

R E S O L U T I O N

WHEREAS, Leo Bruso, Land & Commercial, Inc. is the owner of a 13.64-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned R-E, L-D-O/R-C-O; and

WHEREAS, on October 3, 2005, Leo Bruso, Land & Commercial, Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of subdividing a parcel of land where part is within the Chesapeake Critical Bay Area, and a variance from the "Chesapeake Bay Area Critical Area Conservation Manual" to allow disturbance for the installation of a stormwater management outfall; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04008/01 for River's Edge, including Variance Request VC-04008, 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 December 22, 2005, 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 December 22, 2005, 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-04008, and further APPROVED Conservation Plan CP-04008/01, River's Edge for one parcel with the following conditions:

1. Prior to certificate approval of the conservation plan, the plan shall be revised as follows:
 - a. Revise the conservation plan to either relabel Sheet 1 or replace it with the signed natural Resources Inventory.
 - b. Provide a table that states the maximum amount of impervious surfaces, the gross tract, area of 100-year floodplain, net tract, and maximum net lot coverage permitted for each lot.
 - c. Show a proposed limit of disturbance on all appropriate sheets.

- d. Revise paragraph 4.f. of the buffer management notes to say: "The viewshed creation shall be limited to one window per waterfront lot no greater than 30 feet wide that is created from one specific point on the property. No understory native vegetation shall be removed to create this window. Selective pruning may be accomplished as stated above."
 - e. Show the random planting pattern for the afforestation buffer planting.
 - f. Under "Site Preparation," the use of herbicides to control invasive vegetation is appropriate due to the difficulty of establishing native plants. The third paragraph must be revised to add "...in accordance with the label instructions of the application methods being used for the location of the application, for the current and predicted weather conditions, and for the species of vegetation controlled
 - g. Under "Tree Care Warranty" add a Note 4 stating "All afforestation shall be bonded in a separate bond prior to the issuance of the first grading permit and shall be held until after the final reinforcement planting and survival checks in the third year."
 - h. Include a detail for the installation of fencing, two-rail split rail or equivalent, on the property side of all afforestation areas.
 - i. Include the following note on sheet 5:

"All afforestation and associated fencing shall be installed prior to the issuance of the first building permit. A certification prepared by a qualified professional may be used to provide verification that the afforestation has been completed. It must include, at a minimum, photos of the afforestation areas and the associated fencing for each lot, with labels on the photos identifying the locations and a plan showing the locations where the photos were taken."
2. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the 2.05 acres of required planting and be reviewed by the Environmental Planning Section prior to certification" The following note shall be placed on the plat:
- "Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous treed, limbs, branches, or trunks is allowed."
3. The following note shall be placed on the final plat: "No accessory structures may be placed within the R-C-O portion of any lot."
4. Prior to the signature approval, the applicant shall submit evidence that the Chesapeake Bay Critical Area Commission has approved the growth allocation for the Chesapeake Bay Critical Area granted by the District Council pursuant to Zoning Map Amendment A-9955.

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 property is located on the west side of Riverview Road, approximately 1,000 feet south of the intersection of Riverview Road and West Riverview Road. Most of the land within the subject application is within the Chesapeake Bay Critical Area. There are no streams or wetlands on the property. All areas of steep slopes are within the 100-year floodplain and the 100-foot Chesapeake Bay Critical Area buffer. There are no nearby sources of traffic-generated noise. The proposed development is not a noise generator. According to the "Prince George's County Soil Survey," the principal soils on the site are in the Aura, Elkton, Galestown, Keyport and Sassafras soils series. The most significant limitations associated with these soils include high water tables and impeded drainage that would have the greatest impact on sites requiring septic systems, however, public water and sewer are proposed. Marlboro clay is not found to occur in the vicinity of this property. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program publication entitled "Ecologically Significant Areas in Anne Arundel and Prince George's Counties," December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic or historic roads in the vicinity of the property. This property is located in the Potomac River watershed. The site is in the Developing Tier according to the adopted General Plan.

2. **Background**

The Environmental Planning Section previously reviewed Zoning Map Amendment A-9955 and Chesapeake Bay Critical Area Conservation Plan CP-04008 for a portion of this property and Preliminary Plan of Subdivision 4-04003 for the entire property. This 23.50-acre property includes 13.64 acres of land in the Chesapeake Bay Critical Area (CBCA). Zoning Map Amendment A-9955 rezoned the 13.64 acres within the CBCA from R-C-O to L-D-O. Chesapeake Bay Critical Area Conservation Plan CP-04008 and Preliminary Plan of Subdivision 4-04003 were approved by the Planning Board. The current application is for the resubdivision of 16.82 acres of the property and includes all of the land within the Chesapeake Bay Critical Area. A revision to Chesapeake Bay Critical Area Plan CP-04008 must be approved by the Planning Board before Preliminary Plan of Subdivision 4-05089 can be approved.

On October 7, 2005, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the L-D-O Zone and the Chesapeake Bay Critical Area Conservation Manual; however, the plans required technical changes. The revised plans that were accepted for processing on November 21, 2005, are addressed in detail below.

