

R E S O L U T I O N

WHEREAS, Richard and Patricia Jackson are the owners of a 0.72-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 June 9, 2004 Emerge Homes 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 for net lot area, net lot coverage, width of yard at the front building line, height of the house, disturbance to slopes greater than 15 percent and disturbance to the expanded Chesapeake Bay Critical Area buffer; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04012 for Tantallon on the Potomac, including Variance Request VC-04012A, 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 July 29, 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 July 29, 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-04012A for a variance:

- of 2,514 square feet to the minimum Net Lot Area required in the R-R Zone;
 - of 629 square feet to the Net Lot Coverage required in the R-R zone by Table II of Section 27-442(c) of the Zoning Ordinance;
 - for the maximum height required in the R-R zone by Table II of Section 27-442(c) of the Zoning Ordinance;
 - for the disturbance to steep slopes as generally prohibited by the Conservation Manual and Section 27-548.17 of the Zoning Ordinance; and
 - for disturbance to the expanded Chesapeake Bay Critical Area Buffer as generally prohibited by the Conservation Manual and further APPROVED Conservation Plan CP-04012, Tantallon on the Potomac for Lot 17, Section 12 with the following condition:
1. Prior to signature approval, written approval from the Critical Area Commission shall be obtained for the two variances that involve CBCA regulations. If approval is not obtained, the Conservation Plan shall be considered null and void.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince

George's County Planning Board are as follows:

2. Site Description

The 0.72 acre property in the R-R/L-D-O zones is on the cul-de-sac of Monterey Circle and is located within the Chesapeake Bay Critical Area. The 100 foot-wide Critical Area Primary Buffer and expanded buffer occur on the property. There is an extensive area of 100-year floodplain and adjacent steep slopes on the site. These features are part of the expanded Critical Area Buffer. Current air photos indicate that the site is entirely 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 general region. A Stormwater Design Plan has been approved by DER. The *Prince George's County Soils Survey* indicates that the principal soils on the site are in the Keyport series. The site is in the Developing Tier according to the *General Plan*.

2. Background

Record Plat 89-29, dated June 13, 1974, indicates that the gross tract area was 31,154 square feet, that at the time of platting the 100-year floodplain was 9,881 square feet and that the original net tract was 21,673 square feet. Because the Record Plat is old, the Prince George's County Department of Environmental Resources has required a new delineation of the 100-year floodplain. The new 100-year floodplain includes 13,668 square feet and reduces the net lot area to 17,486 square feet. 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 plan 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, and no tributary streams on the site. The plan shows the 100-foot CBCA buffer, the 100-year floodplain, areas with slopes in excess of 15 percent and the expanded CBCA buffer.

The plan proposes disturbance to slopes in excess of 15 percent and disturbance to the expanded CBCA buffer. Disturbance to the expanded Critical Area Buffer is prohibited by the *Conservation Manual* and disturbance to slopes in excess of 15% is prohibited by the *Conservation Manual* and Section 27-548.17 of the Zoning Ordinance, without the approval of a variance. A variance request was received on July 9, 2004 for disturbance to the expanded buffer and for disturbance to the steep slopes.

The gross tract area is 31,154 square feet and the net tract is 17,486 square feet (the area of 100-year floodplain is subtracted to determine the net tract area). A minimum Net Lot Area of 20,000 square feet is required by Section 27-442 Table II of the Zoning Ordinance. A variance request was received on July 9, 2004 to allow construction of a residential structure on a property in the R-R zone with a Net Lot Area of less than 20,000 square feet.

The maximum amount of impervious surface permitted per Section 27-548.17 of the Zoning

Ordinance is 15% of the gross tract area or 4,673.1 square feet. The proposed impervious surface is 4,393 square feet or 14.1%.

The maximum Percentage of Lot Coverage permitted by the Zoning Ordinance for Lot 17, per Section 27-442 Table II of the Zoning Ordinance, is 25% of the contiguous net tract area or 4,371 square feet. The proposed Percentage of Lot Coverage is 5,000 square feet or 28.6%. Because the proposed Percentage of Lot Coverage is more than that permitted by the Zoning Ordinance, a variance is required. A variance request was received on July 9, 2004.

Section 27-442 Table III of the Zoning Ordinance requires that the lot be at least 100 feet wide at the front building line. No measurement is shown on the plan; however, the width at the front building line scales to approximately 85 feet. A variance request was received on July 9, 2004.

