



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco

PGCPB No. 13-03

File No. CP-09003

RESOLUTION

WHEREAS, Dwight & Sonia Casey are the owners of a 0.91-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 March 24, 2011, Dwight & Sonia Casey filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of validating existing conditions, adding fence, removing portions of the existing retaining walls, installing new landscaping and storm water management control devices and mitigating the site in order to correct County and State violations; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-09003 for Indian Queen Estates, Lot 3, Block G, (Casey Property), 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 December 13, 2012 and January 10, 2013, 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 December 13, 2012 and January 10, 2013, 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 Conservation Plan CP-09003, Indian Queen Estates, Lot 3, Block G, (Casey Property), and the associated variances with the following conditions:

1. Prior to certification, the following revisions shall be made to the Conservation Plan:
 - a. The plan shall be revised to label the following structures as "To Be Removed":
 - (1) The existing elevated stone patio and surrounding stairs
 - (2) The relocated chimney
 - (3) The four flared stairs in the primary buffer
 - (4) The two retaining walls proposed to connect the patio and stairs to the lower set of stairs
 - b. Show the limits and square footage of the existing playground matting. This area shall be included in the CBCA lot coverage calculations.

PGCPB No. 13-03
File No. CP-09003
Page 2

- c. Revisions made to the Conservation Plan to address other conditions of approval shall not increase the CBCA lot coverage above 15 percent, with the exception of the existing lot coverage from the neighbor's driveway and for the playground area.
- d. Tables A, B and B1 shall be revised and modified as necessary to accommodate plan changes required by other conditions of approval. Credit shall not be granted for the removal of lot coverage that is not located within the property boundary.
- e. The developed woodland table shall be revised in accordance with the Environmental Planning Section's Attachment 3, and modified as necessary to accommodate plan changes required by other conditions of approval.
- f. The Critical Area Commission shall provide written consent on the details of the planting arrangement and planting information shown on the plan.
- g. The CBCA violation calculations table (for disturbed area), CBCA variance calculations table (for lot coverage in the buffer), and CBCA mitigation summary table shown on the plan shall be revised in accordance with the Environmental Planning Section's Attachments 4, 5, and 6, and modified as necessary to accommodate plan changes required by other conditions of approval.
- h. Label all newly proposed areas of lot coverage with the square footage.
- i. Show the critical root zone of the existing specimen tree delineated at a ratio of 1.5:1 (critical root zone radius in feet: diameter at breast height in inches).
- j. Remove the label shown on the plan indicating that the existing revetment is proposed to be removed.
- k. Remove the pathway and the label for what is shown as "future pathway access to bulkhead and pier."
- l. Ensure that all existing easement information is shown; specifically for the neighbor's driveway access, if applicable.
- m. Remove any proposed or existing fences along the western property line which impedes access to the neighbor's driveway.
- n. The curb and gutter that is proposed to be removed along the eastern side of the driveway shall be replaced along the portion of the driveway that is proposed to remain.
- o. Label the height of the eight-inch thick block wall along the western property line.

PGCPB No. 13-03
File No. CP-09003
Page 3

- p. Provide the correct the rear setback for the dwelling.
 - q. The property owner shall sign and date the property owner's certification box.
 - r. The revision box shall be updated on the plans.
 - s. Provide the label "Conservation Plan" in the title block on all sheets of the plan set.
 - t. Revise the CBCA general notes as follows:
 - (1) Revise Note 19 to identify the specimen tree located on-site.
 - (2) Revise Note 20 to accurately reflect the amount of existing lot coverage in the 100-foot buffer.
 - (3) Revise Note 21 to accurately reflect the proposed increase or decrease of lot coverage within the 100-foot buffer
 - u. Show a single existing treeline that accurately reflects the dripline of the existing tree canopy.
2. Prior to certification of the Conservation Plan, the information on the plan with respect to the proposed planting shall be revised as follows:
- a. Remove existing vegetation from the planting list and from counting toward planting credits.
 - b. Provide abbreviations for all plant material within the plant list. These abbreviations shall be reflected on the plan.
 - c. Provide overstory, understory, shrub, and groundcover planting in the open area between the bottom step and the bioretention area.
 - d. Provide understory, shrub, and groundcover planting within the primary buffer to the maximum extent practicable.
 - e. Remove any proposed woody vegetation from the bioretention embankment in accordance with the Department of Public Works and Transportation (DPW&T) planting standards.
3. A Conservation and Planting Agreement shall be recorded in the land records prior to permit approval.

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

PGCPB No. 13-03
File No. CP-09003
Page 4

1. **Overview**—The property is the subject of a Consent Order and Settlement Agreement between the Attorney General for the State of Maryland and the applicant (Case No. CAE 07-13341). The Consent Order was filed in the Circuit Court for Prince George's County for violation notices issued by the Department of Environmental Resources (DER) and for violations of Maryland's Critical Area Law. The violations pertain to the applicant's replacement, reconstruction and expansion of a series of retaining walls, steps and landings which run from the back of the applicant's residence down to the bulkhead of Broad Creek. The applicant states that certain permits were obtained from DER to construct the improvements. However, the applicant did not obtain all of the necessary permits or the Planning Board's approval of a conservation plan prior to performing the work within the critical area.

Although some portions of the existing retaining walls, patios and stairs within the critical area buffers are proposed to be removed, the applicant is requesting approval from the Planning Board to retain a majority of the structures that were constructed on the property. The applicant also proposes to perform construction activities, both inside and outside the Critical Area buffers, and the grading and the restorative planting of trees, shrubs and groundcovers within the primary and secondary Critical Area buffers.

Four variances from the Zoning Ordinance are requested as follows; (a) exceeding the maximum impervious surface ratio of 15 percent, (b) encroachments into the CBCA primary and secondary buffers; (c) development on slopes greater than 15 percent; and d) the clearing of natural and developed woodland in excess of 30 percent.

2. **History**—The following is a list of prior issued permits, plan approvals, violations, or other events that may relate to the review of the Conservation Plan application. The following information was either submitted by the applicant at the time of acceptance, or obtained thru the research of the property and may not include all prior Federal, State, or County actions that pertain to the site.

February 8, 1996— Chesapeake Bay Critical Area Conservation Plan No. CP-95012, and Preliminary Plan of Subdivision 4-95128 are approved for the property by the Planning Board. A lot line adjustment was proposed with the abutting property to the east (Lot 4, Block G), and a Conservation Plan and Conservation Agreement were required to be approved by the Planning Board prior to the approval of any subdivision (PGCPB Resolution No. 96-44).

February 27, 1997— Final Plat of Subdivision VJ 178@75 is recorded in Land Records adjusting the common property line between Lots 3 and 4, Block G, Indian Queen Estates.

October 24, 2002— The Department of Environmental Resources (DER) issues Zoning Violation No. 36748-2002 to the Caseys' for unauthorized disturbance in the CBCA. In summary, the corrective actions required were to;

PGCPB No. 13-03
File No. CP-09003
Page 5

Stop work, apply for and obtain a grading permit for 5,130 square feet of disturbance within the CBCA, pay a mitigation fee of \$1.20 per square-foot for the area disturbed (equaling \$6,156), prepare and submit an acceptable conservation and mitigation plan and a conservation agreement to DER. The date of compliance was November 25, 2002, 33 days after the violation notice was issued.

