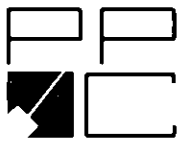


MN
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



PGCPB No. 10-69

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File No. CP-09002

R E S O L U T I O N

WHEREAS, Cecilia Fex and Dana Scott Galloway are the owners of a 0.81-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned Rural Residential (R-R) and is within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone; and

WHEREAS, on January 8, 2010, Cecilia Fex and Dana Scott Galloway filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of reconstructing a freestanding carport on a property within the Chesapeake Bay Critical Area (CBCA); and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-09002 for Fex and Galloway Property, including Variance Request VC-09002, 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 June 17, 2010, 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 June 17, 2010, 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 Section 27-548.11 of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-09002, and further APPROVED Conservation Plan CP-09002, Fex and Galloway Property with the following conditions:

1. Prior to signature approval of the conservation plan, the plan shall be revised to remove any references to future construction.
2. Prior to signature approval of the conservation plan, the plan shall be revised to show the stream buffer drawn to 100 feet from the bank and labeled as the Critical Area secondary buffer. The revised Conservation Plan shall include a Buffer Management Plan with all necessary plant schedules, details and notes requiring buffer planting at 3:1 ratio for the amount of 55 square feet of increased lot coverage, equaling 165 square feet of vegetation to be planted within the 100-foot Critical Area primary buffer.
3. The abandoned shallow well behind the house shall be backfilled and sealed, in accordance with COMAR 26.04.04, by a licensed well driller or witnessed by a representative of the Health Department.

4. The Conservation Agreement that is required to be executed and signed prior to permit approval, shall state the required 3:1 planting ratio and specify that the mitigation is to be planted within the Critical Area primary buffer.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The proposal is for the reconstruction of a freestanding carport on a property within the Chesapeake Bay Critical Area (CBCA). The property previously contained a carport that was 290 square feet in area. The proposed (and partially constructed) carport is 55 square feet greater in area, at a total of 345 square feet. The applicant had begun the reconstruction based on a misunderstanding of a CBCA staff-level approval by the Department of Public Works and Transportation (DPW&T). A Chesapeake Bay Critical Area conservation plan is required prior to the issuance of any permit by Prince George's County. The Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans. The subject property is zoned R-R (Rural Residential) and is within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone in the Potomac River basin.

It should be noted that the original request in this case was for approval of the carport and two additions to the existing dwelling. The applicants subsequently amended their plan to forego the request for approval of the proposed additions to the dwelling, because it would have necessitated the removal of the existing mature trees in the area of proposed development. The revised plan substantially reduces the amount of the requested net increase of lot coverage.

Because the carport is located in the front yard, a variance to Section 27-442(i), Footnote 10, of the Zoning Ordinance will be required. That section requires accessory buildings to be located in the rear yard. In addition, a variance is required to allow for development within the 100-foot CBCA buffer.

2. The 0.81-acre lot in the R-R/L-D-O Zones is located on the west side of Mariner Drive, 500 feet south of its intersection with Riverview Road, and is wholly within the Chesapeake Bay Critical Area. The site slopes down to, and has 100 feet of shoreline along, the Potomac River. There is a small stream along the southwestern property line of the site. The property contains 100-year floodplain and approximately half of the site is within the 100-foot CBCA buffer. 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 have critical habitat on or near the subject property. The *Prince George's County Soil Survey* indicates that the principal soils on the site are in the Sassafras series. The site is in the Developing Tier according to the 2002 *Prince George's County Approved General Plan*. Except for noting that the property is within the Chesapeake Bay Critical Area, there are no specific recommendations pertaining to the environmental elements of the master plan that relate to the subject property. The 2005 *Approved Countywide Green Infrastructure Plan* indicates that the site is a regulated area due to its location in the Chesapeake Bay Critical Area.

