

R E S O L U T I O N

WHEREAS, Brian P. Woolfolk is the owner of a 0.29-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned R-R and L-D-O Zones; and

WHEREAS, on October 20, 2003, Landesign, Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of the construction of a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area and variances from the *Conservation Manual* because development is proposed within the buffer, and a variance from the Zoning Ordinance is required to permit the net lot coverage to exceed 25 percent; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-03014 for Tantallon on the Potomac, including Variance Request VC-03014A, 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 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 February 12, 2004, 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 the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-03014A, and further APPROVED Conservation Plan CP-03014, Tantallon on the Potomac for Lot 45.

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

1. **Site Description**

The 0.29-acre property is in the southwest quadrant of the intersection of Swan Creek Road and Autumnwood Drive within the Chesapeake Bay Critical Area. There are no streams or wetlands on the property. There is 100-year floodplain on the property. Most of the property is within 100 feet of the mean high tide line, making it within the Chesapeake Bay Critical Area Primary Buffer. Current air photos indicate that the site is mostly open. No steep slopes occur on the site. 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 principal soils on the site are in the Keyport soil series. The site is in the Developing Tier according to the General Plan.

2. **Background**

The proposal is for the construction of a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area. A Chesapeake Bay Critical Area Conservation Plan is required prior to the issuance of any permit by the Prince George's County Department of Environmental Resources. The Planning Board is the final approving authority for Chesapeake Bay Critical Area Conservation Plans.

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 permitted by Section 27-548.17 of the Zoning Ordinance for Lot 45 is 25 percent of the gross tract (3,202.25 square feet). The proposed impervious surface is 3,200 square feet. The gross tract is 12,809 square feet; however, the presence of 3,835 square feet of land area within the 100-year floodplain reduces the net tract to 8,974 square feet. The Prince George's County Department of Environmental Resources has approved the filling of a portion of the floodplain; however, even after the filling, the net tract is only 10,019 square feet. The maximum amount of net lot coverage permitted by the Zoning Ordinance for Lot 45 is 2,504.75 square feet. The proposed net lot coverage is 3,200 square feet. Twenty-five lots are shown on Record Plat 66-85 that created Lot 45. Only one of those lots is smaller in gross tract area than Lot 45. When Lot 45 was created, no 100-year floodplain was known to occur on the lot, and the gross tract and net tract were identical. The plan proposes development within the buffer. The Conservation Manual prohibits disturbance to the Chesapeake Bay Critical Area Primary Buffer without the approval of a variance.

The Planning Board is the final approving authority for conservation plans and as such is the approval authority for the requested variances.

3. **Buildable Lot Analysis**

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 lot is grandfathered because it was recorded prior to December 1, 1985. If conformance with the grandfathering provisions can be found, the proposal can move forward.

The following is an analysis of the text (shown in *italics*) from the Zoning Ordinance. The subject lot meets all of the requirements of the Zoning Ordinance to be considered a buildable lot in the R-R zone.

All buildable lots (except outlots) within subdivisions recorded prior to December 1, 1985, shall remain buildable lots, regardless of lot size, provided:

- (1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;*

Comment: The proposed Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water quality.

- (2) The applicant has identified fish, plant, and wildlife habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of affected species to sustain themselves; and*

Comment: The Chesapeake Bay Critical Area Plan submitted includes an inventory that indicates there are no fish, plant, or wildlife habitats that could be adversely impacted by the proposed development.

- (3) The lot size, frontage, and vehicular access are in accordance with the requirements of the underlying zone. Development of these lots shall not count towards the growth allocation of the applicable Overlay Zone.*

Comment: The Final Plat of Subdivision was approved on October 25, 1967. The lots were recorded and are shown on Record Plat 66-85 in the Prince George's County Land Records.

The lot size, frontage, and vehicular access are in accordance with the requirements of the R-R Zone, and development of this lot requires no use of Growth Allocation.

4. Variance Analysis – Disturbance to the Primary Buffer

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).

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these requirements.

