

A M E N D E D   R E S O L U T I O N

WHEREAS, Linda L. Neilson, is the owner of a 0.29-acre parcel of land known as Treasure Cove Lots 9 & 10, Block 13 & p/o Belleau Trail, Tax Map 113, Grid C-3, said property being in the 12th Election District of Prince George's County, Maryland, and being zoned R-R and L-D-O; and

WHEREAS, on September 23, 2003, Linda L. Neilson, filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing an accessory structure and an addition to an existing residential structure on a property located within the Chesapeake Bay Critical Area; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-03009 for Treasure Cove Lots 9 and 10, including Variance Request VC-03009A, 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 February 12, 2004, for its review and action in accordance with the 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; and ]

\*[WHEREAS, on February 12, 2004, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.]

\*WHEREAS, CP-03009 was approved by the Prince George's Planning Board on February 12, 2004, and PGCPB Resolution No. 04-137 was adopted on June 24, 2004; and

\*WHEREAS, on July 22, 2004, the Prince George's County Planning Board approved a request for reconsideration of CP-03009, and

\*WHEREAS, on July 22, 2004, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid request for reconsideration,

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED a variance regarding lot width, APPROVED a variance for the rear yard setback for an addition to the existing structure, APPROVED a variance for the construction of an accessory structure in front of a principle structure and further APPROVED Conservation Plan CP-03009 for Treasure Cove, Lots 9 and 10.

\*Denotes Amendment

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[Brackets] indicate deleted language

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

1. The 0.29-acre property is in the northwest quadrant of the intersection of Belleau Trail and Argonne Trail within the Chesapeake Bay Critical Area. The property is triangular with 21.67 feet of frontage on Argonne Trail and is developed with a single-family residential structure that was constructed prior to 1965. There are no streams, wetlands or 100-year floodplain on the property. There are no steep slopes on the property. There is no Chesapeake Bay Critical Area buffer on the property. Current air photos indicate that the site is mostly open, not wooded and developed with a single-family detached residential structure. No historic or scenic roads are affected by this proposal. There are no significant nearby noise sources, and the proposed use is not expected to be a noise generator. No species listed by the State of Maryland as rare, threatened or endangered are known to occur in the in the general region. A Stormwater Design Plan has been approved by the Prince George's County Department of Environmental Resources. The *Prince George's County Soils Survey* indicates that the soils on the site are in the Keyport soil series. The site is in the Developing Tier according to the General Plan.
2. Lots 9 and 10 were recorded on August 26, 1927, and are shown on Record Plat 3-62 in the Prince George's County Land Records. The abandoned portion of Belleau Trail that is part of the subject property was created by C-7276 on October 13, 1965. The residential structure appears on M-NCPPC air photos taken in March 1965. Permit #16066-2003 was issued on June 6, 2003, for the installation of the 12-foot x 24-foot concrete slab shown on the plan in the front yard area of the lot, in front of the principle structure. A waiver from preparing a Conservation Plan was granted by the Prince George's County Department of Environmental Resources for the construction of the slab because the area of disturbance was less than 500 square feet, there would be no disturbance to the buffer, no steep slopes would be affected, no tributary streams would be affected, no Habitat Protection Areas would be affected, no tidal or nontidal wetlands would be affected, and no variances to any Chesapeake Bay Critical Area requirements were needed.
3. This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area. The maximum amount of impervious surface area permitted by Section 27-548.17 of the Zoning Ordinance for the property is 25 percent of the gross tract (3,192.75 square feet). The existing impervious surface is 2,346.90 square feet, and the proposed impervious surface is 3,130.90 square feet. The maximum amount of net lot coverage permitted by the Zoning Ordinance for the property is 25 percent of the net tract (3,192.75 square feet). The existing net lot coverage is 2,784.50 square feet, and the proposed net lot coverage is 3,000.50 square feet.
4. In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. The subject lots are grandfathered because they were recorded prior to December 1, 1985. If conformance with the grandfathering provisions can be found, the proposal can move forward. The Planning Board found that the lot meets all of the requirements of the

- Zoning Ordinance to be considered a buildable lot in the R-R Zone.
5. Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance or the Conservation Manual for properties within the Chesapeake Bay Critical Area only where an applicant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance, and where the Prince George's County Planning Board (or its authorized representative) has found conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section 27-230(a). The Planning Board found that no variances are required to the Chesapeake Bay Critical Area provisions for the application to be approved.

The applicant requested five variances from other provisions of the Zoning Ordinance in order to develop the property as proposed. Staff offered analyses associated with each required finding and the applicant presented justifications for the following variances from the Zoning Ordinance: (1) to permit the construction of an accessory structure in front of the principle residential structure, a variance from the requirements of Section 27-442(i) Table VIII Accessory Buildings is required; (2) to permit a new accessory structure within the side yard setback of 8 feet, a variance from the requirements of Section 27-442(i) Table VIII Accessory Buildings is required; (3) to validate the existing structure that has an inadequate rear yard setback, a variance from the requirements of Section 27-442(e) Table IV – Yards is required; (4) to permit an addition to the existing structure within the rear yard setback, a variance from the requirements of Section 27-442(e) Table IV – Yards is required; and (5) to validate the existing inadequate lot width, a variance from the requirements of Section 27-442(d) Table III – Lot/Width Frontage is required. No variance to any Chesapeake Bay Critical Area regulation is required.

The Planning Board found that a variance to a side yard setback (#2 above) was not required, because the 8-foot required setback is for principle structures only and that the proposed accessory structure would be properly setback 2 feet and be in conformance with the Zoning Ordinance.

The Planning Board granted a variance of 10 feet from the required 20-foot rear yard setback for the proposed addition to the existing structure (#4 above), noting that the architecture of the house constrained the location and that the existing house was currently within the 20-foot setback. The granting of this variance removed the need to validate the existing structure within the 20-foot rear yard setback (#3 above).