3. The site is a deed parcel recorded in the Prince George's County Land Records in Liber 14477, Folio 85 containing 35,311 square feet or 0.81 acre.
4. 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 woodland required by CBCA regulations on a lot in the Limited Development Overlay (L-D-O) Zone 15 percent of the site or 5,293 square feet. Critical Area Note 12 on the conservation plan indicates that there are 0.20 acre or 9,000 square feet of woodland existing on-site. This amount of woodland exceeds the minimum requirement of 15 percent.
5. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is 20,000 square feet. The gross lot area, as indicated on the deed for the property is 35,311 square feet. According to survey information, the 100-year floodplain occupies 15,214 square feet of the property. The net tract area is 20,097 square feet.
6. The maximum amount of impervious surfaces permitted per the CBCA regulations (Section 27-548.17 of the Zoning Ordinance) is 15 percent of the gross tract area or 5,296.65 square feet. The plan indicates existing impervious surfaces of 2,857 square feet, or 8.09 percent. With the additional 55 square feet from the reconstructed carport, the corresponding proposed CBCA impervious surface would be 2,912 square feet or 8.25 percent, well within the 15 percent maximum.
7. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) is 25 percent of the contiguous net tract area or 5,024.25 square feet. The proposed percentage of lot coverage, which includes the house footprint, carport, walkway and driveway, is 2,608 square feet or 13 percent.
8. The minimum lot width at the street frontage permitted by Section 27-442, Table III, Footnote 3, of the Zoning Ordinance is 60 feet. The lot width at the street frontage is 69.5 feet.
9. The minimum lot width at the building line permitted by Section 27-442, Table III, of the Zoning Ordinance is 100 feet. The lot width at the proposed building line exceeds 120 feet.
10. The minimum front yard setback permitted by Section 27-442, Table IV, of the Zoning Ordinance is 25 feet. The proposed front yard setback is 40 feet to the carport and 104 feet to the existing single-family residence.
11. The minimum side yards permitted by Section 27-442, Table IV, of the Zoning Ordinance are a total of 17 feet with a minimum of eight feet. The proposed side yards are 13 and 45 feet for a total of 58 feet.
12. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. The proposed rear yard is 145 feet.

13. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet. The proposed height is 9.34 feet for the carport and 20.8 feet for the existing single-family residence.
14. The Chesapeake Bay Critical Area Commission requires 3:1 replacement for trees cleared within the 100-foot CBCA buffer. The critical area plan correctly notes that no trees will be cleared as part of this development.
15. Since this application was originally submitted for review by the Planning Department, new regulations were adopted by the State of Maryland regarding development in the Chesapeake Bay Critical Area. Those regulations are referred to as the "Buffer Establishment" regulations (COMAR 27.01.09.01) which specifically state: "At the time of application, if the buffer is not fully forested or is not fully established in woody or wetland vegetation, an applicant shall establish the buffer to the extent required; where new development involves an accessory structure, establishment of the buffer is required in an amount equal to the net increase in lot coverage." According to Nick Kelly, Natural Resources planner with the State of Maryland Critical Area Commission of the Chesapeake and Atlantic Coastal Bays, this regulation is applicable to this case, thus requiring that an area three times the net increase of 55 square feet of lot coverage be planted in the critical area 100-foot buffer.
16. A Variance Request (VC-09002) was received for a variance to Section 27-442(i), Footnote 10, of the Zoning Ordinance. That section requires accessory buildings to be located in the rear yard. A variance to allow development within the 100-foot CBCA buffer is required. Because the Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans, it is also the approving authority for the requested variance.
17. Section 27-230(a) of the Zoning Ordinance contains findings required for all variances. A variance must be obtained to allow the carport to be in the front yard. 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;**

The subject property has exceptional conditions not ordinarily found on lots in the R-R Zone. The property is located on the west side of a private easement leading from the cul-de-sac of Mariner Drive and is wholly within the Chesapeake Bay Critical Area. The majority of the site is either within the floodplain or the 100-foot CBCA buffer, or both.

- (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**

The strict application of the Zoning Ordinance would result in undue hardship upon the owner of the property. 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 require the applicant to build the carport in the rear or side yard, which would necessitate the removal of trees and would cause further encroachment into the 100-foot CBCA buffer. This proposal minimizes any environmental impacts.

(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

The variance will not substantially impair the integrity of the General Plan or master plan. The use of the site for single-family detached residential development with an accessory carport is in complete conformance with the recommendations of the General Plan and the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*.

