

R E S O L U T I O N

WHEREAS, Mariner Overlook Development, LLC is the owner of a 1.86-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 August 23, 2004, Mariner Overlook Development, LLC filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of the subdivision of one lot into two lots and the future construction of a house on the newly created lot with a variance required for disturbance to steep slopes; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04018 for a single family dwelling, including Variance Request VC-04018 for disturbance to steep slopes for the reconstruction of a driveway as generally prohibited by the conservation manual and Section 27-548.17 of the Zoning Ordinance 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 January 20, 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 January 20, 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-04018 and further APPROVED Conservation Plan CP-04018, Mariner's Overlook with the following conditions:

1. Prior to signature approval, written approval from the Critical Area Commission shall be obtained for the variance that involves CBCA regulations. If approval is not obtained, the conservation plan shall be considered null and void.
2. Prior to signature approval, an approved preliminary plan of subdivision shall be obtained.
3. Prior to final plat for these two lots, all necessary easements shall be obtained and the easements shall be shown on the plat.
4. Prior to signature approval, the conservation plan shall be revised as follows:
 - a. The plan shall be revised to show afforestation within the primary critical area buffer and

all required notes and details shall be added to the plan, including removal of the existing gazebo.

- b. The plan shall be revised to show correct numbers for all required calculations on the plans.
- c. The plan shall be revised to clearly depict the areas of impervious surface proposed.

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 1.86-acre property in the R-R/L-D-O Zones is located at the north end of Mariner Drive. The property is currently developed with a single-family detached residential structure, lawn areas, landscaping, and a gazebo. There is no woodland on the property. The western property line is the Potomac River. The 100-foot Chesapeake Bay Critical Area buffer and an area of 100-year floodplain occur in the northern portion of the site. The property that is the subject of this application does not include streams, wetlands or the associated buffers to these features. A significant area of steep slopes occurs on the property. 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 Sassafras series. 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. The site is in the Developing Tier according to the adopted *General Plan*.

2. **Background**

Tax Map 122, Parcel 73, was created prior to the enactment of the Chesapeake Bay Critical Area regulations. The existing single-family detached residential structure and driveway were constructed prior to March 11, 1988.

- 1. 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.
- 2. The maximum amount of impervious surfaces permitted by Section 27-548.17 of the Zoning Ordinance for the property is 15 percent of the gross tract (12,153.24 square feet). The area of existing impervious surfaces is 8,055 square feet. Reconstruction of the driveway will result in the removal of 1,040 square feet. The area of proposed impervious surfaces, including the new house on lot 2 is 10,820 square feet (13.5 percent). The proposed impervious surface areas are less than the maximum permitted

within the L-D-O Zone.

3. The maximum amount of net lot coverage permitted by the Zoning Ordinance for the property is 25 percent of the net tract (18,447 square feet). The existing net lot coverage is 6,942 square feet; however, this is to be reduced by 1,040 square feet by the reconstruction of the driveway. The proposed net lot coverage for lot 1 is 5,902 square feet (14.1 percent). The proposed net lot coverage for lot 2 is 3,805 square feet (10.3 percent). The proposed net lot coverage for each lot is less than the maximum permitted in the R-R Zone.
4. No clearing of woodland is proposed. The plan shows that it will meet the minimum 15 percent tree cover required by Section 4.2.d.5. of the *Chesapeake Bay Critical Area Conservation Manual* by providing on-site planting; however, the species, planting pattern, and planting schedule are not shown on the plan.
5. The existing structure and proposed new structure 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 as submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes 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 as submitted states 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.

- (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: Tax Map 122, Parcel 73, was created prior to the enactment of the Chesapeake Bay Critical Area regulations. 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, Tax Map 122, Parcel 73, was recorded prior to December 1, 1985, and at that time was a “legally buildable lot” with a gross tract of 80,021 square feet and a net tract area of 75,021 square feet. When it was recorded, the Chesapeake Bay Critical Area regulations were not in effect.

4. **Variance Analysis—Disturbance to Steep Slopes: Variance A**

A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow disturbance to slopes greater than 15 percent for the realignment of an existing driveway. Because the proposed realignment of the driveway 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 is accessed by an asphalt driveway from Mariner Road. The existing driveway traverses an area of steep slopes. Any permit to repair or reconstruct the driveway would require a variance from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* because steep slopes would need to be disturbed. Any access from Mariner Drive would have to traverse steep slopes in order to reach the existing residential structure.

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. The existing driveway traverses an area of steep slopes and provides the only access point to the 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: Any permit to repair or reconstruct the existing driveway would require a variance from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* because steep slopes would need to be disturbed.

- (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: The location of the existing driveway on steep slopes is a special circumstance and the denial of a variance for disturbance to steep slopes would deny the property owner the ability to reconstruct the drive and have reasonable access to their property. Any access from Mariner Drive would have to traverse steep slopes in order to reach the existing residential structure.

- (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: The granting of the variance will permit the property owner to repair a preexisting condition where no feasible alternative exists. Any access from Mariner Drive would have to traverse steep slopes in order to reach the existing residential 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 property owner purchased the land in its current state and 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.

- (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.

- (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 a statement 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.

5. **Summary**

On July 30, 2004, the Subdivision Review Committee determined that, except for the variance 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 revised plan was received December 22, 2004, and a revised justification statement for the variance was received on January 10, 2005. Because a variance to the Chesapeake Bay Critical Area Program is 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 Squire, with Commissioners Harley, Squire and Vaughns voting in favor of the motion, and with Commissioner Eley and Chairman Hewlett absent its regular meeting held on Thursday, January 20, 2005, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 3rd day of February 2005.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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