The site plan shows the proposed house to be 38 feet in height and three stories. The maximum height of a house in the R-R zone per Section 27-442 Table V is 35 feet and 2-1/2 stories. If additional side yard, beyond the minimum required, is provided in conformance with Section 27-442 Table IV Footnote 6 of the Zoning Ordinance, the height may be increased to 40 feet but not over three stories. A variance request was received on July 9, 2004.

The plan proposes the clearing of 8,775 square feet of the existing 28,308 square feet of forest and provides mitigation with 2,180 square feet of on-site planting and a fee-in-lieu of \$7,914. The plan meets the afforestation requirements of the Chesapeake Bay Critical Area.

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. 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 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, 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 Final Plat of Subdivision was approved on June 13, 1974 as shown on Record Plat 89-29 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.

Recommended Finding: The subject property was recorded prior to December 1, 1985 and at that time was a legally buildable lot with a gross tract of 31,140 square feet, a 100-year floodplain area of 9,881 square feet, a net tract area of 21,673 square feet and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

4. **Variance Analysis – Net Lot Area: Variance #1**

Section 27-230(b) of the Zoning Ordinance 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).

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: The requested variance is not to any provision of the Chesapeake Bay Critical Area Program, and as such this required finding does not apply.

- (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: Record Plat 89-29, dated June 13, 1974, indicates that the gross tract area is 31,154 square feet, that at the time of platting the 100-year floodplain was 9,881 square feet and that the original net tract was 21,673 square feet. Because the Record Plat is old, the Prince George's County Department of Environmental Resources has required a new delineation of the 100-year floodplain. The new 100-year floodplain includes 13,668 square feet and reduces the net lot area to 17,486 square feet.

Of the 49 lots on Section 12 of Tantallon on the Potomac, none has a net tract area of less than 20,000 square feet. The change in the delineation of the 100-year floodplain has created an unusual circumstance that results in a net lot area smaller than any other similar property. A literal interpretation of this Subtitle would deprive the applicant of rights commonly enjoyed by other properties because the gross tract area of the lot meets the requirements of the zone, and the change in the 100-year floodplain resulted in the reduction in the net lot area that resulted in the need for the variance.

- (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 all other lots within the vicinity have a Net Lot Area of 20,000 square feet or more. If not for the change in the location of the 100-year floodplain, this variance would not be necessary.

- (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. The granting of this variance is in harmony with the general spirit and intent of the Critical Area regulations because if not for the change in the location of the 100-year floodplain, the requested variance would not be needed.

- (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 recommended for approval 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, 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 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: Record Plat 89-29, dated June 13, 1974, indicates that the gross tract area is 31,154 square feet, that at the time of platting the 100-year floodplain was 9,881 square feet and that the original net tract was 21,673 square feet. Because the Record Plat is old, the Prince George's County Department of Environmental Resources has required a new delineation of the 100-year floodplain. The new 100-year floodplain includes 13,668 square feet of land area and reduces the net lot area to 17,486 square feet. Of the 49 lots on Section 12 of Tantallon on the Potomac, none has a net tract area of less than 20,000 square feet. The change in the delineation of the 100-year floodplain has created an unusual circumstance that results in a net lot area smaller than any other similar property and as such is considered an extraordinary condition of the subject property.

- (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 variance to Net Lot Area is not granted, the development of the property with a single-family residential structure would not be permitted. This would be considered an

exceptional hardship because all development potential on the property would be lost.

- (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*.

Recommended Action: Staff recommends approval of a variance of 2,514 square feet to the minimum Net Lot Area required in the R-R zone.

5. **Variance Analysis – Percentage of Lot Coverage: Variance #2**

Section 27-230(b) of the Zoning Ordinance 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: The requested variance is not to any provision of the Chesapeake Bay Critical Area Program, and as such this required finding does not apply.

- (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: Percentage of Lot Coverage is calculated using the amount of net Net Lot Area on the subject property. As stated in the analysis of variance #1, the Net Lot Area of the property has been reduced due to a change in the location of the 100-year floodplain. The change in the delineation of the 100-year floodplain has created an unusual circumstance that results in a Net Lot Area smaller than any other similar property in the vicinity. A literal interpretation of this Subtitle would deprive the applicant of rights commonly enjoyed by other properties because the gross tract area of the lot meets the requirements of the zone, and the change in the 100-year floodplain resulted in the reduction in the net lot area that resulted in the need for the variance. If the 100-year floodplain was in its original position, and the current application had been submitted, the current variance would not be necessary.

- (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 all other lots within the vicinity have a maximum Percentage of Lot Coverage of 5,000 square feet or more. The current application is for 5,000 square feet of lot coverage.