The entire 16.82-acre property is exempt from the requirements of the Prince George's County Woodland Conservation and Tree Preservation Ordinance because 13.64 acres are located in the Chesapeake Bay Critical Area, which has more stringent requirements than the Woodland Conservation Ordinance, and the 3.18-acre portion of the property located outside the CBCA has

less than 10,000 square feet of existing woodland.

The CBCA conservation plan consists of seven sheets labeled as follows: (1) Natural Resources Inventory, (2) Site Plan, Development Concept Plan, Preservation Plan, Stormwater Concept Plan, (3) Landscaping Plan, Mitigation Plan, Afforestation Plan, (4) Afforestation Details, Buffer Management Details, Tree Planting Details, (5) Erosion and Sediment Control Plan Phase I, (6) Erosion and Sediment Control Plan Phase II and (7) Sediment Control Detail Sheet.

Sheet 1 correctly indicates there are no threatened or endangered species, no colonial waterbird nesting sites, no forests with interior dwelling bird species, no natural heritage areas, no waterfowl staging areas, no anadromous fish spawning streams, no wetlands, and no tributary streams on the site. The mean high tide line is shown on the plans and the location of the 100-foot-wide primary CBCA is correctly shown. The areas containing steep slopes are correctly identified. Soils boundaries and soil characteristics are correctly shown. The woodlands on the site are adequately described. All existing development features need to be shown. A dwelling structure and accessory pool have been removed as part of a raze permit since the approvals of 4-04003, CP-04008, and NRI-95-05. Sheet 1, while labeled "Natural Resources Inventory," is not the signed NRI. The sheet must either be relabeled or replaced with the signed copy.

Sheet 2 correctly shows the R-C-O and L-D-O boundaries, the 100-foot CBCA buffer, and a 100-year floodplain as determined from the use of the 10-foot FEMA elevation. The existing access road to the boat ramp is to remain. The final development plan notes the grading for installation of the public street, ten houses, and a stormwater management system. A proposed stormdrain will impact the 100-foot CBCA buffer. A variance from the provisions of the "Chesapeake Bay Critical Area Conservation Manual" is required for this disturbance. A variance application has been submitted.

A table noting the proposed maximum impervious areas for each of the lots and Parcel A is included on Sheet 2. The maximum impervious surface areas for this project cannot exceed 15 percent of the gross tract (89,298 square feet). Because Lots 5-A and 5-B are proposed to straddle the CBCA overlay zoning line, it is necessary to state the exact amount of impervious surfaces allowed on these lots. In addition, there is an excess of impervious surface "credits" of 16,433 square feet. Allowing this amount of impervious surfaces to be used on a first-come, first-served basis has the potential to cause problems between neighbors. To prevent this situation, and any confusion regarding lots that straddle the CBCA zoning line, a table shall be provided that states the maximum amount of impervious surfaces for each lot.

The house footprints and grading are conceptual, but the maximum limit of disturbance is set by the conservation plan. The proposed limit of disturbance is not shown on any of the plans. In addition, a table has not been provided that indicates the gross tract, area of 100-year floodplain, net tract, and maximum net lot coverage permitted for each lot.

Sheet 3 shows the proposed planting of 2.05 acres of mixed native tree species. The required afforestation is 15 percent of the gross tract within the Chesapeake Bay Critical Area, or 2.05 acres on the subject property. Planting of the 100-foot buffer, as required by the “Chesapeake Bay Critical Area Conservation Manual, has been shown. The planting shown along the northern boundary will serve to increase the size of the existing woodland and partially meet the 15 percent afforestation requirement.

Sheet 4 indicates that afforestation will consist of the seedlings of mixed native tree species in a random pattern. A table has correctly calculated that 410 trees are required to meet the 2.05-acre requirement. A five-year management plan is provided with planting to occur in February-April. There are several edits that are needed to the text on this sheet and some required information that is missing.

- In the buffer management plan notes, paragraph 4.f. states, “It is intended to create a window through the understory by elevating the lower branches...” On the subject property, the land rises up from the water approximately 20 feet. For many years the trees will not block the views from the properties, and when they do, the area of blockage will be higher in the trees. This paragraph shall be clarified to say: “The viewshed creation shall be limited to one window no greater than 30 feet wide that is created from one specific point on the property. No understory vegetation shall be removed to create this window. Selective pruning may be accomplished as stated above.”
- There is no detail showing the random planting pattern for the afforestation buffer planting.
- Under “Site Preparation,” the use of herbicides to control invasive vegetation is appropriate due to the difficulty of establishing native plants. The third paragraph must be revised to add “...in accordance with the label instructions for the application methods being used, *for the location of the application, for the current and predicted weather conditions*, and for the species of vegetation controlled.” (italics is the added text)
- Under “Tree Care Warranty” add a Note 4 stating “All afforestation shall be bonded in a separate bond prior to the issuance of the first grading permit and shall be held until after the final reinforcement planting and survival checks in the third year.”

Sheet 5 is the erosion and sediment control plan. When additional information is provided on the other sheets, this sheet should be revised as necessary.

