

R E S O L U T I O N

WHEREAS, Evette Williams is the owner of a 3,855 square-foot parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned R-55 and I-D-O Zones; and

WHEREAS, on January 5, 2004, Evette Williams filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of an addition to an existing house in the Chesapeake Bay Critical Area. A variance is required because the existing residential structure does not meet the required rear yard, front yard and side yard setbacks and the proposed Lot Coverage and Net Lot Area are greater than the maximum allowable requirements; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04001 for Funkhouser's Addition to Hyattsville, including Variance Request VC-04001A, 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 13, 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 May 13, 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-04001A, and further APPROVED Conservation Plan CP-04001, Funkhouser's Addition to Hyattsville for Lot 27.

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 subject property is located on the west side of 49th Avenue approximately 100 feet south of its intersection with Decatur Street, within the Chesapeake Bay Critical Area associated with the Anacostia River. There are no streams or wetlands on the property. There is no floodplain on the property. Current air photos indicate that the site is developed and not wooded. 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

Management Concept or Technical Plan is under review by DER. The *Prince George's County Soils Survey* indicates that the principal soils on the site are in the Elsinboro soil series. The site is in the Developed Tier according to the *General Plan*.

2. **Background**

The lot was recorded in 1927 and is shown on Record Plat 3-19 in the Prince George's County Land Records. The residential structure appears on M-NCPPC air photos taken in March 1965.

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 the property is 100 percent of the gross tract (3,855 square feet). The existing amount of impervious surfaces is 1,040.50 square feet and the proposed amount of impervious surfaces is 1,537.70 square feet. All other provisions of the Chesapeake Bay Critical Area regulations have been met on-site.

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.

4. **Variance Requests**

Variances requested to **validate existing conditions**:

- a. The current Net Lot Area does not meet the minimum requirement of 5,000 square feet. The existing and proposed Net Lot Area is 3,855 square feet. A variance of 1,145 square feet is requested.
- b. The existing side yard setback is less than the required 8 feet. Existing and proposed conditions are a 3 foot setback from the southern property line. A variance of 5 feet is requested.
- c. The existing front yard setback is less than the 20 feet required. The covered porch is existing and is proposed to remain 18 feet from the front property line. A variance of 2 feet is requested.

Variances requested to **validate an existing condition and approve an increase** in the variance needed:

- d. The existing and proposed rear yard setbacks are less than the required 20 feet. The existing setback, which is not proposed to change, is 4 feet. The proposed addition to the

house will result in a 3 foot rear yard setback. The existing variance needed without the addition, is 16 feet. With the house addition, the variance request increases to 17 feet.

Variances requested for **proposed construction**:

- e. The existing house meets the Maximum Percentage of Lot Coverage requirement of 30%; currently, Net Lot Coverage is 960 square feet, or 24.9%. The proposed addition will increase the amount of Lot Coverage to 1,457 square feet, or 37.8%. The variance requested is 300.5 square feet or 7.8% over the maximum allowed.

5. **Variance Analysis**

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 following is an analysis of the application's conformance with the Zoning Ordinance requirements related to the Chesapeake Bay Critical Area. Because all of the variances requested are similar in nature and are the result of an unusually-shaped buildable lot with an existing residential structure, the variances are evaluated as a group below. See Staff Exhibit A for an illustration of the locations of each of the variances requested.

(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: None of the variances being sought are from provisions related to the Chesapeake Bay Critical Area regulations. Additionally, the variances for inadequate side yard setback and intrusion into the rear yard setback for the existing structure are sought to validate a condition that has existed for at least 35 years. Because the principal structure was placed far back on the property, almost any addition to that structure would require a variance. The shape of the property, when combined with required setbacks, significantly reduces the legal building envelope.

(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 does not establish a special treatment because the lot is shaped in such a way that is 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 requests are 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 applicant will be required to meet the requirements of the Stormwater Management Ordinance which will address issues of water quality for this site.

- (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 applicant will be required to meet the requirements of the Stormwater Management Ordinance which will address issues of water quality for this site.

- (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-55 and I-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: The subject property is an unusual shape in that it is not deep; at its deepest point the lot is only 46.82 feet deep (northern property line). The existing house has been placed back from the front property line a distance of 18 feet, and despite being a rather small existing structure, the house is closer to both the rear and front property lines than is currently allowed in the Zoning Ordinance. Because of the configuration of the lot and the existing residential structure, any addition would likely 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: If the variances requested for existing conditions are not approved, it would create a situation where the lot remains in non-conformance with the Zoning Ordinance. If the variances that relate solely to the addition are not approved, an addition of the size proposed could not be built.

- (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 II Master Plan*.

4. **Summary**

On January 16, 2004, the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the R-R Zone, the I-D-O Zone and the

Conservation Manual; however, the plan required numerous technical revisions. Revised plans were accepted for processing on March 3, 2004. The plan contains all of the information required for Chesapeake Bay Critical Area Conservation Plan.

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-04001A.

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 Harley, with Commissioners Eley, Harley, Vaughns, Squire and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, May 13, 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

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