

R E S O L U T I O N

WHEREAS, Ramdat Nookram is the owner of a .09-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned R-55/I-D-O; and

WHEREAS, on March 23, 2006, Ramdat Nookram filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of building an addition to an existing house 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-06003 for Ramdat Property, including Variance Request VC-06003, 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 30, 2006, 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 30, 2006, 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-06003A through VC-06330F, for a variances and further APPROVED Conservation Plan CP-06003, Ramdat Property for Lots 35 and 12, and Block 12 with the following condition:

Prior to signature approval of the conservation plan, the site plan must be revised to:

- a. Correct the lot coverage calculations for existing and proposed development;
- b. Correct the impervious surfaces calculations;
- c. Note all approved variances.

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 subject property is located in the Town of Colmar Manor on the east side of 40<sup>th</sup> Avenue, approximately 100 feet south of its intersection with Kearny Road, within the Chesapeake Bay Critical Area in the Anacostia River Basin. There are no streams or wetlands on the property.

There is no floodplain on the property. Current air photos indicate that the site contains an existing structure and is not 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 Management Concept or Technical Plan is under review by DER. The Prince George's County Soils Survey indicates that the principal soil on the site is in the Sandy & Clayey soil series. The site is in the Developed Tier according to the 2002 Prince George's County Approved General Plan.

## **2. Background**

The lots were recorded on March 1, 1904, and are shown on Record Plat A-9 in the Prince George's County Land Records. The existing residential structure appears on M-NCPPC air photos taken in March of 1965. This site is not subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area. The minimum net lot area permitted by Section 27-442 Table I of the Zoning Ordinance is 5,000 square feet. The existing net lot area is 4,000 square feet. The maximum amount of impervious surface permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 100 percent of the gross tract area or 4,000 square feet. The plan proposes total impervious surface areas of 1,474 square feet or 36.9 percent. The maximum percentage of lot coverage permitted by Section 27-442 Table II of the Zoning Ordinance is 30 percent of the contiguous net tract area or 1,200 square feet. The existing percentage of lot coverage is 1,402 square feet or 35.1 percent. The proposed percentage of lot coverage is 1,474 square feet or 36.9 percent. The minimum lot width at the street frontage permitted by Section 27-442 Table III of the Zoning Ordinance is 25 feet. The existing lot width at the street frontage is 40 feet. The minimum lot width at the building line permitted by Section 27-442 Table III of the Zoning Ordinance is 50 feet. The existing lot width at the building line is 40 feet. The minimum front yard setback by Section 27-442 Table III of the Zoning Ordinance is 25 feet. The existing front yard setback is 17 feet. The minimum side yards permitted by Section 27-442 Table IV of the Zoning Ordinance is a total of 17 feet with a minimum of eight feet. The existing side yards total 16 feet with a minimum of seven feet on the north side. The maximum height permitted by Section 27-442 Table V of the Zoning Ordinance is 35 feet and the proposed height is 28 feet. All other provisions of the Chesapeake Bay Critical Area regulations have been met on-site.

A variance request was received on June 22, 2006, to certify the location of the existing single-family detached residential structure. An examination of property ownership and current air photographs indicates that all neighboring properties are 4,000 square feet in area, all have the same setback from the street, and several have larger single-family detached residential structures.

Variances are required to be approved before any permit may be issued. No variances to any provision of the Chesapeake Bay Critical Area regulations are needed. Variances from other requirements of the Zoning Ordinance are requested as stated below. Because the Planning Board is the final approving authority for Chesapeake Bay Critical Area Conservation Plans, it is also the approval authority for the requested variances.