Sheet 6 illustrates the proposed second phase of grading for the construction of the residential structures. A limit of disturbance has not been shown. It should be noted that the house footprints and grading are conceptual but the maximum limit-of-disturbance and maximum impervious surface areas are fixed by this plan. A different house footprint may be shown on a building permit plan if it meets all setback, lot coverage, and impervious surface coverage and

does not cause disturbance beyond the maximum limit of disturbance shown on the plan.

Sheet 7 includes all of the notes required for an erosion/sediment control plan.

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. Because it was recognized that some otherwise buildable existing properties could be adversely impacted with the enactment of the new regulations, Section 27-548.10 (c) of the Zoning Ordinance was created to provide grandfathering.

The following is an analysis of Section 27-548.10 (c) of the Zoning Ordinance [text in **bold**]. If conformance with the grandfathering provisions can be found, the proposal can move forward.

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 meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes adverse impacts on water quality. The proposed installation of a bioretention facility on each lot will reduce the impact from runoff.

- (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, as defined by the Chesapeake Bay Critical Area program, 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 lot size, frontage, and vehicular access are in accordance with the requirements of the R-E Zone, and the application submitted requires no use of growth allocation.

Recommended Finding: The proposed development meets the requirements of Section 27-548-10(c) of the Zoning Ordinance.

4. **Variance Analysis—Disturbance to the Chesapeake Bay Critical Area Buffer**

A variance is requested from the Zoning Ordinance and the “Chesapeake Bay Critical Area Conservation Manual” to allow disturbance to the Chesapeake Bay Critical Area buffer for the installation of a stormwater management outfall in compliance with the approved stormwater management concept plan. Regulations prohibit new construction within the 100-foot Chesapeake Bay Critical Area buffer unless a variance is approved.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the “Chesapeake Bay Critical Area 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).

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 of the topography of the site, all existing runoff must flow west to the Potomac River.

- (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 proposed installation of a bioretention facility on each lot will reduce the impact from runoff; however, a stormdrain system is required to control overflow of the individual facilities. If the stormdrain is not extended through the 100-foot CBCA Buffer and the outfall was placed above the shoreline, erosion from runoff would occur. In order to comply with the approved stormwater management concept plan, the applicant must install stormwater management facilities to control runoff from proposed impervious

surfaces.

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

Comment: The stormwater management facilities to control runoff are in complete conformance with the General Plan and the Subregion VII Master Plan.

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: In order to comply with the approved stormwater management concept plan, the applicant must install stormwater management facilities to control runoff from proposed impervious surfaces.

- (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: There are similar properties within the Chesapeake Bay Critical Area that have been developed with single-family detached residential structures both before and after the Chesapeake Bay Critical Area regulations took effect.

- (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 the variance would not create a special treatment because in order to comply with the approved stormwater management concept plan, in conformance with County Code, the applicant must install the stormwater outfall in the location shown.

- (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 with regard to the requested variance, 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. The granting of this variance is in harmony with the general spirit and intent of the critical area regulations because it permits orderly development of a property that is impacted by a condition that existed before the Chesapeake Bay Critical Area regulations were adopted.

- (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 proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources. The Prince George's County Department of Environmental Resources has determined that additional stormwater management is required in the locations shown on the plans. The construction requiring the variance will reduce impacts on water quality resulting from runoff.

- (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, as defined by the Chesapeake Bay Critical Area program, 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 proposed use of the property with single-family residences is in complete conformance with land use policies and the requirements of 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.

Summary: If the variance for the outfall is denied, reasonable development of the property could

not occur.

Recommended Action: Staff recommends approval of a variance for disturbance to the 100-foot Chesapeake Bay Critical Area buffer as generally prohibited by the “Chesapeake Bay Critical Area Conservation Manual” for the installation of the stormwater management outfall.

5. This case was originally scheduled and posted for the Planning Board hearing of December 8, 2005. By letter dated December 7, 2005, Thomas Deming the attorney representing the Potomac Valley Citizens Association, Inc. and Dawn Davit, called into question the finality of the zoning decision (A-9955-C), as it relates to the roll of the Chesapeake Bay Critical Area Commission and the approval of growth allocation. In order to allow staff time to review the December 7, 2005 letter from Mr. Deming, the applicant granted a 70-day waiver and the Planning Board continued the case to December 22, 2005.

By memorandum dated December 12, 2005 Andree Checkley, associate General Counsel, M-NCPPC advised the Planning Board that it was appropriate to proceed with hearing both the CBCA Plan and preliminary plan applications on December 22, 2005.

At the hearing the attorney for the applicant proffered Condition 4, to address concerns of the citizens. The Planning Board accepted the proffer.

6. **Summary**

The revised plans will meet the requirements of the “Chesapeake Bay Critical Area Conservation Manual”, the L-D-O Zone, and the R-E Zone with the imposition of the conditions noted.

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 Vaughns, with Commissioners Eley, Vaughns, and Hewlett voting in favor of the motion, with Commissioner Squire absent at its regular meeting held on Thursday, December 22, 2005, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 16th day of March 2006.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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