



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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PGCPB No. 16-131

File No. CP-15005

RESOLUTION

WHEREAS, Werrlein Property is the owner of a 0.3902-acre parcel of land in the 5th Election District of Prince George's County, Maryland, being zoned One-Family Detached Residential (R-55) and Intense-Development Overlay (I-D-O); and

WHEREAS, on September 22, 2016, Werrlein Property filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a new single-family detached dwelling on each vacant lot within an existing single-family housing development; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-15005 for East Hyattsville, Lots 16 and 17, Block F, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on November 10, 2016, for its review and action in accordance with Zoning Ordinance, Subtitle 27, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on November 10, 2016, 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-15005, East Hyattsville, Lots 16 and 17, Block F, for the purpose of constructing a new single-family detached dwelling on each vacant lot within an existing single-family housing development, with the following condition:

1. Prior to signature approval of the conservation plan, the Chesapeake Bay Critical Area (CBCA) plan set shall be revised as follows:
 - a. Remove Table B from the plan.
 - b. The applicant shall execute and record a Chesapeake Bay Conservation and Planting Agreement. The agreement shall be reviewed by the County prior to recordation. The applicant shall provide a copy of the recorded agreement to M-NCPPC and the liber/folio shall be shown on the conservation plan approval block.
 - c. Add a note to the plan indicting the applicable exemption from the Prince George's County Tree Canopy Coverage Ordinance.

- d. Add a note on the site plan stating that there are no fish, plant, or wildlife habitats, as described in the Conservation Manual that could be adversely impacted by the proposed development.

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

- A. **Nature of the Applicant's Request:** The subject application requests two lots (Lots 16 and 17) more specifically known as 5105 and 5107 Emerson Street in Hyattsville, Maryland, located within the Chesapeake Bay Critical Area (CBCA). The site is currently unimproved. The proposal is to construct a new single-family detached dwelling on each vacant lot within an existing single-family housing development. The conservation plan approval is required because the entire site lies within the CBCA. A CBCA conservation plan is required prior to issuance of any permit by Prince George's County. The Planning Board is the final approving authority for CBCA conservation plans. The 0.39-acre property is located in the One-Family Detached Residential (R-55) and Intense-Development Overlay (I-D-O) Zones.

The applicant also requested variances from Section 27-442(d) (minimum lot width at front building line), and 27-442(e) (side yard setbacks) of the Zoning Ordinance. The variance requests are as follows: (1) the site does not meet the minimum 65 linear feet lot width at the front building line; and (2) the proposed houses do not meet a total of 17 feet with a minimum 8 feet side yard setbacks requirement per Zoning Ordinance. Therefore, the application included variances.

Site Description .

The 0.39-acre property addressed 5105 and 5107 Emerson Street is located on the south side of Emerson Street, approximately 550 feet west on Emerson Street from its intersection with 52nd Avenue. The subject property is wholly within the Chesapeake Bay Critical Area (CBCA). The property does not contain streams, wetlands, or woodlands, however, it does contain Critical Area 100-foot primary buffer, secondary buffer, and 100-year floodplain. The predominant soils found to occur according to the U.S. Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Web Soil Survey (WSS), include the Cordorus-Hatboro-Urban land and Zekiah-Urban land complex soils. According to available information Marlboro clay and Christiana complexes are not found to occur on this property. The site is not located within a Sensitive Species Protection Review Area nor does it have State or Federal Rare, Threatened or Endangered species within the boundary area. No scenic or historic roads are affected by this proposal. There is no significant nearby transportation-related noise source and the proposed improvements are not expected to be a noise generator. According to the 2005 *Approved Countywide Green Infrastructure Plan*, the entire site is within the Network Gap. The site is located within the Established Communities of the Growth Policy Map and Environmental Strategy Area 4 of the Regulated Environmental Protection Areas Map as designated by *Plan Prince George's 2035 Approved General Plan*.

B. **History:** An unrecorded plat shows that the subject lots were created in 1903. The subject property was brought into the Maryland-Washington Regional District on April 17, 1928. At that time, the property was placed in the "A" Residential Zone. On November 1949, the One-Family Detached Residential (R-55) Zone came into effect. Since the proposed site has never been the subject of a record plat, these lots are considered acreage created by deed. According to the earliest available aerial photographs from 1938, a single-family structure had existed on Lot 17. This house was later destroyed by fire; therefore, it was razed in 1993.

C. **Environmental Review:**

Natural Resource Inventory/Environmental Features

An approved Natural Resources Inventory Equivalence letter (NRI-230-15) was submitted with the review package, which was approved on November 25, 2015. The NRI verifies that Critical Area 100-foot primary buffer, 100-year floodplain and secondary buffer areas are located on-site.

No revisions are required for conformance to the NRI.

