

R E S O L U T I O N

WHEREAS, Paul P. Lutov is the owner of a 0.28-acre parcel of land in the 17th Election District of Prince George's County, Maryland, and being zoned Intense Development Overlay (I-D-O), One-Family Detached Residential (R-55), Mixed Use-Infill (M-U-I), and Development District Overlay (D-D-O); and

WHEREAS, on August 14, 2017, 4550 Rhode Island Avenue, LLC filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of an outdoor storage use on the property (Lots 31-33, Block A, part of Parcel 295, and Lot 46A), with a net reduction of 1,203 square feet of impervious surface; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-17003 for 4550 Rhode Island Avenue 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 9, 2017, 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 9, 2017, 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-17003, 4550 Rhode Island Avenue, for an outdoor storage use on the property (Lots 31-33, Block A, part of Parcel 295, and Lot 46A), with a net reduction of 1,203 square feet of impervious surface, with the following conditions:

1. Prior to certificate of approval of the conservation plan, a 10 percent pollutant reduction worksheet will be required for review by the Prince George's County Department of Permitting, Inspections and Enforcement, demonstrating that the post-development impervious area of the site will result in at least a 10 percent reduction in pollutant runoff from the site.
2. Prior to certification of the conservation plan, the applicant shall:
 - a. Execute and record a Chesapeake Bay Conservation and Planting Agreement. The agreement shall be reviewed by the Prince George's County Department of Permitting, Inspections and Enforcement prior to recordation. The applicant shall provide a copy of the recorded agreement to the Maryland-National Capital Park and Planning Commission, and the liber/folio shall be shown on the conservation plan approval block.

- b. Revise the reference in General Note 27 of the conservation plan from “Section 5B-119(n)” to Section 5B-121(n).”

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

1. **Request:** Approval of a conservation plan, pursuant to the Chesapeake Bay Critical Area (CBCA) Intense Development Overlay (I-D-O) Zone, in connection with the addition of the use of “outdoor storage” to the table of uses for the subject property in the 2004 *Approved Sector Plan and Sectional Map Amendment for the Prince George’s County Gateway Arts District* (Gateway Arts District Sector Plan and SMA) as a permitted use in the Neighborhood Arts and Production character area for Lots 31–33, Block A (and part of Parcel 295 and Lot 46A).
2. **Location:** The subject property is located on the north side of US 1 (Rhode Island Avenue), approximately 225 feet northeast of its intersection with Wallace Street. The property is also located in Planning Area 68 and Council District 2, in the town of North Brentwood.

3. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	I-D-O/R-55/M-U-I/D-D-O*	I-D-O/R-55/M-U-I/D-D-O
Use(s)	Vacant	Outdoor Storage
Acreage	0.2	0.2

Note: *The project is located in the CBCA I-D-O Zone. See Finding 7 for a detailed discussion of the project’s conformance with the requirements of the CBCA I-D-O Zone.

4. **Surrounding Uses:** The site is surrounded to the northeast by a building supply store and its adjacent storage in the M-U-I Zone; to the southeast by US 1 with commercial land use in the Urban Light Industrial (U-L-I) Zone beyond; to the southwest by vacant land and a single-family detached unit in the M-U-I Zone; and to the northwest by 41st Avenue and single-family detached units beyond.
5. **Previous Approvals:** The site is the subject of Stormwater Management Concept Plan 62162-2016-00, approved on July 26, 2017 and valid until July 26, 2020. The site is also the subject of Natural Resources Inventory NRI-024-2017, approved by the Planning Board on February 6, 2017.

6. **Design Features:** The subject property is improved with a building that was originally constructed in approximately 1940 and has been used generally by various commercial or industrial businesses, most recently, the sale of vintage house parts and radiators. The building shall be razed, and the site used for outdoor storage on Lots 31-33, Block A. No new buildings are herein approved.

The subject property is split-zoned, with the properties fronting on US 1 in the M-U-I Zone (Lots 31-33, Lot 46A, and Parcel 295, Block A), and Lot 10, Block A, fronting on 41st Avenue in the R-55 Zone, all within the CBCA (Intense Development Overlay (I-D-O)) Zone. Access to the site is to be solely from US 1; no access is proposed to 41st Avenue.

The Gateway Arts District Sector Plan and SMA superimposed the D-D-O Zone on the subject property, placing the property in both the Traditional Residential Neighborhood character area (Lot 10, Block A) and the Neighborhood Arts and Production character area (Lots 31-33, Lot 46A, and Parcel 295, Block A). Lots 31-33, Block A, were zoned M-U-I through this SMA as change number NBAPE-1, while Lot 10, Block A, was retained in the R-55 Zone. The subject property has frontage on both US 1 and 41st Avenue.