**Note* – That per a November 28, 2012 phone conversation with the Department of Environmental Resources (DER) Inspections and Enforcement personnel, four separate violations and stop work orders were issued to the Caseys' between the years of 2002 and 2008, (Violation No.'s 36748-2002, 30287-2005, 30291-2005 & 29773-2006). The Planning Board only has written documentation of two of the four violation notices.

April 30, 2003–

The Department of Environmental Resources (DER) issues Residential Grading Permit No. 2497-2003-00 for grading, landscaping, and to replace existing rotted railroad tie walls in order to re-stabilize the slope. The Statement of Justification that was submitted by the applicant states that this permit was later revoked by DER in 2004.

May 30, 2003–

The Maryland Department of the Environment (MDE) issues General Tidal Wetlands License 03-GL-0284 to remove debris, place 92 linear feet of riprap, and construct a 200-foot long by 6-foot wide timber pier with two boat lifts extending 200 feet channelward of the mean high water line.

July 14, 2006–

The Department of Environmental Resources (DER) issues Zoning Violation No. 29773-2006 to the Caseys' for unauthorized disturbance in the CBCA. In summary, the corrective actions required were to;

Stop work, obtain an approved erosion and sediment control plan, obtain an approved grading permit for approximately 6,400 square feet of disturbance, pay a mitigation fee of a \$1.20 per square-foot for the area disturbed, prepare and submit a conservation plan and conservation agreement to DER, obtain an electrical permit, obtain a building permit for the fence, retaining walls, stairs (or remove the structures), obtain certification from a registered structural engineer or architect for the retaining wall footings, retaining walls and stairs (or remove the structures). The date of compliance was August 14, 2006, 32 days after the violation notice was issued.

PGCPB No. 13-03
File No. CP-09003
Page 6

- October 15, 2009—** The applicant's, Dwight and Sonia Casey enter into a Modified Consent Order and Settlement Agreement with the Attorney General's Office, (Case No. CAE07-13341).
- April 29, 2010—** Stormwater Management Concept Plan 10260-2010-00 is approved for the property by the Department of Public Works and Transportation (DPW&T).
- November 8, 2010—** A pre-acceptance meeting is held on-site with representatives of the Critical Area Commission and the Maryland-National Capital Park and Planning (M-NCPPC) Planning Department.
- March 24, 2011—** The subject application is formally accepted by the Planning Department.
- April 15, 2011—** The subject application is heard by the Subdivision Review Committee.
- September 10, 2012—** A meeting is held on-site with representatives of the Soil Conservation District, the Department of Public Works and Transportation (DPW&T), the Critical Area Commission, and the M-NCPPC Planning Department.

3. **Site Description—**The 0.91-acre lot in the R-R/L-D-O Zones is located on the south side of Indian Queen Point Road at its intersection with Kiskonko Road, and is wholly located within the Chesapeake Bay Critical Area (CBCA). The property contains approximately 2,178 square feet of floodplain and less than half of the site is located within the 100-foot CBCA buffer.

The property is currently developed with a detached single-family dwelling that was constructed in approximately 1974, as well as a carport, asphalt driveway, wood deck, sidewalks, playground area, stone walls, steps, patios and landings. The site slopes down to, and has approximately 92 feet of shoreline along the Broad Creek portion of the Potomac River.

4. **Referrals**

****Note** that some referrals that were received for this application reference companion variance application no. VC-09003. Due to change in policy since the time the subject application was accepted, variance applications are no longer assigned separate application numbers and the merits of any variance request will be decided on as part of the subject conservation plan application.

1. **Critical Area Commission—**By letter dated November 27, 2012, the State of Maryland Critical Area Commission for Chesapeake and Atlantic Coastal Bays provided the following comments concerning the Conservation Plan application:

The application seeks to amend Conservation Plan CP-09003 by granting variances to three Critical Area development standards: (1) to exceed the 15 percent lot coverage limit in the Limited Development Overlay (LDO); (2) to

PGCPB No. 13-03
File No. CP-09003
Page 7

disturb the 100-foot Primary Buffer and expanded Secondary Buffer for steep slopes; and (3) to disturb slopes 15 percent or greater.

Beginning around 1999, Dwight and Sonia Casey sought approval to remove some limited vegetation in the Primary and Secondary Buffer and to replace an existing timber-step walkway, and received staff level approval for this work by the County. In or about 2003, the Caseys' started to construct the structures now under consideration by the Planning Board, the scope of which far exceeded that which they had originally sought approval for and resulted in issuance by the Department of Environmental Resources (DER) of several notices of violations.

Due to the lack of successful enforcement on the Caseys' violations by Prince George's County, in 2007 the Office of the Attorney General filed suit in the Circuit Court for Prince George's County. On October 15, 2009, the parties entered into a Consent Order and Settlement Agreement, whereby the Caseys' agreed, among other things, to (1) remove certain patio areas within the Buffer and (2) re-establish a fully functioning vegetated Buffer in accordance with a detailed "Restoration Plan." The Consent Order further provided that the Caseys' could retain the remaining constructed retaining walls and steps, but only if these structures meet, or are modified to meet, applicable engineering standards in conformance with Prince George's County permitting and approval standards and processes. In this regard, the Consent Order specifically provides that these "Retained Improvements" must be "permitted and approved by [the County]." Thus, contrary to any assertion by the Caseys' that removal of these improvements would be in contravention with the Consent Order, the Consent Order does not in law or fact permit the retention of any of the improvements for which the Caseys' now seek variances. The Consent Order specifically provides that the improvement may only be retained if so permitted by the County.

Subsequent to the date of the Consent Order, Prince George's County determined that in order to properly permit the previously unpermitted improvements within the Buffer, the Caseys' must formally amend their Conservation Plan and seek all necessary variances. The comments below relate to two items: first, whether the planting plan proposed as part of the Conservation Plan is sufficient to meet the intent of the Restoration Plan adopted by the Consent Order, and, second, whether there is merit to the Caseys' variance requests.

1. The Planting Plan Contained Within The Amended Conservation Plan."

As previously mentioned, the Consent Order and Settlement Agreement included a planting plan for the Primary and Secondary Buffer intended to address the disturbance and clearing violations and to provide enforcement consequent to these violations. To these ends, the agreed-upon planting plan provides for a fully forested environment with groundcovers, shrubs, understory and canopy cover. Since 2009, and through consultations with the appropriate county agencies, the

PGCPB No. 13-03
File No. CP-09003
Page 8

final proposed appearance of the Primary Buffer and Secondary Buffer has been altered from that which was contemplated at the time of the Consent Order, including the removal of some walls and grading of the slope. This, in turn, has necessitated alterations in the planting plan. In order to ensure that the end result is a fully forested Buffer, as contemplated at the time of the Consent Order, approval of any of the variances must be conditioned upon approval by Critical Area Commission staff of the final details of the planting plan. This condition should specify that final approval (signature) of the Conservation Plan shall not be made until after Critical Area Commission staff has provide written consent on the details of the planting plan as depicted on the Conservation Plan.

