

R E S O L U T I O N

WHEREAS, Frances P. Liddy is the owner of a 2.128-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned R-R/L-D-O; and

WHEREAS, on July 7, 2004, Frances P. Liddy filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of construction of a house addition in the Chesapeake Bay Critical Area; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04014, including Variance Request VC-04014A, 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 November 18, 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 November 18, 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-04014A for a variance:

- of 2.4 feet to the minimum front yard setback from Riverside Drive required in the R-R Zone for the existing structure;
 - for disturbance to steep slopes as generally prohibited by the Conservation Manual and Section 27-548.17 of the Zoning Ordinance;
 - for disturbance to the 100-foot Chesapeake Bay Critical Area buffer as generally prohibited by the Chesapeake Bay Critical Area Conservation Manual Conservation Manual for the installation of a gravel drive and parking area and further APPROVED Conservation Plan CP-04014, Treasure Cove for Lots 1-17, Block 8 with the following conditions:
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.
 2. Prior to issuance of any building permit, a minor plat revision to remove the 25-foot building restriction lines from Fortside Drive, Riverside Drive, Verdun Trail, Argonne Trail and Belleau Trail shown on Record Plat 3-62 shall be approved.

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 2.13-acre property is composed of 17 lots and is located in the R-R/L-D-O Zones. It is bounded by Fortside Drive, Riverside Drive, Verdun Trail, Argonne Trail and a portion of abandoned Belleau Trail and is entirely located within the Chesapeake Bay Critical Area. Fortside Drive is paved, Riverside Drive is maintained by the Department of Public Works and Transportation as a gravel road, and both Verdun Trail and Argonne Trail are “paper streets” that are used as pedestrian pathways. A portion of the property is within the 100-foot Chesapeake Bay Critical Area buffer. There are extensive areas of slopes greater than 15 percent on the property. The property is currently developed with a single-family detached residential structure that is served by public water and a private septic system. There are no streams, wetlands or 100-year floodplain on the site. Current aerial photos indicate that the site is mostly 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

The lots were recorded on August 26, 1927 and are shown on Record Plat 3-62 in the Prince George's County Land Records. The abandoned portion of Belleau Trail was created by C-7276 on October 13, 1965. The existing residential structure can be seen on the M-NCPPC 1965 aerial photos and, according to the Maryland Department of Assessments and Taxation was constructed in 1954. Permit #21380-2002 was approved by the Prince George's County Department of Environmental Resources for the construction of the retaining wall shown on the current application, and a second-story addition to the existing principal structure. A waiver from the requirement for a Conservation Plan was granted by the Prince George's County Department of Environmental Resources for this work. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380. The approval limits the total area of impervious surface and requires the planting of additional trees. Permit #37143-2002, proposing a 25 foot by 46 foot free-standing storage shed/garage in the approximate location of the house addition shown on the current application, was placed on hold by the M-NCPPC Permit Review Section on November 15, 2002, and no further action has been taken on that application.

Because the proposed construction is directly attached to the existing structure, it must meet all requirements of the Zoning Ordinance for a principal structure. The property is unusual because it fronts on four streets: Fortside Drive, Riverside Drive, Verdun Trail and Argonne Trail. Because the property fronts on more than three streets, the lot is defined as a “through lot” by

Section 27-107.01 of the Zoning Ordinance and requires minimum building restriction lines of 25-feet from all streets by Section 27-442(e) Table IV of the Zoning Ordinance, and the maximum permitted height of the structure is 35 feet. Access to the property is from Riverside Drive. All of Riverside Drive and a portion of the subject property are within the 100-foot Chesapeake Bay Critical Area buffer. More than half of the property contains wooded slopes in excess of 15 percent. A designated septic system recovery area and the existing single-family detached residential structure are located on the flattest portion of the site.

Findings

This site is not subject to the provisions of the Woodland Conservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area and as such is subject to the stricter requirements of the Chesapeake Bay Critical Area Program.

The maximum amount of impervious surfaces permitted by Section 27-548.17 of the Zoning Ordinance for the property is 25 percent of the gross tract (23,175.59 square feet). The area of existing impervious surfaces is 3,005.42 square feet and the area of proposed impervious surfaces is 5,447.42 square feet (5.9 percent). The increase in impervious surface includes only the proposed addition to the house.

The maximum amount of net lot coverage permitted by the Zoning Ordinance for the property is 25 percent of the net tract (23,175.59 square feet). The existing net lot coverage is 3,005.42 square feet and the proposed net lot coverage is 6,347.42 square feet (6.8 percent). The additional net lot coverage includes the area of the proposed addition and the proposed driveway.