- (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 Chesapeake Bay Critical Area Plan recommended for approval 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, 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 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: The lot is not unusually narrow, not unusually shallow and is not unusually shaped when compared with all other lots within the subdivision. The change in the location of the 100-year floodplain could be considered an extraordinary condition of the property that has resulted in the need for certain variances in order for it to be developed in a manner similar to other lots in similarly situated.

- (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 with regard to Percentage of Lot Coverage would result in the development area of the lot being reduced to an area smaller than any other within the subdivision and less than that intended when the lot was created.

- (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*.

Recommended Action: Staff recommends approval of a variance of 629 square feet to the Net Lot Coverage required in the R-R zone by Table II of Section 27-442(c) of the Zoning Ordinance.

6. **Variance Analysis – Lot Width at Front Building Line: Variance #3**

Section 27-230(b) of the Zoning Ordinance 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: The requested variance is not to any provision of the Chesapeake Bay Critical Area Program, and as such this required finding does not apply.

- (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: Section 27-442 Table III of the Zoning Ordinance requires that the lot be at least 100 feet wide at the front building line. Record Plat 89-29, dated June 13, 1974, indicates that the lot is 70 feet-wide at the street and widens gradually. The lot does not attain a width of 100 feet until it is 100 feet from the street. This location is only 40 feet from the existing 100-year floodplain. No measurement is shown on the plan; however, the width at the front building line scales to approximately 85 feet. When the Record Plat was recorded in 1974, the required width at the front building line was 75 feet. Subsequent to the platting of the subdivision, the Zoning Ordinance was amended to require a minimum of a 100-foot width at the front building line in the R-R zone. 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 because other lots within Section 12 of Tantallon on the Potomac with maximum lot widths of less than 100 feet were developed with single-family detached residential structures prior to the change in the Zoning Ordinance regarding the width of the lot at the front building line.

- (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 all other lots within the vicinity having a lot width of less than 100 feet have previously been developed with single-family detached residential structures.

- (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 Chesapeake Bay Critical Area Plan recommended for approval 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, 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 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: Record Plat 89-29, dated June 13, 1974, indicates that the lot is 70 feet-wide at the street and widens gradually. The lot does not attain a width of 100 feet until it is 100 feet from the street. This location is only 40 feet from the existing 100-year floodplain. As such, this could be considered exceptional shallowness and narrowness, because the lot does not meet the current Zoning Ordinance requirements for lot width and the building restriction lines imposed by the revised Zoning Ordinance and the 100-year floodplain result in an extremely small building envelop.

- (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 variance to lot width is not granted, the development of the property with a single-family residential structure would require moving the building back to where the front building line would be 100 feet. This could increase disturbance to the CBCA Buffer and increase the magnitude of the variance needed for these impacts. It would also significantly reduce the area of forest retained on the property. Additionally, retaining the required 25-foot building restriction line from the 100-year floodplain would create an unusually shaped development envelope. The resulting building envelope would be so small as to make the building of a reasonably sized residential structure on the property extremely difficult if not impossible.

- (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*.

Recommended Action: Staff recommends approval of a variance of 15 feet to the width of the lot at the front building line required in the R-R zone by Table II of Section 27-442(c) of the Zoning Ordinance.

7. **Variance Analysis – Maximum Height of a House: Variance #4**

Section 27-230(b) of the Zoning Ordinance 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: The requested variance is not to any provision of the Chesapeake Bay Critical Area Program, and as such this required finding does not apply.

- (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: Section 27-442 Table V of the Zoning Ordinance requires that the maximum height of a house in the R-R zone is 35 feet and 2-1/2 stories. The plan proposes a height of 38 feet and three stories. No other structures within Section 12 of Tantallon on the Potomac has requested or been granted a variance to Section 27-442 Table V of the Zoning Ordinance. If the house could be situated where the side yards were greater than the minimum required by the Zoning Ordinance, then the house could be constructed at a height of 38 feet without a variance.

- (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 create a special treatment because no other lots within the vicinity have previously been developed with single-family detached residential structures exceeding the maximum height permitted by the Zoning Ordinance.

- (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 Chesapeake Bay Critical Area Plan recommended for approval 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, 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 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: As noted with the analysis of Variance #3, the parcel of land has constraints that limit the location of the house. If the house was moved back from the street to where additional side

yards would result in no need for a variance to the height of the structure, that placement would create additional disturbance to steep slopes, create additional disturbance to the Chesapeake Bay Critical Area buffer and result in the loss of additional forest.