2. Variances.

a. *To Exceed Lot Coverage*

Over the years, the General Assembly has strengthened the Critical Area law, and, in particular, reaffirmed the stringent standards which an applicant must meet in order for a local jurisdiction to grant a variance to Critical Area restrictions. The law provides that variances to a local jurisdiction's Critical Area program may be granted *only* if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. Further, the Critical Area law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. Thus, on any variance request, the Planning Board must make an affirmative finding that the applicant has overcome this presumption, based upon the evidence presented. Here, in addition to the criteria set forth in Section 27-230 of the County Code, the following standards apply, pursuant to Natural Resources Article 8-1808(d) and COMAR 27.01.11, to a request for a variance from Critical Area development restrictions:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an **unwarranted hardship** to the applicant.*
2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

PGCPB No. 13-03
File No. CP-09003
Page 9

4. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

More particularly, an "unwarranted hardship" means that "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." In establishing this standard, the General Assembly specifically rejected the notion set forth in *Mastandrea v. North*, 361 Md. 107 (2000), that an applicant for a variance could be denied reasonable and significant use of their property if the denial prevented use of the 100-foot Buffer, regardless of the use or potential uses of other portions of the property. Further, it is not an unwarranted hardship, as the Caseys' might contend, that an applicant for an after-the-fact variance might incur considerable costs should the variance be denied and the applicant be required to remove structures which the applicant constructed illegally.

Relevant to the impervious surface limitations applicable to the Caseys' property, prior to 2008 Prince George's County did not include gravel driveways, such as the encroachment of the neighbor's driveway on the Caseys' property, as impervious surface. In 2008, the Critical Area law was amended such that "lot coverage" now includes driveways and any area covered by manmade materials. Thus, the portion of the neighbors' driveway on the Caseys' property might now be considered legally nonconforming, and this 809 square feet of impervious surface could be considered an "unwarranted hardship" inasmuch as the circumstances of its existence may be peculiar to this property. Regardless, the remainder of the lot coverage on the property must be considered against the applicable lot coverage limitations and the standards for a Critical Area variance, including the unwarranted hardship standard.

The lot coverage limit for this parcel is 5,932 square feet, which increases to 6,741 if one were to account for the additional 809 square feet of the neighbors' driveway. The table on the proposed Conservation Plan established that the Caseys' are proposing 6,625 square feet of lot coverage (inclusive of the neighbors' driveway). However, Sheet 2 of the proposed Conservation Plan depicts two new areas of lot coverage which are not accounted for in the table: (1) a new and smaller patio/step area at the bottom of the hill in an area where an unpermitted existing patio is to be removed in conformance with the Consent Order and (2) a "relocated chimney." We recommend against these new improvements as they do not meet the necessary variance standards. Specifically, the Caseys' can establish no unwarranted hardship that might otherwise permit these contemplated structures.

b. To Disturb the Primary and Secondary Buffer and to Disturb Steep Slopes

PGCPB No. 13-03
File No. CP-09003
Page 10

A component of the Caseys' disturbance variances is retention of the elevated circular patio partially encircled by two courses of steps, which was constructed without a permit. For this structure to remain as part of an approved variance, the Caseys' must demonstrate, among the other variance criteria, that an unwarranted hardship necessitates its retention. Critical Area staff is presently aware of no circumstances that warrant such a finding. Should the Board, nevertheless, find that the Caseys' have met the applicable standards for grants of the disturbance variances (in either whole or part), the Board must require mitigation for disturbance to the Primary and Secondary Buffer at a ratio of 3:1 for the area of disturbance, in accordance with amended "Buffer" regulations set forth at COMAR 20.01.09.01. The Buffer regulations must be applied as minimum standards by a local jurisdiction notwithstanding any provision or lack of a provision in the County Code. *See* COMAR 27.01.01.03. Any mitigation that cannot be located on site can be met by payment of a fee-in-lieu of \$1.50 per square foot in accordance with COMAR 27.01.09.01-4.

The November 27, 2012 letter from the Critical Area Commission states that variances are requested for three Critical Area development standards. For the purposes of clarification, the applicant has requested the Planning Board's approval of four variances from the following sections of the code:

Section 5B-114(e)(8): for exceeding the maximum 15 percent CBCA impervious lot coverage;
Section 5B-121(e): for the placement of structures in the buffer;
Section 5B-114(e)(7): for disturbance of slopes 15 percent or greater; and
Section 5B-114(e)(5): for clearing of natural or developed woodland in excess of 30 percent.

2. **Environmental Planning**—The Environmental Planning Section provided the following comments concerning the Conservation Plan application:

The Environmental Planning Section (EPS) has reviewed the Chesapeake Bay Critical Area Conservation Plan, CP-09003, stamped as received by the EPS on November 19, 2012 and the associated variance requests, stamped as received on October 1, 2012 and recommends approval subject to conditions.

Background

The Environmental Planning Section is aware of the following records for the subject property:

- a. A Conservation Plan, CP-95012, approved by the Planning Board February 8, 1996;

PGCPB No. 13-03
File No. CP-09003
Page 11

- b. A final plat of subdivision for a lot line adjustment between Lots 3 and 4, Block G, Indian Queen Estates recorded February 27, 1997;
- c. A Department of Environmental Resources violation, NOV 36748-2002, issued on October 24, 2002, for clearing 5,130 square feet within the Critical Area including a mitigation fee of \$6,156, and required a grading permit be obtained and a restoration bond for mitigation planting;
- d. The Department of Environmental Resources issued Grading Permit No. 2497-2003-00 for grading, landscaping, and retaining wall construction on April 30, 2003;
- e. The Maryland Department of the Environment issued a tidal wetland permit, no. 03-GL-0284 on May 30, 2003;
- f. The Department of Environmental Resources revoked grading permit no. 2497-2003-00 in 2004;
- g. The Department of Environmental Resources issued zoning violation no. 29773-2006 on July 14, 2006 for unauthorized disturbance within the Critical Area to:
 - (1) Stop work
 - (2) Obtain erosion and sediment control approval
 - (3) Obtain approved grading permit for 6,400 square feet of disturbance
 - (4) Pay mitigation fee of \$1.20 per square foot of disturbed area
 - (5) Submit a conservation plan and agreement
 - (6) Obtain electrical permit
 - (7) Obtain building permit for fence, retaining walls, stairs
 - (8) Obtain certification from a registered structural engineer or architect for retaining wall footings and stairs.
- h. Stormwater Management Concept Plan 10260-2010-00 was approved by the Department of Public Works and Transportation on April 29, 2010.

The current application for a Conservation Plan is to satisfy Consent Order #CAE 07-13341 issued to enforce violations dating back to 1999 for unauthorized clearing of vegetation, unauthorized lot coverage, and disturbance within the Critical Area buffer.