No clearing of woodland is proposed. The current amount of existing woodland, 65,000 square feet, exceeds the 15 percent of the gross tract (13,905.35 square feet) required by the Prince George's County Chesapeake Bay Critical Area Program.

The existing structure and proposed addition do not exceed the maximum height of 35 feet that is set by the Zoning Ordinance.

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 meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes adverse impacts on water quality. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 August 26, 1927, as shown on Record Plat 3-62 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 the application submitted requires no use of Growth Allocation.

Recommended Finding: The subject property, containing Lots 1-17 of Treasure Cove, was recorded prior to December 1, 1985, and at that time was a "legally buildable lot" with a gross tract of 92,702.36 square feet, a net tract area of 92,702.36 square feet and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

4. Variance Analysis – Setback of Existing Structure: Variance A

A variance is requested from the Zoning Ordinance because the existing single-family detached structure intrudes 2.40 feet into the 25-foot building restriction line from Riverside Drive required by the Zoning Ordinance and the final plat. The variance is for an existing condition along the Riverside Road frontage of the property that does not significantly impact any nearby properties or affect travel along Riverside Drive.

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: The lot is exceptional because the extent of steep slopes creates a shallow area of flat land for development. Portions of the flat area of the property are within the 25-foot building restriction lines associated with Fortside Drive, Riverside Drive and Verdun Trail.

- (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 existing structure has been in this location since before 1965. If the variance to the front setback is not granted, a portion of the existing structure would have to be removed. This creates peculiar and unusual practical difficulties to and 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 as a single-family residence is 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: The existing structure has been in this location since before 1965. If the variance to the front setback is not granted, a portion of the existing structure would have to be removed. This creates unwarranted hardship to the owner of the property. Some similarly situated properties built before 1989, when the Chesapeake Bay Critical Area regulations took effect, exist within the Chesapeake Bay Critical Area

- (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: A literal interpretation of this Subtitle would require the applicant to remove a small portion of a structure that has been in place since before 1965.

- (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 similar variances have been granted for structures that have existed prior to the enactment of the Critical Area Conservation Manual.

- (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: According to public records, the existing structure was built in 1954 and the applicant purchased the property in 1980. 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 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380. The granting of this variance is in harmony with the general spirit and intent of the Critical Area regulations because it serves to validate 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 Chesapeake Bay Critical Area Plan recommended for approval incorporates

stormwater management controls to minimize adverse impacts on water quality. 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 the property as a single-family residence 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.

Recommended Action: The denial of the variance would result in the need for the applicant to, at a minimum, remove the portion of the existing structure that intrudes into the required setback. The granting of the variance would not affect neighboring properties. Staff recommends approval of a variance of 2.40 feet from the 25-foot building restriction line for the existing structure within the 25-foot building restriction line from Riverside Drive.

5. Variance Analysis – Disturbance to Steep Slopes: Variance B

A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow the disturbance to slopes greater than 15 percent for the construction of a house addition. Because the subject house addition requires a variance from the *Chesapeake Bay Critical Area Conservation Manual*, both the general criteria of Section 27-230(a) and the supplemental criteria of Section 27-230(b) apply. Thus, the applicant must ultimately demonstrate that denial of the requested variance would cause both practical difficulties and an unwarranted hardship.

The existing house footprint is about 3,005 square feet. The proposed addition would cover an additional 2,442 square feet, an 81 percent increase in the building footprint, excluding the walkway that connects the two structures. The current amount of floor area is 6,010 square feet (two stories). The proposed increase is 4,884 square feet because the addition is two-stories. The

total floor area proposed is 10,894 square feet.

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 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(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: There is an extensive area of steep slopes and the subject property could be considered to have exceptional topographic conditions for a portion of the property. A flat area approximately 110 feet wide at its widest point exists adjacent to Riverside Drive. This is the area that contains the existing 3,005 square foot house.

- (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: To address this required finding the applicant states that “. . .the site being proposed is the only reasonable location on the property on which to construct the garage.” Staff agrees the site proposed is the only reasonable location for a garage (house addition) of the size and configuration proposed. Staff does not believe that the applicant has provided sufficient justification for the size and configuration of the house addition proposed. If it so chooses, the Planning Board could find that it is an undue hardship upon the applicant to redesign the house addition to reduce it to the point where the impacts on the 15 percent slopes are minimized.

