

R E S O L U T I O N

WHEREAS, Joel Bohamerges Ramos is the owner of a 10,072.4-square foot parcel of land in the 2nd Election District of Prince George's County, Maryland, and being zoned R-55 and I-D-O Zones; and

WHEREAS, on January 15, 2004, Joel Bohamerges filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of an addition to a single-family dwelling and a variance for setbacks and net lot coverage; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04002 for Holliday Company's Addition to Highland (Brentwood) including Variance Request VC-04002A, 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 June 3, 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 June 3, 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-04002A, and further APPROVED Conservation Plan CP-04002, Holliday Company's Addition to Highland (Brentwood) for Lots 11 and Part of 12, Block H.

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 northside of Allison Street approximately 400 feet of its intersection with 40th 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 contains an existing structure and is 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 soil on the site is in the Codorus series which generally exhibits moderate limitations to development due to impeded

drainage, high water table and flood hazard. The site is in the Developed Tier according to the *General Plan*.

2. **Background**

The lots were recorded on March 1, 1904 and are shown on Record Plat A-9 in the Prince George's County Land Records. The existing residential structure was built in 1920 and appears on M-NCPPC air photos taken in March of 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 (10,072 square feet). The existing impervious surface is 547 square feet and the proposed impervious area is 3,255 square feet. The maximum amount of net lot coverage permitted by the Zoning Ordinance for the property is 30 percent of the net tract area which is 3,021.72 square feet. The existing net lot coverage is 433.11 square feet or 4.3% and the proposed net lot coverage is 3,199 square feet or 31.8%. 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 lots are grandfathered because they were recorded prior to December 1, 1985.

4. **Variance Requests**

There are two variances requested:

- a. A variance is requested to permit the construction of a new single-family detached structure with a Lot Coverage more than the maximum limit of 30%. The existing Lot Coverage is 4.3%. The existing structure is proposed to be razed. The new structure is proposed to be 3,199 square feet which is 31.8% Lot Coverage. The variance requested is for 1.8% Lot Coverage above the maximum of 30%.
- b. A variance is requested to permit the construction of a new single-family detached structure closer to the front lot line than the maximum required setback of 25 feet. The existing structure is 16.9 feet from the front lot line; this structure will be removed. The new structure is proposed to be built 12 feet from the front property line in keeping with the general character of the surrounding neighborhood.

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 impacts 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. Because both of the variances requested are similar in nature, the variances are evaluated together 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: Neither of the variances being sought are from provisions related to the Chesapeake Bay Critical Area regulations. This lot is peculiar in that it was platted in 1904, long before the Chesapeake Bay Critical Area regulations were envisioned. .

- (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 are similarly developed.

- (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 privilege because the house proposed is in keeping with the character of the existing neighborhood.

- (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 the 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 Chesapeake Bay Critical Area Plan incorporates dry wells to manage stormwater.

(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 conditions or other extraordinary sanitations or conditions;

Comment: The extraordinary conditions of this lot is that it was platted 100 years ago, long before the Zoning Ordinance was adopted and the Chesapeake Bay Critical Area

requirements were envisioned. The house proposed is in keeping with the character of the surrounding neighborhood.

(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 plan as submitted reflects a reasonable use of the property and is in keeping with the character of the existing neighborhood. To provide a reasonably sized residence, the Lot coverage variance is needed and in order to be in keeping with the front set backs of the other residences in the neighborhood, the front set back variance is required.

(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*.

6. **Summary**

On January 30, 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 April 2, 2004. The applicant, in consultation with the Town of Brentwood, has submitted a revised plan that contains all of the information required for a 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-04002A.

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.

* * * * *

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 Eley, with Commissioners Harley, Eley, Vaughns, Squire and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, June 3, 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:BM:rmk