Site Description

The 0.91-acre lot in the R-R/L-D-O zones is located on the south side of Indian Queen Point Road and is wholly within the Chesapeake Bay Critical Area (CBCA). The property contains 100-year floodplain and contains the 100-foot Primary CBCA Buffer and the Secondary CBCA Buffer expanded for steep slopes. The site is located within the Broad Creek drainage basin. The predominant soils found to occur according to the US

PGCPB No. 13-03
File No. CP-09003
Page 12

Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey (WSS) include the Croom-Howell-Collington Complex, the Sassafras-Urban Land Complex, and the Magnolia-Urban Land Complex. Marlboro and Christiana clay are not found to occur on this property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur on this site. 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. The site is located in the Developing Tier of the 2002 *Prince George's County Approved General Plan*. According to the 2005 *Approved Countywide Green Infrastructure Plan*, the site contains Regulated Areas and Network Gaps.

Variances

This application includes a statement of justification for four variance requests from the following sections of code: Section 5B-114(e)(8) for exceeding the maximum 15 percent CBCA impervious lot coverage; Section 5B-121(e) for the placement of structures in the buffer; Section 5B-114(e)(7) for disturbance of slopes 15 percent or greater; and Section 5B-114(e)(5) for clearing of natural or developed woodland in excess of 30 percent.

The variance request is being submitted in order to retain certain on-site improvements, remove and/or replace other on-site improvements, and to improve the stability of steep slopes. The statement of justification indicates that the improvements and disturbances for all of the variances are common and the justification provided applies to all four variance requests.

It should also be noted that all variances pursuant to a violation in the Critical Area must comply with Section 5B-111(p), which states:

(p) Variances pursuant to a violation.

The Planning Board may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or regulation in accordance with the variance provisions of this subtitle or Subtitle 27. However, a final decision shall not be made by the Planning Board until all abatement, restoration, and mitigation measures have been provided on a conservation plan submitted for review that meets all the requirements of this Subtitle and as applicable other subtitles of the County Code; and

- (1) Mitigation for violations in any Critical Area Buffer shall be shown according to the ratios shown in Section 5B-121, Table (h)(2) of this Subtitle; and**
- (2) Variances may not be granted by the Planning Board from the provisions of Subtitles 5B or 27 for property located within the**

PGCPB No. 13-03
File No. CP-09003
Page 13

Chesapeake Bay Critical Area Overlay Zones to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless a notice of violation is issued, including assessment of a penalty for the violation. Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed; and

- (3) If there are provisions of the violation that require stabilization, the installation of erosion and sediment control devices, or the payment of a fine, a final decision shall not be made by the Planning Board on the variance request until all such corrective work has been completed and the fine paid. The applicant is responsible for providing information verifying the status of the violation prior to the Planning Board's decision regarding the variance request. The Director or the Director's authorized representative and the Planning Director or the Director's designee shall inspect the site prior to the decision regarding the variance request.**

Conformance with Section 5B-111(p) can be found because the Conservation Plan as submitted, along with recommended conditions of approval demonstrates abatement, restoration, and mitigation measures that meet all requirements of Subtitle 5B and other applicable subtitles of the County Code. Mitigation for buffer violations has been proposed on the plan. Stabilization of the site is needed as a result of the violation. Grading for slope stabilization and sediment and erosion control measures have been addressed on the plan. Permits to perform the corrective work cannot be issued until the Conservation Plan is approved. Staff from both the Environmental Planning Section and the Zoning Section has inspected the site.

Section 27-230 of the Zoning Ordinance contains required findings **[text in bold]** to be made before a variance can be granted. The plain text is staff's analysis of the request.

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:**

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

The property is irregularly shaped. It is long (approximately 330 feet) and has narrow road frontage (approximately 125 feet) which tapers down to its narrowest

PGCPB No. 13-03
File No. CP-09003
Page 14

width of approximately 60 feet at about 35 feet from the mean high tide line, then it expands back out to approximately 92 feet at its far southern boundary. The topography is also exceptional; it is characterized by a relatively flat area at the north end of the site adjacent to Indian Queen Point Road where the house and driveway are located and a relatively flat area adjacent to Broad Creek at the southernmost end of the site. In between is an area of steep and severe slopes which rise in elevation approximately 65 feet in a run of approximately 100 feet.

- (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**

Consent Order #CAE 07-13341 was issued to enforce a violation. Among other things, the consent order requires local approval of a Conservation Plan. In order to allow for mitigation of the violation as well as to address slope stability issues on the property, the disturbance of developed woodland and impacts to steep slopes are necessary.

The allowable CBCA lot coverage for this property is 15 percent, or 5,932 square feet. The current application proposes a total of 16.75 percent. However, it should be noted that the adjacent property has a driveway encroachment of 809 square feet by order of the Circuit Court (CAL02-21873). Currently, the plan shows the removal of existing lot coverage so that without the encroachment, the current application would be 15 percent and would not require a variance for lot coverage. The variance request is to exceed the allowable 15 percent lot coverage to accommodate the encroachment; however, there is an additional area on the site that should be included in the CBCA lot coverage calculations that is not currently considered. The area is currently labeled as an existing playground with a mulch groundcover; however, the material covering this area of the site has been determined to be a matting type of material. While this material may allow water to infiltrate, it is considered CBCA lot coverage by definition, and should be included in the lot coverage calculations. The limits of the matting should be clearly shown on the plan including a label with the area in square feet. While this material technically meets the definition of CBCA lot coverage, it is a permeable material and is located outside of the buffer. The driveway encroachment and the playground matting are both unique existing site conditions, neither is the result of any violation, and because both of these areas of lot coverage are located outside the buffer, it seems reasonable to allow these areas of lot coverage to remain under the current variance request because their removal would cause exceptional or undue hardship upon the applicant.

PGCPB No. 13-03
File No. CP-09003
Page 15

The removal of lot coverage is proposed both inside and outside the buffer. Outside the buffer, the applicant is proposing to remove 376 square feet of driveway. A small portion of the area proposed to be removed is located outside the boundary of the property and should not be counted as lot coverage removed from the site. Within the buffer, the applicant is proposing to remove 743 square feet of stone retaining walls, stairs, and landings that were constructed without a valid permit. However, the applicant wishes to retain a portion of the lot coverage within the buffer and has proposed the addition of approximately 160 square feet of lot coverage in the form of four (4) flared stairs instead of the existing landing at the bottom of the slope, two retaining walls to connect the hardscape proposed to remain after the removal of other walls, and a relocated chimney. The newly proposed stairs are located in the primary buffer and are not a necessary addition to the existing stairs to access the lower portion of the site. The relocated chimney may require a zoning variance for the side yard set-back and adds unnecessary lot coverage. It is recommended that the chimney be removed from the plan. The two proposed retaining walls are intended to provide slope stability and to connect two areas of hardscape that are proposed to remain; a set of stairs located within the primary buffer, and an elevated stone patio with stairs on both sides located in the secondary buffer.

While the elevated stone patio and surrounding stairs are a means to gain access to the waterfront portion of the site, it is an elaborate structure that was built without a permit, has questionable structural integrity, and is located within the secondary buffer. Other less invasive means of gaining access to the waterfront are available that would require less lot coverage, which is especially important within the buffer. It is recommended that the stone patio and surrounding stairs be removed because other less invasive means to gain waterfront access are available that would require significantly less lot coverage. Should the removal of these structures be approved, then the need for the two additional retaining walls proposed to connect the structure with the lower steps would no longer be necessary. Should the approval include the retention of these structures, the two proposed retaining walls would be necessary for support and grading purposes.