- (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;*

Comment: Almost all of Lot 45 is within 100 feet of the mean high tide line. Even if a variance were granted to reduce the front building restriction line to zero, any reasonable development of the site would require disturbance to the buffer.

- (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;*

Comment: Other properties nearby were similarly developed after the enactment of the Chesapeake Bay Critical Area Program.

- (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;*

Comment: The granting of these variances neither creates a need for other variances nor establishes a special treatment because the lot contains features not found to this magnitude on other lots.

- (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;*

Comment: The applicant has taken no action on this property to date, and the current request is not related to uses on adjacent properties.

- (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;*

Comment: The Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat.

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

Comment: 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;*

Comment: The Chesapeake Bay Critical Area Plan includes an inventory that indicates 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*

Comment: 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.*

Comment: No use of Growth Allocation is needed to proceed with the proposed development.

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. The following is an analysis of the application's conformance with these requirements.

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

Comment: Because the extent and location of buffer reduces the buildable area and the extent of floodplain reduces the net tract, development with any single-family residential structure similar in character to those existing in the neighborhood would require a variance.

- (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*

Comment: The strict application of the Conservation Manual with regard to nondisturbance of the buffer would result in the prohibition of any single-family residential structure.

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

Comment: The use of the site for a single-family residence is in complete conformance with General Plan and the Subregion VII Master Plan.

5. **Variance Analysis – Net Lot Coverage**

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).

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these requirements.

- (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;*

Comment: When the property was platted on October 25, 1967, no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 45. Only one of those lots is smaller in gross tract area than Lot 45. When Lot 45 was created, no 100-year floodplain was known to occur on the lot, and the gross tract and net tract were identical. Changes in methods for establishing the location of the 100-year floodplain have occurred since that date. The current 100-year floodplain elevation for this site has been established by the Prince George's County Department of Environmental Resources as elevation 10 feet. The gross tract is 12,809 square feet; however, the presence of 3,835 square feet of land area within the 100-year floodplain reduces the net tract to 8,974 square feet. The Prince George's County Department of Environmental Resources has approved the filling of a portion of the floodplain; however, even after the filling, the net tract is only 10,019 square feet.

- (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;*

Comment: Other properties nearby were similarly developed after the enactment of the Chesapeake Bay Critical Area Program.

- (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;*

Comment: The granting of these variances neither creates a need for other variances nor establishes a special treatment because the lot contains features not found to this magnitude on other lots.

- (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;

Comment: The applicant has taken no action on this property to date, and the current request is not related to uses on adjacent properties.

- (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;*

Comment: The Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat.

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

Comment: 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;*

Comment: The Chesapeake Bay Critical Area Plan includes an inventory that indicates 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*

Comment: 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.*

Comment: No use of Growth Allocation is needed to proceed with the proposed development.

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. The following is an analysis of the application's conformance with these requirements.

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

Comment: Because the extent of 100-year floodplain reduces the net tract, development with any single-family residential structure similar in character to those existing in the neighborhood would require a variance.

- (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*

Comment: The strict application of Table II of Section 27-442(c) of the Zoning Ordinance would result in the building area of the lot being reduced to an amount significantly less than lots with similar gross tract areas.

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

Comment: The use of the site for a single-family residence is in complete conformance with General Plan and the Subregion VII Master Plan.

6. Summary

On November 7, 2003, the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the R-R Zone, the L-D-O Zone and the Conservation Manual; however, the staff reviewer for the Washington Suburban Sanitary Commission was concerned about building close to an existing sewer line, and at that time the applicant had not filed variance requests. By letter dated December 22, 2003, the Washington Suburban Sanitary Commission has approved the plan as submitted. Variance requests for disturbance to the buffer and net lot coverage were accepted on January 5, 2004.

The granting of these variances is appropriate to permit reasonable development of the site with a single-family residence that is similar in character to those in the neighborhood. Staff recommends approval of VC-03014A.

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 Eley, seconded by Commissioner Squire, with Commissioners Eley, Squire, and Vaughns voting in favor of the motion and with Commissioners Harley and Hewlett opposed, at its regular meeting held on Thursday, February 12, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 9th day of September 2004.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:JS:rmk