Conservation Plan

The plan labeled as a "Conservation Plan – 5105 & 5107 – Lots 16-17 Block F/East Hyattsville" contains the information such as existing conditions, stormwater management and landscape because these requirements are needed as part of the overall conservation plan for this site. Since there are no restrictions on impervious surfaces within the I-D-O, the subject conservation plan shall be revised to remove Table B.

No woodlands or regulated environmental features will be impacted as part of this application.

Chesapeake Bay Critical Area Commission (CAC) Review

No comments were received from CAC concerning this case.

Department of Permitting, Inspections and Enforcement (DPIE) Review

An approved Stormwater Management Concept plan and an approval letter (No. 54551-2015) were submitted with the subject application. The approved plan shows both houses have front and rear rooftop disconnections and four dry wells on each lot as the applicant's method of best management practices. These features serve to meet the site's water quality requirements. No quantity controls are required. This project also submitted a CBCA 10 percent pollutant-removal requirement worksheet. The proposed two lots are meeting the required pollutant-loading removal requirement with the previously mentioned best management practices methods.

No revisions are required for conformance with the approved Stormwater Management Concept.

Chesapeake Bay Conservation Agreements

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

Review of the Conservation and Planting Agreement falls under the purview of DPIE; however, recordation of this document is the responsibility of the property owner.

Prince George's County Soil Conservation Service (SCS) Review

No comments were received from SCS concerning this case.

D. Recommended Findings

1. Property has never been the subject of a record plat; therefore, these lots are considered acreage created by deed dated October 17, 1972 and recorded in Liber 4136 at folio 559.

Pursuant to Section 24-107(c)(7)(a) of the Subdivision Regulations, the site is exempt from the requirements of filing a preliminary plan of subdivision because the proposed use is for a single-family dwelling. Proposed dwellings will meet all the current zoning requirements except the minimum lot width and the front building line which is 65 feet and the lot width of 50 feet. The only grandfathering allowed by footnote 4 is in Section 27-442 which allows below 65 feet if the lots are shown on a record plat.

2. This site is not subject to the provisions of the Woodland Conservation and Wildlife Habitat Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area (CBCA).
3. The minimum net lot area required by Section 27-442(b), Table I, of the Zoning Ordinance is 6,500 square feet. The gross lot area, as indicated on the site plan is 8,500 square feet for each lot for total of 17,000 square feet for two lots.
4. No restrictions on impervious surfaces required per the CBCA regulations (Section 5B-113 of the Critical Area Ordinance) in the I-D-O Zone.
5. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) for each lot is 30 percent of the contiguous net tract area or 8,500 square feet. The proposed percentage of lot coverage, which includes the house footprint, and driveway, is 1,985 square feet or 23.4 percent for each house.
6. The minimum lot width at the street frontage permitted by Section 27-442(d), Table III, of the Zoning Ordinance is 45 feet. The lot width provided at the street frontage is 50 feet.
7. The minimum lot width at the front building line permitted by Section 27-442(d), Table III, of the Zoning Ordinance is 65 feet for one family detached in general. The site plan shows that the lot width at the front building line is 50 feet. Thus, a variance of 15 feet is requested.

8. The minimum front yard setback permitted by Section 27-442(e), Table IV, of the Zoning Ordinance is 25 feet for one-family detached dwellings, in general. The proposed front yard setback is 32 feet.
9. The minimum side yards permitted by Section 27-442(e), Table IV, of the Zoning Ordinance are a total of 17 feet with a minimum of 8 feet for one family detached dwellings, in general. The setbacks proposed for each lot is a total of 15 feet with a minimum of 7.5 on each side yard. Therefore, a variance of two feet of side yard setbacks are requested for each lot.
10. The minimum rear yard required by Section 27-442(e), Table IV, of the Zoning Ordinance is 20 feet for one-family detached in general. The proposed rear setback is 94 feet.
11. The maximum height permitted by Section 27-442(f), Table V, of the Zoning Ordinance is 35 feet. The proposed two story houses are expected to be 27 plus/minus a foot in height, which is below the maximum requirement.
12. Because the Planning Board is the final approving authority for CBCA conservation plans, it is also the approving authority for the requested variances.

E. **Variance Analysis:** Section 27-230(a) of the Zoning Ordinance contains findings required for all variances and provides as follows:

- (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 subject two lots were created by deeds in 1903, prior to the establishment of the current R-55 Zoning Regulations in November 1949. They were created in accordance with the Residential "A" zoning regulations in effect at the time: The subject lots, therefore, do not conform to the current regulations. The minimum lot width at the front building line at the time was required to be 50 feet and the minimum side yard setback was required to be not less than seven feet on each side of the main building. According to the applicants' statement of justification, a single-family house had existed on Lot 17, which was destroyed by fire and razed in 1993. Lot 16 always remained undeveloped. The extraordinary situation is that the applicant is currently unable to replace the existing house on Lot 17 and construct a new house on Lot 16 without being subject to current regulations because the lots are unrecorded. Without relief from the strict application of the Zoning Ordinance, the applicant will not be able to develop the property without consolidating two existing lots into one lot.