In summary, staff supports the variance requests for impacts to the steep slopes and additional clearing of existing developed woodland for the grading and site work necessary to implement mitigation measures and planting on the site. Not supporting these variances would prevent the applicant from providing much needed mitigation and meeting the intent of the consent order. Staff also supports exceeding the 15 percent CBCA lot coverage, if needed, for the unique circumstances of the neighboring

PGCPB No. 13-03
File No. CP-09003
Page 16

driveway encroachment and for the playground matting because both areas are located outside of the buffer, because the driveway location is by circuit court order, and because while the playground matting technically meets the definition of lot coverage, it is permeable. These areas of lot coverage should be allowed to remain under the current variance request because their removal would cause exceptional or undue hardship upon the applicant.

Staff does not support the variance requests for the placement of certain structures in the buffer or for exceeding the 15 percent lot coverage for certain structures located within the buffer. Specifically, the existing elevated stone patio and surrounding staircase are recommended to be removed. The proposed structures not supported are the four flared stairs located in the primary buffer and the relocated chimney. Should the elevated patio and surrounding stairs be approved to remain, the two proposed retaining walls would be necessary for support and grading purposes; however, should the patio and surrounding stairs be required to be removed, the two proposed retaining walls would not be needed.

It should be noted that the removal of the elevated stone patio and surrounding staircase would require a significant revision to the proposed grading scheme for the site including an increase in the limits of disturbance in order to achieve the ultimate stability of the slope. It should also be noted that the recommended mitigation requirements for this case have been based on the amount of lot coverage in the buffer and on the amount of area disturbed under violation, BVN 29773-2006. The recommended changes to the plan may affect the final amount of mitigation required.

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

The intent, purpose, or integrity of the General Plan or Master Plan will not be affected by the granting of this variance request.

- (b) Variances may only be granted by the Planning Board from the provisions of this Subtitle or Subtitle 5B for property located within the Chesapeake Bay Critical Area Overlay Zones where an appellant 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**

PGCPB No. 13-03
File No. CP-09003
Page 17

found, in addition to the findings set forth in Subsection (a), that:

- (1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;**

One special circumstance that exists is the fact that the property is subject to Consent Order #CAE 07-13341 which was issued to enforce a violation and requires the local approval of a Conservation Plan. Another inherent special condition is that there is a significant portion of the property delineated as steep and severe slopes. These slopes are incorporated, by definition, into the delineation of the secondary buffer. Mitigation efforts including grading for slope stabilization and the removal of impervious CBCA lot coverage requires impacts to the buffer, steep slopes, and developed woodland for implementation purposes. Without the grant of the requested variances to stabilize the slopes, remove and or reconstruct portions of the retaining walls and to perform additional grading and replanting of the slopes, the stability of the entire rear yard slope is at risk. The variances for impacts to the steep slopes and developed woodland are supported in order to perform the needed mitigation.

The property is currently improved with a permitted house, driveway, and deck/ patio. The variance requests to retain certain structures within the buffer and for exceeding the 15 percent lot coverage requirement for those structures are not supported under this variance finding because they are not necessary for reasonable and significant use of the entire lot. As discussed under variance finding (a)(2) above, reasonable and significant use of the entire lot is not at issue.

PGCPB No. 13-03
File No. CP-09003
Page 18

- (2) **A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;**

A literal interpretation of the provisions of the Critical Area Program and related ordinance would deprive the applicant from impacting the steep slopes and developed woodland in order to perform the needed mitigation work. These variances are supported.

Waterfront property owners throughout the Chesapeake Bay generally have reasonable access to abutting bodies of water. Reasonable access to the waterfront portion of the property can be gained by less invasive means that would require significantly less lot coverage than the structures currently under consideration. The variance requests to retain certain structures within the buffer and for exceeding the 15 percent lot coverage requirement for those structures are not supported under this variance finding.

- (3) **The granting of a variance would not confer upon an applicant any special privilege that would be denied by Critical Area Program to other lands or structures within the Critical Area;**

All property owners proposing impacts to the buffer, structures in the buffer, clearing in excess of 30 percent developed woodland, and exceeding the maximum 15 percent impervious CBCA lot coverage are required to obtain variances. Each application would be examined based on the parameters that it presents.

Granting of the variances for disturbance of steep slopes and for clearing of woodland in this instance would allow the applicant to perform much needed restoration of the property and to re-vegetation of the primary and secondary buffers. The variance requests to retain certain structures within the buffer and for exceeding the 15 percent lot coverage requirement for those structures are not supported under this variance finding.

PGCPB No. 13-03
File No. CP-09003
Page 19

- (4) The variance request 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 nonconforming, on any neighboring property;**

Prior to commencement of the grading and construction in the Critical Area which is the subject of local violation notices and the state's consent order, the applicant applied for and received a residential grading permit to replace old wooden stairs accessing the water and failing wooden retaining walls. While the work performed on the site to date was in excess of that approved with the permit, the current application proposes to reduce impervious surfaces, provide long-term stormwater management and short term sediment erosion control in order to re-grade the site to address slope stability issues. Re-planting of the slope is also proposed. The ultimate design is one that would have required the same variance requests regardless of the violation. Granting of the variances is discussed in detail under other variance findings. Obviously, the hardship(s) faced by the applicants cannot include removal of structures built without permission.

- (5) The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;**

Ultimately, the mitigation of the site will reduce the amount of stormwater and sediment entering the adjacent waterway, Broad Creek, and will serve to enhance water quality, fish, wildlife, and plant habitat beyond the existing site conditions. The proposed removal of impervious lot coverage from the property, especially within the buffer, will allow the final site conditions to

PGCPB No. 13-03
File No. CP-09003
Page 20

have less impervious surfaces to drain into Broad Creek than what exists today. The proposed addition of stormwater management features including roof leaders and a bioretention facility will treat the runoff from a majority of the impervious surfaces prior to release into Broad Creek. The proposed re-grading of the steep slopes will provide stability and lessen the risk of slope failure which could otherwise cause excessive sediment to enter into Broad Creek, among other inherent health, safety, and welfare risks. And, while some existing vegetation is proposed to be removed to achieve the long-term stability of the slopes, overall the proposed re-planting of the slope will provide vegetation coverage exceeding what was there before the violation.

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

See discussion for Finding 5 above.

- (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;**

See discussion for Finding 5 above.

- (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 general spirit and intent of the State Critical Area Law is to allow reasonable use of properties within the Critical Area while preserving, enhancing and/or restoring vegetation within the primary and secondary buffers. The permanent activities proposed within the Critical Area are for passive recreational uses for the homeowner and their guests. Overall the proposed re-

PGCPB No. 13-03
File No. CP-09003
Page 21

planting of the slope will provide vegetation coverage exceeding what was there before the violation.

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

No growth allocation is proposed for this property.

Summary of the Critical Area Request for Variances

This application includes a statement of justification for four variance requests from the following sections of code: Section 5B-114(e)(8) for exceeding the maximum 15 percent CBCA impervious lot coverage; Section 5B-121(e) for the placement of structures in the buffer; Section 5B-114(c)(7) for disturbance of slopes 15 percent or greater; and Section 5B-114(e)(5) for clearing of natural or developed woodland in excess of 30 percent.