The Planning Board granted a variance of 13.33 to the required 35-foot minimum lot width in the R-R zone, noting that this is an existing condition that was created on October 13, 1965 when C-7276 regarding the abandonment of Belleau Trail was approved (#5 above).

The Planning Board found that the applicant \*[failed to] adequately demonstrated that the denial of the requested variance for the placement of the accessory structure in front of the principle structure (variance #1 above) would result in practical difficulties or undue hardship, considering that some neighboring properties \*[lack] have accessory structures in the front yard and that the proposed garage could \*not be situated in the side or rear yard areas, \*in part because of existing fixtures in those locations. The Planning Board granted the required variance for the placement of an accessory structure in front of a principle structure based on the evidence presented and submitted for the record.

### **Required Findings of Section 27-230(b)**

Section 27-230(b) contains the following required findings (in italics). The Planning Board findings are in plain text.

- (1) *Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship;*

The Planning Board found that for all requested variances the “special conditions or circumstances” provisions had been met with regard to this required finding because of the unusual triangular shape of the subject property, the narrow front lot line and a long side lot line that abuts an abandoned street.

With regard to variance #1, the Planning Board found that the applicant \*[failed to] adequately demonstrated that the placement of the accessory structure \*[in front] of the principle structure would result in unwarranted hardship\*, in part because of existing fixtures in those locations. [An accessory structure could be placed to the rear of the principle structure without a variance. The Planning Board found that the applicant had \*[not] adequately demonstrated that the accessory structure could not be placed to the rear of the principle structure.]

- (2) *A literal interpretation of this Subtitle would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area;*

The Planning Board found that for all approved variances this required finding was met because of the unusual shape and existing conditions of the subject property, as described in the Board’s analysis of Section 27-230(b)(1). \*[With regard to variance #1, the Planning Board found that a literal interpretation of the regulations would not deprive the applicant of rights commonly enjoyed by other property owners because an accessory structure could be situated to the rear of the principle structure without the need for a variance.]

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

The Planning Board found that for all approved variances this required finding was met because, without those variances, the unusual shape and existing conditions of the subject property would make it difficult or impractical for the applicant to make what would otherwise be reasonable improvements upon the property. \*[With regard to variance #1, the applicant has the option to proceed without a variance, by locating the accessory structure to the rear of the principle structure. Thus, the granting of variance #1 would confer upon the applicant a special privilege.]

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

The Planning Board found that this required finding was met for all approved variances because these variances were not a result of any action of the applicant or neighboring properties and were the result, for the most part, of pre-existing conditions of the property that had been in place for a substantial amount of time. All of the subject variances are related solely to existing and proposed uses within the subject property and do not concern uses on neighboring properties.

As for variance #1 for the placement of an accessory structure in front of the principle residential structure, there were no previous actions of the applicant that led to the need for a variance. The applicant had placed a concrete slab in the front yard area with the intent of constructing an accessory structure; however, the construction of the slab itself did not require a variance. As such, the Planning Board found that there was no action on the applicant's part that resulted in the need for the variance, and that the placement of the slab could not be used as a basis for approving a variance for the accessory structure.

- (5) *The granting of a variance would not adversely affect water quality or adversely impact fish, plant, or wildlife habitat within the Chesapeake Bay Critical Area, and that granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area;*

The Planning Board found that the Chesapeake Bay Critical Area Plan submitted incorporated stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat.

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

The Planning Board found that the approved Chesapeake Bay Critical Area Plan incorporates stormwater management controls to minimize adverse impacts on water quality.

- (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;*

The Planning Board found that the Chesapeake Bay Critical Area Plan included an inventory that indicated that there are no fish, plant or wildlife habitats that could be adversely impacted by the proposed development.

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

The Planning Board found that the use of a single-family residence is in complete conformance with the R-R and L-D-O zones.

- 9) *The growth allocations for Overlay Zones within the County would not be exceeded by the granting of the variance.*

The Planning Board found that no use of Growth Allocation is needed to proceed with the proposed development.

#### **Required Findings of Section 27-230(a)**

Section 27-230(a) contains the following required findings (in italics). The Planning Board findings are in plain text.

- (1) *A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;*

The Planning Board found that for all requested variances this required finding was met because of the unusual triangular shape of the subject property, the narrow front lot line and a long side lot line that abuts an abandoned street.

- (2) *The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and*

The Planning Board found that for all approved variances this required finding was met because the unusual shape and existing conditions of the property, as described in the Board's analysis of Section 27-230(a)(1), would make strict compliance with the Zoning Ordinance impractical. Without these variances, the shape and conditions of the property would severely restrict the applicant's ability to develop what would otherwise be reasonable improvements. As for the rear yard setback variance, the property was platted in 1927 and the existing house was constructed prior to 1965. It would be impractical to correct the existing residential structure's encroachment into the rear yard setback without a variance.

With regard to variance #1, the Planning Board found that the applicant had \*[not] demonstrated that the denial of the construction of an accessory structure in front of the principle residential structure would result in exceptional or undue hardship upon the owner\*, in part because of existing fixtures in the rear and sides of the property. Accessory structures could \*not be placed to the rear\*or sides of the principle structure without a variance. [The Planning Board found that the applicant had not adequately demonstrated that the accessory structure could not be placed to the rear of the principle structure.]

(3) *The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.*

The Planning Board found that all of the proposed variances met this required finding because the use of the site for a single-family residence is in complete conformance with *General Plan* and the *Subregion VII Master Plan*.

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 Harley, seconded by Commissioner Vaughns, with Commissioners Harley, Vaughns, Eley, Squire and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 22, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 29th day of July 2004.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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