

R E S O L U T I O N

WHEREAS, Emerge Homes, Inc. is the owner of a 0.55-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 November 18, 2004, Emerge Homes, Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a single-family residence 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-04021 for Tantallon on the Potomac 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 February 17, 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 February 17, 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 Conservation Plan CP-04021, Tantallon on the Potomac Lot 21 with the following condition:

1. Prior to signature approval, written approval from the Chesapeake Bay 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.

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 0.55 acre property in the R-R/L-D-O zones is on the north and east sides of Monterey Circle by the cul-de-sac and is located within the Chesapeake Bay Critical Area. The 100 foot-wide Critical Area Primary Buffer and expanded buffer do not occur on the property. There are no streams, wetlands, 100-year floodplain or steep slopes on the site. 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 thh

Developing Tier according to the *General Plan*.

2. **Background**

The Final Plat of Subdivision was approved on July 13, 1974 as shown on Record Plat WWW 89-29 in the Prince George's County Land Records. Lot 21 has a gross tract area of 23,974 square feet. There is no 100-year floodplain on the property, so the net tract area is also 23,974 square feet.

3. **Findings**

- a. This site is not subject to the provisions of the Woodland Conservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area.
- b. 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, no wetlands, no tributary streams and no Critical Area buffers on the site.
- c. The gross tract is 23,974 square feet and the net tract is 23,974 square feet. The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. The proposed amount of impervious surfaces is 4,328 square feet or 18.1%. The proposed impervious surface areas are more than the maximum permitted within the L-D-O zone. A variance to the impervious surface area maximum has been submitted.
- d. The maximum Percentage of Lot Coverage permitted by the Zoning Ordinance for Lot 21, per Section 27-442 Table II of the Zoning Ordinance, is 25% of the contiguous net tract area or 5,993.5 square feet. The proposed Percentage of Lot Coverage is 5,430 square feet or 22.6%. The proposed net lot coverage is less than the maximum permitted in the R-R zone.
- e. The plan proposes the clearing of 18,930 square feet of the existing 21,090 square feet of forest. Because the clearing is more than 30%, a 3:1 replacement (56,790 square feet) is required. The plan proposes to meet part of the afforestation requirement by providing 7,930 square feet of on-site planting. A fee-in-lieu for the remaining 48,860 square feet (\$19,544) is required.
- f. Architectural plans were reviewed in detail. The garage nearest to Monterey Circle is clearly attached and meets the required setback from the front lot line. The plans show that the height of the house is 35 feet and conforms to the maximum set by the Zoning Ordinance.

4. **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.

- “...(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 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: Tantallon on the Potomac, Section 12, Lot 21 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.

The subject property, Tantallon on the Potomac, Section 12, Lot 21, was recorded prior to December 1, 1985 and at that time was a “legally buildable lot” with a gross tract of 23,974

square feet, a net tract area of 23,974 square feet and when it was recorded the Chesapeake Bay Critical Area regulations were not in effect.

5. **Variance Analysis – Maximum Impervious Surface Area: Variance A**

A variance is requested to the maximum limit of 15% of the gross tract area for impervious surface areas required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*. Because the variance is 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.

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 (text in bold). 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 property is roughly triangular in shape with 381.26 feet of frontage on Monterey Circle, 200 feet along the east boundary and 146.35 feet along the north boundary. The property has no steep slopes and is essentially flat with a maximum elevation of approximately 28 feet and a minimum elevation of approximately 21 feet.

As demonstrated by Applicant's Exhibit #1, this lot is the only lot within Section 12 of Tantallon on the Potomac that is triangular in shape and has no rear yard and, therefore, has exceptional shape.

- (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: Because the lot is 23,974 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. If the lot were only 21,870 square feet,

the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance would allow 25% of the gross tract area or 5,445 square feet, thus allowing the larger house to be built on a smaller lot.

Testimony established that the proposed structure is in keeping with the existing community with regard to size and appearance and that requiring a smaller structure to meet the current impervious surface limit would result in reducing the size to less than that permitted on neighboring lots that have smaller net tract areas. This is a peculiar and unusual difficulty because if the lot were smaller, the same size house could be built as proposed.

**(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 (text in bold). 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: Of the 51 lots shown on the Record Plats for Section 12 of Tantallon on the Potomac, WWW 89-29 and NLP 103-01, 31 lots have smaller gross tract areas. Twenty six of these lots are less than one-half acre and are allowed by the Zoning Ordinance to have impervious surfaces equal to 25% of their area. This is a special circumstance that is peculiar to this lot because the lot is only slightly larger than one-half acre and the large reduction to the maximum permitted impervious surface area results in an unwarranted hardship. It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one-acre in size are treated substantially differently than lots that are larger or smaller.

**(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 could be developed with a slightly smaller single-family residential structure and have the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area. The Letter of Justification states: "Since this lot was zoned and recorded in 1974, houses of similar sizes and shapes have been built on lots of similar and smaller size in the same section of the same subdivision." Staff agrees that this is a true statement and notes that none of these lots have requested or received a variance to the requirement for minimizing impervious surfaces because

they have been under one-half acre in size or they have been substantially larger in size and had higher permitted impervious surfaces areas.

Testimony provided in this case included statements that houses of similar sizes have been built throughout the neighborhood, and that denying this applicant the ability to construct a similarly sized home would deprive the applicant of rights commonly enjoyed by other property owners within the Critical Area and within the subject community.

- (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: To date no application for a variance for an increase in the amount of impervious surfaces has been requested or approved for any Chesapeake Bay Critical Area Plan submitted for review. Limiting impervious surface areas is a cornerstone of the Chesapeake Bay Critical Area Program because of its direct correlation with runoff and water pollution. Houses on smaller lots within the subdivision have been legally built with larger impervious surface areas.

The Planning Board found that the granting of this particular variance, for the subject property, would not confer on the applicant any special privilege because of the peculiar language of the Zoning Ordinance that disproportionately reduces the amount of impervious surfaces allowed on lots between one-half acre and one acre in size.

- (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 generally 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 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.

### 3. **Summary**

On December 3, 2004 the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the L-D-O Zone and the *Conservation Manual*; however, the plan showed that area of proposed impervious surfaces permitted by the Zoning Ordinance for Lot 21, per Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*, was exceeded. Revised plans were accepted for processing on January 21, 2005. A variance application was accepted for processing on December 23, 2004.

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 Squire, seconded by Commissioner Harley, with Commissioners Squire, Harley and Hewlett voting in favor of the motion, and with Commissioner Eley opposing the motion and with Commissioner Vaughns absent at its regular meeting held on Thursday, February 17, 2005, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 10th day of March 2005.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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