Staff recommends approval of the requested variances for disturbance of slopes 15 percent or greater, for clearing of natural or developed woodland in excess of 30 percent, and for exceeding the maximum 15 percent CBCA impervious lot coverage, if needed, for the retention of the neighbor's driveway encroachment and the playground, but not specifically for the retention of structures in the buffer. The Planning Board supports the variance request for the placement of structures in the buffer for the retention of the lower stairs only.

Staff does not support the variance request for the retention of the existing elevated patio and surrounding stairs within the secondary buffer. It is recommended that the structures be removed. It is also recommended that the addition of the four flared stairs proposed within the primary buffer and the addition of the two retaining walls proposed to connect the elevated patio and stairs with the lower stairs, be required to be removed from the plan. It is also recommended that the proposed relocated chimney be removed from the plan.

The Critical Area Commission (CAC) provided a referral letter dated November 27, 2012 which included and evaluation of three (3) variances: (1) to exceed the 15 percent lot coverage limit; (2) to disturb the 100-foot Primary Buffer and expanded Secondary Buffer for steep slopes; and (3) to disturb slopes 15 percent or greater. It should be noted that the applicant is also requesting a variance for clearing in excess of 30 percent of the developed woodland. The concerns of the Critical Area Commission (CAC) with respect to the variance findings include the following:

- a. They do not believe that the applicant has proven "unwarranted hardship" for the retention of the structures in the buffer.

PGCPB No. 13-03
File No. CP-09003
Page 22

- b. They specifically call attention to the elevated patio and surrounding stairs and do not find that retention of the structure meets the variance standards.
- c. They recommend against the four proposed steps located at the bottom of the hill and the relocation of the chimney.

The CAC referral letter also addresses concerns regarding the proposed planting shown on the plan.

Environmental Review

This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area.

An exemption letter will be issued upon approval of the Conservation Plan.

A Conservation Plan is required to show all existing and proposed lot coverage on the site with calculations to confirm the property is in compliance with the requirements for Zoning Ordinance lot coverage and Chesapeake Bay Critical Area (CBCA) lot coverage. Tables A, B and B1 were provided to show the breakdown of all surfaces on-site and how they do or do not count toward lot coverage.

The limit of Zoning Ordinance lot coverage per Section 27-442(c) of the Ordinance is 25 percent of the net lot area or 9,342 square feet for the subject lot. The existing Zoning Ordinance lot coverage as shown in Table A on the plan is 4,661 square feet or 12.47 percent of the net lot area. The total lot coverage proposed to be removed is 376 square feet. No additional zoning lot coverage is proposed. However, based on the information shown on the plan, staff has determined that the lot coverage areas are slightly different than what is represented in the table. Table A needs to be revised to accurately reflect what is proposed on the plan. The total proposed zoning lot coverage is within the limits allowed per Section 27-442(c).

The limit for CBCA lot coverage, per Section 27-548.17 and Section 5B-114(e)(8) of the County Code, is 15 percent of the gross lot area or 5,932 square feet. According to the calculations provided in the tables on the plan, the existing CBCA lot coverage equals 7,744 square feet or 19.58 percent of the site. Because portions of the existing lot coverage are the result of a violation, 1,119 square feet of lot coverage is proposed to be removed (743 square feet within the buffer and 376 square feet outside of the buffer). The proposed total CBCA lot coverage as shown in Table B on the plan is 6,625 square feet or 16.75 percent of the site. However, based on the information shown on the plan, staff has determined that the lot coverage areas are slightly different than what is represented in the tables. Also, a small portion of lot coverage is proposed to be removed off-site, from the existing driveway. Because the lot coverage calculations are based on the site area, credit

PGCPB No. 13-03
File No. CP-09003
Page 23

for the off-site removal cannot be counted. The plan must be revised to remove this small area of lot coverage removal.

Tables B and B1 need to be revised to accurately reflect what is proposed on the plan. The total CBCA lot coverage proposed with this plan exceeds the limits allowed per Section 27-548.17 and Section 5B-114(e)(8) of the County Code; however, a variance has been requested. Any plan revisions required as part of the variance approval must be reflected in updates to the lot coverage tables.

Projects in the Critical Area are required to preserve and/ or restore developed woodlands to the greatest extent practicable, per Section 5B-114(e)(3). Clearing of developed woodlands in excess of 30 percent is prohibited without a variance from Section(e)(5). This site must also meet the 15 percent developed woodland requirement, per Section 5B-114(c)(6)(D).

The plan indicates that clearing was done under the violation and that additional clearing is proposed to provide necessary slope stabilization and other aspects of the proposed mitigation. A variance for clearing in excess of 30 percent has been requested.

A developed woodland table has been shown on the plan; however, based on the information shown on the plan, staff has determined that the woodland clearing areas are slightly different than what is represented in the table. The developed woodland table needs to be revised to accurately reflect what is proposed on the plan in accordance with the Environmental Planning Section's attachment 3. The total developed woodland on-site subsequent to the proposed mitigation planting will exceed the 15 percent developed woodland requirement; however, planting in addition to what is currently proposed on the plan is recommended and discussed in detail below.

The consent order requires that the applicant re-establish a fully functioning vegetated buffer on the property. The mitigation plan approved with the consent order showed the proposed planting of a variety of native trees, both canopy and understory, evergreens, shrubs, and groundcover. While the Conservation Plan currently under review has been revised to remove areas of lot coverage and to re-grade portions of the slopes, the requirement to fully re-establish the buffer with a mix of native species remains.

The plant list currently shown on the plan indicates that credits are being sought for existing vegetation to remain. There are no provisions in the code to allow for credits to be granted for undisturbed vegetation. The existing vegetation listed in the proposed plant list must be removed.

Several planting abbreviations have been shown on the plan that do not appear to have been listed in the planting table, likewise, several plants are listed in the planting table that have not been assigned abbreviations. The plan and the table must be updated to consistently show the abbreviations for all proposed plant material.

PGCPB No. 13-03
File No. CP-09003
Page 24

The amount of plant material shown on the Conservation Plan currently under review contains a comparable amount of plant material as that shown on the consent order plan; however, the current plan shows open space within the buffer that should be planted and areas where only overstory plants have been proposed where the addition of understory and groundcover would be appropriate. Also, the current plan shows several large trees proposed to be planted within close proximity to the embankment of the bioretention area. Planting of the bioretention area and within close proximity of the embankment should be done in accordance with the DPW&T standards. These trees should be relocated to other more appropriate areas of the site.

A large open area is currently proposed between the bottom step and the bioretention area. This area is located within the primary buffer and is a high priority area for planting. This area should be shown with a mix of overstory trees, understory trees, shrubs, and groundcover. The only areas currently proposed to be planted with shrubs are within the secondary buffer. In addition to the trees currently proposed, the addition of shrubs and groundcover must be planted within the primary buffer, on both sides of the stairs, in the area directly below the bottom steps, to the west of the bioretention area, and any other appropriate areas within the primary buffer. A mix of overstory, understory, shrubs, and groundcover is important for the re-establishment of a fully functioning vegetated buffer.