The applicant submits that “. . .the denial of the variance to allow this minor intrusion into the 15 percent slope area would, in fact, result in denial of reasonable and significant use of the property.” Staff disagrees with this contention because the applicant has occupied the property in a 3,050 square foot residential structure since 1980, without a garage. This would seem to be a reasonable use 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 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: Staff agrees with the applicant's justification statement that special conditions or circumstances exist that are peculiar to this property because of the 15 percent slopes, adjacent to the ± 100 foot-wide flat area next to Riverside Drive. The required finding, however, includes the statement that the Planning Board must find that a literal interpretation of the provisions would result in unwarranted hardship.

In the justification statement, the applicant contends that "...given the topographic restraints that present themselves throughout the property and further given the location of the existing house and the associated septic tank and drainage field, it would virtually amount to a taking of the applicants' property . . ." to deny the variance requested. The use of the statement "amounts to a taking" is a serious contention, one that both Maryland law and federal law do not support. The applicant has had reasonable use of the property since 1980, and has not previously applied for relief from the need to have a garage on the property. To be construed a taking of private property for public purposes without just compensation, the denial of the variance would have to deny the property owner a reasonable use of the property, which clearly has not occurred in this case.

The question arises as to "reasonable use" and to the magnitude of the variance requested with regard to reasonable use, and the subjective nature of the finding of "unwarranted hardship." Based on the size of the proposed addition, staff agrees that the location shown is the only reasonable location for that addition. It is also true that an addition of a smaller size could be constructed closer to the house, and closer to Riverside Drive, if it were reduced in size.

Staff concludes that the Planning Board could find that the proposed house addition, in the size and location proposed, is a reasonable use of the property, and the redesign of the addition to a smaller size located closer to the existing structure could be considered unwarranted hardship.

- (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: The property is currently developed with a single-family residential structure and has the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area.

- (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: Although other lots within the vicinity have disturbed steep slopes in order to be reasonably developed, the development in each case was the first construction of a single-family residential structure on the site and not an addition to an existing structure.

- (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 variance request, 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 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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. 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 the property as a single-family residence 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.

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

6.. **Variance Analysis – Disturbance to the Chesapeake Bay Critical Area Buffer: Variance C**

A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow disturbance of the 100-foot Chesapeake Bay Critical Area buffer to allow development in the form of a gravel driveway.

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 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(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 extraordinary conditions on and adjacent to this property relate to the position of the primary access to the site. The access is via Riverside Drive, which is located completely located within the 100-foot Chesapeake Bay Critical Area buffer. Because the access to the property is from the 100-foot Chesapeake Bay Critical Area buffer, the driveway must also be placed there.

- (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 for the placement of the house addition (and three car garage) is approved, practical difficulties would result if the variance from the driveway construction is not also approved. If the variance for the addition is not approved, no practical difficulty exists.

- (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 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: Disturbance to the Chesapeake Bay Critical Area Buffer is prohibited by the Chesapeake Bay Critical Area Conservation Manual. When the property was created in 1927, the Chesapeake Bay Critical Area Program did not exist. The site does not have a parking area. Riverside Drive is a narrow gravel street and both Verdun Trail and Argonne Trail are paper streets. Although parking on Riverside Drive is legal, it can create an unsafe condition for other properties in the neighborhood by interfering with fire, police and rescue vehicles. Because all of Riverside Drive, a portion of the subject property and a portion of Verdun Trail are within the 100-foot Chesapeake Bay Critical Area buffer, there are no reasonable alternatives.

- (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: Almost all of the properties in the area have on-site parking.

- (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 along Riverside Drive have disturbed the CBCA buffer in order to be reasonably developed with a parking area.

- (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 this 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 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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. 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 stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 the property as a single-family residence 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.

Recommended Action: Failure to grant the variance to permit the construction of an on-site parking area would not degrade water quality or impact other properties. Staff recommends approval of a variance for disturbance to the expanded Chesapeake Bay Critical Area Buffer for the construction of a gravel drive and parking area.

7. **Summary**

On July 30, 2004, the Subdivision Review Committee determined that, except for the variances noted above, the Conservation Plan was in general conformance with the requirements of the R-R Zone, the L-D-O Zone and the *Chesapeake Bay Critical Area Conservation Manual*. A Justification Statement was received on July 7, 2004, with the original plan submission. Revised plan were received October 20, 2004. An amended Justification Statement was received on November 8, 2004. Applicant's Exhibit #4 modified the location of the driveway. 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.

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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 Harley, seconded by Commissioner Eley, with Commissioners Harley, Eley, Squire, Vaughns and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, November 18, 2004, in Upper Marlboro, Maryland.

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

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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