1 Sustainable Landscaping Requirements schedule, indicating the project meets what would be required.
10. **Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance:** As previously discussed, the site was issued a numbered exemption from the Woodland and Wildlife Habitat Conservation Ordinance (E-021-2023), because a portion of the LOD area is outside the CBCA. This exemption was issued because the site is a government project that proposes clearing less than 20,000 square feet of woodlands.
11. **Prince George’s County Tree Canopy Coverage Ordinance:** The subject application is exempt from the requirements of the Tree Canopy Coverage Ordinance, in accordance with Section 25-127(b)(1)(B) and (D) of the County Code.
12. **Referral Comments:** The subject application was referred to the concerned agencies and divisions. The referral comments are summarized, as follows, and incorporated herein by reference:
 - a. **Historic Preservation and Archeological Review—**The Planning Board has reviewed and adopts the memorandum dated April 4, 2024 (Stabler, Smith, and Chisholm to Price), in which the Historic Preservation Section offered the following comments:

“A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites, indicates the probability of archeological sites within the subject property is high. Numerous precontact archaeological sites have been identified along Broad Creek and the Potomac River, within a mile of the subject property, and this proposed project has a high probability of containing precontact Native American archaeological resources. The land that became the Broadwater Estates, where the subject properties are located, was identified by the National Park Service in 1963 as containing archaeological resources related to the

settlement of Moyaone, the sixteenth-century Piscataway village that existed where present-day Piscataway Park is located.”

As such, monitoring for archeological resources has been added as a condition of approval herein.

- b. **Community Planning**—The Planning Board has reviewed and adopts the email dated April 10, 2024 (Mekonnen to Price), in which the Community Planning Division found that the approved improvements will not impact conformance to the *2006 Approved Henson Creek-South Potomac Master Plan and Section Map Amendment* planning area.
 - c. **Transportation Planning**—As of the writing of this resolution, the Transportation Planning Section offered no comments.
 - d. **Subdivision**—The Planning Board has reviewed and adopts the memorandum dated March 22, 2024 (Bartlett to Price), in which the Subdivision Section offered an analysis of subdivision regulation conformance and found no issues.
 - e. **Environmental Planning**—The Planning Board has reviewed and adopts the memorandum dated April 15, 2024 (Schneider to Price), in which the Environmental Planning Section offered an analysis of the subject application and recommended approval of CBP-2023-001, subject to conditions included herein.
 - f. **Critical Area Commission**—The Planning Board has reviewed and adopts the memorandum dated August 29, 2023 (Grassman to Moffer), in which the Critical Area Commission found the project consistent with the Prince George’s County Critical Area Program.
 - g. **Prince George’s County Department of Parks and Recreation (DPR)**—The Planning Board has reviewed and adopts the email dated April 19, 2024 (Thompson to Price), in which DPR stated it had no issues regarding the subject application.
 - h. **Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE)**—The Planning Board has reviewed and adopts the memorandum dated April 15, 2024 (Guzman to Price), in which DPIE noted that the project has been approved by DoE.
13. **Community Feedback:** The Planning Board did not receive any inquiries from the community regarding the subject CBP.


BE IT FURTHER RESOLVED, that an appeal of the Planning Board’s action must be filed with Circuit Court for Prince George’s County, Maryland within thirty (30) days following the adoption of this Resolution.

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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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, and Shapiro voting in favor of the motion, and with Commissioner Doerner absent at its regular meeting held on Thursday, May 16, 2024, in Largo, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of June 2024.

Peter A. Shapiro
Chairman

By 
Jessica Jones
Planning Board Administrator

PAS:JJ:TP:rpg


Approved for Legal Sufficiency
M-NCPPC Office of General
Counsel