As discussed below, mitigation requirements remain on-site that have not been addressed with on-site planting. The required additional planting will not only serve to provide a fully vegetated buffer, but will also off-set the cost of paying a fee-in-lieu for any credits that cannot be met on-site.

The Critical Area Commission (CAC) referral letter dated November 27, 2012 addresses concerns regarding the proposed planting shown on the plan. Because the plan has changed from what was approved with the consent order, and in order to ensure the end result is a fully forested Buffer, the Critical Area Commission staff has requested the opportunity to approve the details of the planting plan prior to certification.

The code allows for the mitigation requirements to be considered cumulatively for violations; however, because the main concern with this application is to allow for mitigation to move forward, mitigation for this site should be based on the lot coverage approved in the buffer and for the amount of area disturbed under violation notice BVN 29773-2006. Because the mitigation of the site requires extensive grading, most of which overlaps the grading done under violation, it is not recommended that the additional disturbance be subject to additional mitigation requirements. Additional mitigation for the clearing of developed woodland and for the proposed limits of disturbance should not be considered cumulatively.

Several tables, labeled as CBCA violation calculations (for disturbed area), CBCA variance calculations (for lot coverage in the buffer), and CBCA mitigation summary

PGCPB No. 13-03
File No. CP-09003
Page 25

table, are shown on the plan to address the required mitigation; however, staff has determined that the information provided in these tables needs to be revised to accurately represent the mitigation requirements. The tables should be revised in accordance with the Environmental Planning Section's attachments 4, 5, and 6. These tables may need to be further revised to address other conditions of approval.

The Violation Calculations table (EPS attachment 4) is for the area disturbed under the violation. This table needs to be revised to address the 4:1 mitigation rate for disturbance within the buffer in accordance with Sections 5B-111(j)(3)(A)(ii) and 5B-119(e)(2). The 6,400 square feet of disturbance outlined in the County's notice of violation should be shown in the table at a 4:1 replacement ratio.

The Variance Calculations (EPS attachment 5) table needs to be revised to account for the 3:1 mitigation rate required for the variance for lot coverage within the buffer in accordance with Section 5B-121(h)(2). The table also needs to be revised to be based on the final amount of impervious lot coverage proposed within the buffer.

The Mitigation Summary table (EPS attachment 6) needs to be revised to account for the required changes to the Violation Calculations, the Variance Calculations, and to account for the additional on-site planting discussed above. Any mitigation that cannot be met with additional on-site planting must be reflected as such in the table and addressed with fee-in-lieu in the amount of \$1.50 per square foot.

The Conservation Plan requires some technical changes to be in conformance with the Chocoma Bay Critical Area regulations. Sheet one of the plan set is labeled as a Conservation Plan. The remaining sheets of the plan set need to be revised to include the label, "Conservation Plan." The CBCA general notes need to be revised as follows: note 19 needs to be revised to identify the specimen tree located on-site; note 20 needs to be revised to accurately reflect the amount of existing lot coverage in the 100-foot buffer; and note 21 needs to be revised to accurately reflect the proposed increase or decrease of lot coverage within the 100-foot buffer. A duplicate existing treeline is currently shown on the plan. The plan needs to be revised to show a single treeline. A separate shrub line has been shown which outlines the location of existing shrubs. The shrub information has been sufficiently reflected on the plan. Several areas of existing lot coverage are appropriately labeled as being proposed for removal; however, several new areas of lot coverage are proposed. The areas of newly proposed lot coverage need to be labeled with the square footage of proposed lot coverage. The critical root zone for the specimen tree needs to be revised to reflect a 1.5:1 (critical root zone radius in feet: diameter at breast height in inches).

The site has an existing revetment along the shore which is currently labeled as being removed; however, the current application has not included any information pertaining to the removal of the wall. The label indicating that the wall is proposed to be removed needs to be removed from the plan. A pathway is shown on the plan and labeled as "future

PGCPB No. 13-03
File No. CP-09003
Page 26

pathway access to bulkhead and pier.” The pathway is not part of the current application. The pathway and note need to be removed from the plan.

Access to the neighboring property is shown on the plan and labeled as an encroachment per Prince George’s County Circuit Court Case CAL-02-21873. If the driveway access is an easement, the easement information should be shown on the plan. A proposed fence is shown along the northwestern property boundary that would impede access to the neighbor’s property from the driveway. This portion of the fence must be removed.

A Chesapeake Bay Conservation and Planting Agreement will be required to be executed and recorded prior to permit approval for development of the site.

An approved Stormwater Management Concept Plan and Approval Letter (No. 10260-2010-00) were submitted with the subject application. The plan shows the use of a bioretention facility located on the lower portion of the property, within the primary buffer. Several roof drains are proposed to be piped from the house to the bioretention facility.

The Conservation Plan shows the same concept features, and according to the Department of Public Works and Transportation (DPW&T) referral response received by the M-NCPPC Planning Department on November 2, 2012, the current Conservation Plan under review is consistent with the approved concept plan.

No revisions are required for conformance with the approved Stormwater Management Concept Plan. A technical approval will be required prior to the issuance of any permit.

An on-site meeting was held September 10, 2012 with representatives of the Soil Conservation District, the Department of Public Works and Transportation, the Critical Area Commission, and the M-NCPPC Planning Department, to discuss concerns regarding plans submitted showing a concept to remove several walls and to re-grade the slope to address long-term slope stability. This concept was new at the time of the meeting and has been reflected on the plans currently under review.

As a result of the meeting, the Soil Conservation District provided the applicant with several recommended plan revisions, and according to the referral response received by the Planning Department on November 20, 2012, the Conservation Plan currently under review has conceptually addressed those comments.

No additional information is needed with respect to grading or sediment erosion control as concerns the conservation plan; however, the applicant will be required to obtain approval from the Soil Conservation District for final grading and sediment erosion control plans prior to the issuance of any permit.

PGCPB No. 13-03
File No. CP-09003
Page 27

The Environmental Planning Section recommends approval of Conservation Plan, CP-09003 (Indian Queen Estates, Lot 3, Block G – Casey Property) and the associated variances subject to conditions.

3. **Soil Conservation District**—The Soil Conservation District stated that that their prior comments have been conceptually addressed as shown on Sheet 2 of 3 of the submitted Conservation Plan.
4. **Department of Public Works & Transportation (DPW&T)**—The Department of Public Works & Transportation stated the following concerning the Conservation Plan application:
 - a. The property is located approximately 200 feet south of the intersection of Indian Queen Point Road and Kiskonko Road.
 - b. All storm drainage systems and facilities are to be in accordance with DPW&T's Specifications and Standards.
 - c. All improvements within the public right-of-way and on-site are to be in accordance with the County Road Ordinance, DPW&T's Specifications and Standards and the Americans with Disabilities Act.
 - d. A Conservation Agreement and a Planting Agreement will be required.
 - e. The proposed site development is consistent with the approved DPW&T Stormwater Management Concept Plan 10260-2010, dated April 29, 2010.
 - f. A site development permit will be required for the proposed grading to install bioretention, retaining wall and landscaping improvements.
 - g. A floodplain approval will be required prior to the issuance of the site development permit.
 - h. DPW&T does not support keeping any unauthorized structures in place, including retaining walls, if they are not reviewed, approved, and permitted by the County's building code officials.