- (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, simply requests reconstruction of a single-family house on Lot 17 that had existed on the lot until 1993. If the house on Lot 17 had not been destroyed by fire, it would have been easier for the applicant to justify the variance request for the adjacent Lot 16 because it would have been difficult to widen the existing lot width to meet the current lot-width requirement. The requested variance is very reasonable and in keeping with the character of the existing neighborhood. The strict application of the Zoning Ordinance would cause undue hardship to develop the lots that were created over 113 years ago, long before zoning existed in this area.

- (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 *Plan Prince George's 2035 Approved General Plan* and the *2009 Approved Port Towns Sector Plan and Sectional Map Amendment*. The use of the site is for single-family detached residential development and it is in complete conformance with the recommendations of the General Plan and master plan.

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 CBCA 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 (PGCPB) (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.

- (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 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;**

- (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;
- (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;
- (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;
- (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;
- (6) The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;
- (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;
- (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
- (9) The growth allocations for Overlay Zones within the County would not be exceeded by the granting of the variance.

While the property is located in the CBCA Overlay Zone, it does not require a CBCA variance. Therefore, subparagraphs 1 through 9 are not applicable.

- F. **2010 Prince Georges County Landscape Manual:** The development proposal for two new single-family detached homes are subject the 2010 *Prince George's County Landscape Manual* (Landscape Manual) because the application is for new construction. The Landscape Manual applies as follows:

Section 4.1—Residential Requirements

The plan provides the schedule and plantings showing the requirements of Section 4.1 being met for lots smaller than 9,500 square feet through the planting of shade trees and ornamental trees.

Section 4.7—Buffering Incompatible Uses

The submitted plans note that all of the surrounding properties are single-family detached homes, which are compatible uses and would not require a buffer per Section 4.7. However, the adjacent property to the west, Lot 15, Block F, was previously subject to a Special Exception, SE-1556, approved in 1967 for a private educational institution. The property has a valid Use and Occupancy Permit, 27761-2006-00, issued in 2006 for a daycare. A daycare is identified as a low-impact use per Section 4.7, requiring a Type “B” buffer between it and the proposed home, including a 30-foot building setback, 20-foot landscaped yard, and 80 plant units per 100 linear feet. Since the special exception for a daycare was approved prior to the adoption of a Landscape Manual, the adjacent property provided no landscaping and, therefore, the full requirement is applicable to this property, specifically Lot 16, which directly abuts Lot 15. Based on the existing lot width, it would appear that the required bufferyard and building setback could not meet the normal requirements of the Landscape Manual. An Alternative Compliance application should be submitted and reviewed prior to the subject application being scheduled for a public hearing.

According to the site visit, the adjacent Lot 15 currently does not have an operating daycare. It is being used a single-family home. This fact was verified with the Maryland Licensing and Inspection Department who had further verified that no daycare license had been issued for this property since 2009. Therefore, Alternative Compliance is not required as part of this application.

Section 4.9—Sustainable Landscaping Requirements

The correct Section 4.9 schedule and notes were provided on the plan indicating that all of the proposed plants are native species, which surpasses the requirements of this section.

- G. **Prince George’s County Tree Canopy Coverage Ordinance:** The entire subject property is located within the Chesapeake Bay Critical Area and is exempt from the requirements of the Tree Canopy Coverage Ordinance in accordance with Section 25-127(b)(1)(E). The Tree Canopy Coverage schedules provided on the plans shall be removed and replaced with a note regarding the exemption.
- H. **Urban Design:** Based on the above analysis, the only urban design-related issue for CP-15005, East Hyattsville, is the need to add notes to the plan indicating the applicable exemption from the Tree Canopy Coverage Ordinance.

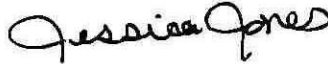
BE IT FURTHER RESOLVED, that an appeal of the Planning Board’s action must be filed with Circuit Court for Prince George’s County, Maryland within thirty (30) days following the adoption of this Resolution.

* * * * *

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 Bailey, seconded by Commissioner Washington, with Commissioners Bailey, Washington, Doerner, Geraldo, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, November 10, 2016, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 1st day of December 2016.

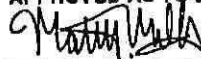
Patricia Colihan Barney
Executive Director



By Jessica Jones
Planning Board Administrator

PCB:JJ:TA:rpg

APPROVED AS TO LEGAL SUFFICIENCY.



M-NCPPC Legal Department

Date

11/23/16