Variances from the Zoning Ordinance are required to:

- A: Validate an existing single-family detached residential structure on an existing lot of 4,000 square feet in the R-55 Zone by granting a variance of 1,000 square feet to the minimum net lot area of 5,000 square feet permitted by Section 27-442 Table I of the Zoning Ordinance;
- B. Validate an existing single-family detached residential structure in the R-55 Zone that has an existing lot 40 feet wide by granting a variance of 10 feet to the minimum lot width of 50 feet at the building line permitted by Section 27-442 Table III of the Zoning Ordinance;
- C. Validate an existing single-family detached residential structure in the R-55 Zone that has an existing front yard of 17 feet by granting a variance of 8 feet to the minimum front yard setback of 25 feet permitted by Section 27-442 Table III of the Zoning Ordinance;
- D. Validate an existing single-family detached residential structure in the R-55 Zone that has existing side yards of nine feet and seven feet for a total of 16 feet by granting a variance of one foot to the minimum side yards permitted by Section 27-442 Table IV of the Zoning Ordinance; a total of 17 feet with a minimum of eight feet;
- E. Validate an existing single-family detached residential structure in the R-55 Zone having a lot coverage of 35.1 percent by granting a variance of 5.1 percent to the maximum percentage of lot coverage permitted by Section 27-442 Table II of the Zoning Ordinance; 30 percent of the contiguous net tract area;
- F. Permit the construction of an addition by granting an additional variance of 1.8 percent to the maximum percentage of lot coverage permitted by Section 27-442 Table II of the Zoning Ordinance of 30 percent of the contiguous net tract area to allow a total lot coverage of 36.9 percent.

### **3. Buildable Lot Analysis**

In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. Because it was recognized that some otherwise buildable existing properties could be adversely impacted with the enactment of the new regulations, Section 27-548.10 (c) of the Zoning Ordinance was created to provide grandfathering.

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

**All buildable lots (except outlots) within subdivisions recorded prior to December 1,**

**1985, shall remain buildable lots, regardless of lot size, provided:**

- (1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;**

**Comment:** The proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes adverse impacts on water quality.

- (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 lots were recorded on March 1, 1904, and are shown on Record Plat A-9 in the Prince George's County Land Records. The lot size, frontage, and vehicular access were in accordance with the requirements in effect at the time of initial development and the application submitted 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 4,000 square feet, a net tract area of 4,000 square feet. When it was platted the Chesapeake Bay Critical Area regulations were not in effect.

#### **4. Variance Analysis**

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 conditions or other extraordinary conditions or conditions;**

**Comment:** The extraordinary condition of this lot is that it was platted 100 years ago and the original structure was built in 1920, long before the Zoning Ordinance was adopted and the Chesapeake Bay Critical Area requirements were envisioned. The house proposed is in keeping with the character of the surrounding neighborhood.

- (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 plan as submitted reflects a reasonable use of the property and is in keeping with the character of the existing neighborhood. The strict application of the Zoning Ordinance would deny any application for a permit.

- (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 II Master Plan.

Section 27-230(b) 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). The following is an analysis of the application's conformance with the Zoning Ordinance requirements. Because all of the variances requested are similar in nature, the variances are evaluated together below.

- (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:** None of the variances being sought are from provisions related to the Chesapeake Bay Critical Area regulations. This lot is peculiar in that it was platted in 1904, long before the Chesapeake Bay Critical Area regulations were envisioned.

- (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:** Other properties nearby are similarly developed and the proposed addition is in keeping with the character of the surrounding neighborhood.

- (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 these variances does not establish a special privilege because the house proposed is in keeping with the character of the existing neighborhood.

- (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 requests are 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.

- (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 applicant is required to meet the requirements of the Stormwater Management Ordinance to address issues of water quality for the site.

- (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 described in the "Chesapeake Bay Critical Area Conservation Manual," 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-55 and I-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.

## **5. Summary**

On May 21, 2006, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the I-D-O Zone and the "Chesapeake Bay Critical Area Conservation Manual;" however, the plans required numerous technical revisions. Revised plans and a variance application were accepted for processing on June 22, 2006. Technical errors remain; however, these are minor.

The granting of these variances is appropriate to permit reasonable development of the site with additions to an existing single-family residence that is similar in character to those in the neighborhood.

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 Vaughns, seconded by Commissioner Clark, with Commissioners Vaughns, Clark, Squire, Eley and Parker voting in favor of the motion at its regular meeting held on Thursday, November 30, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 21st day of December 2006.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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