Section 27-230(b) permits that a variance 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). The following is an analysis of the application's conformance with the Zoning Ordinance requirements.

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;

Circumstances peculiar to the subject property would cause an unwarranted hardship if the Code were literally enforced. The property has its only frontage on a private easement leading from Mariner Drive. The property lies within the 100-foot critical area buffer for the Potomac River. The carport improvement on the subject property is a replacement of an existing structure that was built prior to the adoption of the Chesapeake Bay Critical Area regulations and demonstrates a minimization of environmental impacts by not expanding the limits of disturbance and only requiring a minor increase to the lot coverage on the property. If the variance were not approved, the carport would have to be removed.

(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 Overlay Zones;

A literal interpretation of the Code would deny the applicant of rights enjoyed by others in the CBCA. Most of the other properties nearby have carports or garages, some of which are detached and visible from the front street line. What the applicant is proposing is in keeping with the

character of the surrounding neighborhood, while avoiding impacts to the environmentally-sensitive areas of the site.

- (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 Overlay Zones;**

The granting of this variance does not establish a special privilege. The slight increase to the impervious surface for the proposed reconstructed building is in keeping with the character of the existing neighborhood.

- (4) **The variance requests is 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;**

The variance request is not wholly based upon circumstances which are the result of actions by the applicant or neighboring properties. The only actions taken by the applicant regarding the carport resulted from a misunderstanding by the applicant regarding the "staff-level review" of the CBCA plan by the Department of Public Works and Transportation. The applicant believed that DPW&T "granted" their proposal, allowing them to proceed with the reconstruction. The applicant realizes that they must gain the approval of the Planning Board prior to the issuance of a permit. The location of existing improvements on the property, and not the actions of the applicant created the need for the variance.

- (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;**

The Chesapeake Bay critical area conservation plan submitted minimizes adverse impacts on water by proposing development on an area on the site that does not significantly impact fish, plant, or wildlife habitat. The proposed conservation plan generally minimizes adverse impacts on water quality. In addition, the conservation plan is required to be in conformance with the stormwater management requirements of Prince George's County.

- (6) **The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**

The applicant is required to meet the requirements of the Stormwater Management Ordinance to address issues of water quality for the site. The plan has been reviewed by the Environmental Planning Section (The Maryland-National Capital Park and Planning Commission), the Chesapeake Bay Critical Area Commission, and the Prince George's County Health Department.

No adverse impacts on water quality have been identified. The enclosure and slight enlargement of the carport will not adversely impact water quality due to the limited additional lot coverage.

- (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;**

The conservation plan states that there are no fish, plant, or wildlife habitats, as described in the Conservation Manual that could be adversely impacted by the proposed development. The Conservation Plan demonstrates a minimization of disturbance, does not require removal of trees or woody vegetation, thereby protecting fish, plant or wildlife habitats which 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**

The use, as proposed in this submittal, is in complete conformance with the R-R and L-D-O Zones. The long-existing, single-family residence and carport at this location has not appeared to create any adverse environmental impact. There is nothing to suggest that the addition of 55 square feet of gravel base for a reconstructed carport will change this fact.

- (9) **The growth allocations for Overlay Zones within the County would not be exceeded by the granting of the variance.**

No use of growth allocation is needed to proceed with the proposed development.

SUMMARY

The granting of the variances is appropriate to permit reasonable development of the site with a reconstructed carport as an accessory building to the single-family detached residence existing on the site.

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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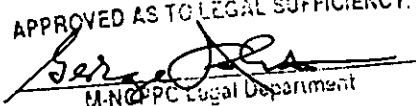
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Clark, seconded by Commissioner Squire, with Commissioners Clark, Squire, Cavitt, Vaughns and Parker voting in favor of the motion at its regular meeting held on Thursday, June 17, 2010, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of July 2010.

Patricia Colihan Barney
Executive Director

By 
Frances J. Guertin
Planning Board Administrator

PCB:FJG:TL:rpg

APPROVED AS TO LEGAL SUFFICIENCY.

M-NCPPC Legal Department
Date 6/23/10