In an e-mail dated September 11, 2012, DPW&T commented on the portion of the driveway that is proposed to be removed by stating that the minimum width for a driveway apron is ten feet wide. Sheet 1 of 3 of the Conservation Plan demonstrates that the driveway apron will be reduced to no more than 16 feet in width.

PGCPB No. 13-03
File No. CP-09003
Page 28

In an e-mail dated November 30, 2012, DPW&T further stated that the revised referral package was reviewed by the District Engineer and the plan addresses most of their concerns. DPW&T further requested that the curb and gutter that is proposed to be removed along the driveway be replaced along the portion of the driveway that is proposed to remain on the site.

5. **Urban Design**—The Urban Design Section stated that the application for landscape improvements to an existing single-family residence is exempt from the applicable sections of the 2010 *Prince George's County Landscape Manual* (Landscape Manual). Section 1.1(e)(1) of the Landscape Manual states that because building, grading, and use permits pertaining to any existing single-family home are exempt from the requirements of Section 4.1, Residential Requirements. No other sections of the Landscape Manual are applicable to the subject project.

The Urban Design Section recommends that the subject application be referred to the Environmental Planning Section and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays for review and comment.

6. **Trails**—The Trails Section stated that there are no sidewalks in the vicinity of the subject property. Indian Queen Point Road is open section. The nearest master planned on-road bikeways and trails occur on Oxon Hill Road (bike lanes), which is part of the Potomac Heritage National Scenic Trail, and a trail easement that lies west of the subject property south of Edgewater Terrace. These facilities do not directly affect the subject application.

7. **Historic Preservation**—The Historic Preservation Section stated the following concerning the Conservation Plan:

Phase I archeological survey is not recommended on the above-referenced 0.91-acre property located at 9923 Indian Queen Point Road in Fort Washington, Maryland. A house was built on the property around 1974 according to tax records. The landscape has been significantly altered since that time with the addition of retaining walls and other landscape features. A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low due to the degree of disturbance.

However, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal monies, or federal permits are required for a project.

8. **Permit Review**—The Permit Review Section provided several comments concerning the Conservation Plan application, most of which have already been addressed thru subsequent plan revisions. The following comment still pertains to the application:

PGCPB No. 13-03
File No. CP-09003
Page 29

- All structures which had permits issued to construct have either expired or have been revoked by DER. Should the Conservation Plan be approved, permits will need to be obtained to validate the work which has been done.
9. **Department of Parks and Recreation (DPR)**—The Department of Parks and Recreation stated that the proposed Conservation Plan does not impact any existing or future parkland.
 10. **Maryland State Highway Administration (SHA)**—There were no comments concerning the Conservation Plan application.
 11. **Prince George's County Health Department**—There were no comments concerning the Conservation Plan application.
 12. **Potomac Electric Power Company (PEPCO)**—There were no comments concerning the Conservation Plan application.
5. **Recommended Findings**
1. The site is known as Lot 3, Block G and is located in the Indian Queen Estates Subdivision. The property is the subject of a record plat that was recorded in Prince George's County Land Records on March 6, 1997 as VJ 178@75, containing 39,547 square feet or approximately .91 acres.
 2. 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 of the property is 39,547 square feet. According to survey information, the 100-year floodplain occupies 2,178 square feet of the property, and no wetlands exist on the site. The net tract area of the property is approximately 37,369 square feet.
 3. The minimum lot width at the front street line permitted by Section 27-442, Table III, Footnote 3, of the Zoning Ordinance is 70 feet. The property has 125.36 linear feet of street frontage along Indian Queen Point Road.
 4. The minimum lot width at the front building line permitted by Section 27-442, Table III, of the Zoning Ordinance is 80 feet. The lot width at the existing building line is approximately 125 feet.
 5. The minimum front yard setback permitted by Section 27-442, Table IV, of the Zoning Ordinance is 25 feet. The existing front yard setback is approximately 111 feet to the carport and 140 feet to the existing single-family residence.

PGCPB No. 13-03
File No. CP-09003
Page 30

6. The minimum side yards permitted by Section 27-442, Table IV, of the Zoning Ordinance are a combined total of 17 feet with a minimum of eight feet on any one side. The existing side yard setbacks are 28 feet along the western property line and 27 feet along the eastern property line. The revised Conservation Plan proposes a "relocated chimney" along the western property line that is outside the limits of the CBCA Secondary Buffer. The plan provides no information on the height of the proposed structure. Therefore, staff is unable to determine if the proposed structure is in compliance with the minimum side yard setbacks required in the R-R Zone.

However, due to the violations on the site and the pending Consent Order and Agreement that the applicant has entered into with the Attorney General's Office, the purpose of the subject application should be to mitigate prior unauthorized disturbances in the CBCA, and not to propose new structures, (or relocate illegally-constructed structures), that have nothing to do with mitigating the site. As a result, staff has recommended that the proposed chimney be removed from the plan prior to certification.

7. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. The existing rear yard is approximately 176 feet. However, the plan incorrectly shows a rear setback of 111 feet. The correct rear setback should be reflected on the Conservation Plan prior to certification.
8. The maximum height for main buildings permitted by Section 27-442, Table V, of the Zoning Ordinance (without requiring additional side yard setbacks) is 35 feet. The height of the existing carport is 14 feet. The height of the existing single-family residence is 17 feet at its lowest point, and 24.5 feet at its highest point.

Comment: The Planning Board agrees with the analysis and comments herein, and hereby adopts Findings 1-8 and Variance Findings on pages 12-21 as their own.

9. **At the Public Hearing**—This application was continued from December 13, 2012 to January 10, 2013 in order to allow the applicant additional time to pay an outstanding violation fee (BVN-29773-2006). Section 5B-111(p)(3) states, among other things, that a final decision shall not be made by the Planning Board on the variance request until all such corrective work has been completed and the fine paid, and that the applicant is responsible for providing information verifying the status of the violation prior to the Planning Board's decision regarding the variance request.

At the time of the initial public hearing for this case on December 13, 2012, the applicant had not paid the outstanding violation fee, and therefore, the Planning Board was unable to make a final decision on the four variances that were requested with the conservation plan application. As a result, the Planning Board decided to continue the case from the December 13, 2012 public hearing, to the January 10, 2013 public hearing in order to allow the applicant additional time to pay a 2006 violation fee (BVN-29773-2006). On January 8, 2013, the Planning Board received confirmation from the Department of Public

PGCPB No. 13-03
File No. CP-09003
Page 31

Works and Transportation (DPW&T) that the outstanding violation fee had been paid by the applicant.

At the public hearing on January 10, 2013, the applicant's attorney requested that the language in Condition 1(d) be revised to remove the following language;

"in accordance with the Environmental Planning Section's Attachments 1 and 2".

The Planning Board was in agreement with the applicant's request and Condition 1(d) has been revised accordingly.

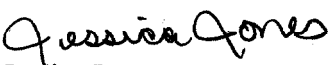
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the adoption of this Resolution.

* * * * *

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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Shoaff and Hewlett voting in favor of the motion at its regular meeting held on Thursday, January 10, 2013, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 31st day of January 2013.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:JF:arj


APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department

Date

1/23/13