- (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 variance to the height of the house is not granted, the resulting change to the design of the house would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property.

- (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*.

Recommended Action: Staff recommends approval of a variance for the maximum height required in the R-R zone by Table II of Section 27-442(c) of the Zoning Ordinance because the

variance request has demonstrated that a reduced height would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property.

8. **Variance Analysis – Disturbance to Steep Slopes: Variance #5**

Section 27-230(b) of the Zoning Ordinance 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: Disturbances to slopes in excess of 15% are prohibited by the *Conservation Manual* and Section 27-548.17 of the Zoning Ordinance. When the property was created in 1974, grading of steep slopes was not regulated and steep slopes were not considered when creating lots within this subdivision. Most of the lot that is above the 100-year floodplain and beyond the 25-foot building restriction line from the 100-year floodplain contains steep slopes. The extent and location of the steep slopes would result in the denial of any grading unless a variance is granted. A literal interpretation would result in a hardship to the applicant, because as reasonably sized residential structure could not be constructed on the otherwise buildable lot without a variance for disturbance to the steep slopes.

- (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: Of the 49 lots on Section 12 of Tantallon on the Potomac, variances for disturbance to steep slopes have been granted for several other lots. In fact, Lot 16 which abuts the subject property to the east received variances for disturbance to steep slopes and the Critical Area buffer.

- (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 other lots within the vicinity have disturbed steep slopes in order to be reasonably developed.

- (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 Chesapeake Bay Critical Area Plan recommended for approval 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, 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 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: The extent of steep slopes on this lot is greater than most other lots within Section 12 of Tantallon on the Potomac. Additionally, the location of the slopes is within the principal development envelope established by setbacks required by the Zoning Ordinance. As such, the subject lot could be considered to have exceptional topographic conditions. The house design also minimizes the impacts to the steep slopes, to the extent possible given the location of the steep slopes and the building envelop.

- (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 failure to grant a variance for disturbance to steep slopes would prohibit any reasonable development of the property.

- (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*.

Recommended Action: Staff recommends approval of a variance for disturbance to steep slopes as generally prohibited by the Conservation Manual and Section 27-548.17 of the Zoning Ordinance.

9. **Variance Analysis – Disturbance to the Expanded Chesapeake Bay Critical Area Buffer: Variance #6**

Section 27-230(b) of the Zoning Ordinance 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: Disturbance to the Expanded Chesapeake Bay Critical Area Buffer is prohibited by the Conservation Manual. When the property was created in 1974, the Chesapeake Bay Critical Area Program did not exist. The extent and location of buffer would result in the denial of reasonable development of the property with a single-family detached residential structure unless a variance is granted. A literal interpretation would result in a hardship to the applicant, because as reasonably sized residential structure could not be constructed on the otherwise buildable lot without a variance for disturbance to the CBCA buffer.

Of the 49 lots on Section 12 of Tantallon on the Potomac, variances for disturbance to the Critical Area buffer have been granted for several other lots. In fact, Lot 16 which abuts the subject property to the east received variances for disturbance to steep slopes and the Critical Area 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: Of the 49 lots on Section 12 of Tantallon on the Potomac, variances for disturbance to development within the CBCA buffer have been granted for other lots.

- (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 other lots within the vicinity have disturbed the CBCA buffer in order to be reasonably developed.

- (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 Chesapeake Bay Critical Area Plan recommended for approval 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, 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 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: The extent of CBCA buffer on this lot is greater than most other lots within Section 12 of Tantallon on the Potomac. Additionally, the location of the CBCA buffer is within the principal development envelope established by setbacks required by the Zoning Ordinance. As such, the subject lot could be considered to have exceptional topographic conditions because the steep slopes are part of the expanded CBCA buffer. The house design also minimizes the impacts to the CBCA buffer, to the extent possible given the location of the steep slopes and the building envelop.

- (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 failure to grant a variance for disturbance to the CBCA buffer would prohibit any reasonable development of the property.

- (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*.

Recommended Action: Staff recommends approval of a variance for disturbance to the expanded Chesapeake Bay Critical Area Buffer as generally prohibited by the Conservation Manual.

10. **Summary**

On July 2, 2004 the Subdivision Review Committee determined that the Conservation Plan required variances from the Zoning Ordinance and the *Conservation Manual* in order to be developed as proposed. Because variances to the Chesapeake Bay Critical Area Program are required, a referral has been sent to the Chesapeake Bay Critical Area Commission. At the present time, no response from the Chesapeake Bay Critical Area Commission has been received.

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, July 29, 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