Originally, the submitted plan showed the southern portion of Lot 10 paved, with revised plans showing all paving to be removed, as Lot 10 is located in the Traditional Residential Neighborhood character area of the sector plan. The plans reflect to pave only those portions of the site located in the Neighborhood Arts and Production character (Lots 31-33, Lot 46A, and Parcel 295, Block A) of the sector plan, replacing the existing pavement on Lot 10, Block A, with additional landscaping.

COMPLIANCE WITH EVALUATION CRITERIA

7. **Chesapeake Bay Critical Area (CBCA) Ordinance:** The site is located within the CBCA I-D-O Zone; therefore, the site is subject to the CBCA regulations. The purposes of the I-D-O Zone, as outlined in Section 27-548.13 of the Prince George's County Zoning Ordinance, are to accommodate existing residential, commercial, or industrial land uses within the CBCA; to promote new residential, commercial, and industrial land uses in accordance with development intensity limits designated for the I-D-O Zone in this Subtitle; to conserve and enhance fish, wildlife, and plant habitats; and to improve the quality of runoff that enters the tributary streams of the Chesapeake Bay from developed areas. The regulations concerning the impervious surface ratio, density, slopes, and other provisions for new development in the I-D-O Zone are contained in Subtitle 5B of the Prince George's County Code, as follows:

Section 5B-113. – Intense Development Overlay (I-D-O) Zones.

- (e) Development standards. The following development standards must be demonstrated within the I-D-O Zone:**

- (1) For redevelopment plans, opportunities to reduce impacts on water quality generated by existing development shall be analyzed;**

The redevelopment of this site results in a reduction in the total area of impervious surface, with the planting of trees and shrubs in the reclaimed pervious area. The effects of these efforts on water quality will be analyzed with the review of the 10 percent pollutant reduction worksheet.

- (2) Urban Best Management Practices (BMPs) for stormwater treatment shall be considered and, where appropriate, implemented as part of all plans for development and redevelopment;**

The Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) has determined that, with less than 5,000 square feet of disturbance, this project is exempt from stormwater management requirements. However, since the property is within the I-D-O Zone, the 10 percent pollutant reduction worksheet is required and will be reviewed and approved by DPIE.

- (3) Stormwater shall be addressed in accordance with the following provisions:**

- (A) Development or redevelopment projects shall use technologies as required by applicable ordinances in order to minimize adverse impacts to water quality caused by stormwater.**
- (B) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the Critical Area 10% Rule Guidance Manual – Fall 2003 and as may be subsequently amended.**
- (C) In the case of new development, offsets shall be used if they reduce pollutant loadings by at least 10 percent of the pre-development levels. Guidance for compliance with this requirement is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003 and as may be subsequently amended.**

- (D) **Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures. Guidance regarding offsets is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance–Fall 2003.**

With the redevelopment of the site and the reduction in impervious area, the applicant must utilize technologies to minimize adverse impacts to water quality, or provide offsets if the 10 percent pollutant reduction cannot be achieved on-site. The review of the 10 percent pollutant reduction worksheet will determine compliance on-site, or if offsets will be required by DPIE as set forth in the Stormwater Management Concept Letter (62162-2016-00) dated July 26, 2017.

- (4) **There is no Critical Area lot coverage maximum in the I-D-O, however, where practicable, permeable areas shall be established in vegetation, and whenever possible, redevelopment shall reduce existing levels of pollution.**

Currently the site contains 12,108 square feet of impervious surface, and with this approval the new impervious area will be 10,825 square feet. A reduction of 1,283 square feet of impervious surface is proposed. As indicated, there is no maximum for CBCA lot coverage within the I-D-O.

- (5) **Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within the I-D-O.**

This site does not contain shoreline or any reasonable means of accessing the shoreline. As discussed in Finding 9.g., the Planning Board herein approves the CBCA plan (CP-17003).

8. **Prince George's County Tree Canopy Coverage Ordinance:** The Tree Canopy Coverage Ordinance became effective on September 1, 2010. The subject property, located entirely within the CBCA, is exempt from the Tree Canopy Coverage Ordinance, in accordance with Section 25-127(b)(1)(E) of the County Code.
9. **Further Planning Board Findings and Comments from Other Entities:** The subject approval was referred, and the comments are summarized as follows:

a. **Environmental Planning—**

Background

The Planning Board previously reviewed the following applications and associated plans for the subject site:

Development Review Case	Associated Tree Conservation Plan	Authority	Status	Action Date	Resolution Number
NRI-024-2017	N/A	Planning Board	Approved	2/06/2017	N/A
CP-17003	N/A	Planning Board	Pending	Pending	Pending
DSP-16053	N/A	Planning Board	Pending	Pending	Pending

Proposed Activity

The current approval is for the demolition of the existing structure and redevelopment of the site as a paved surface for outdoor storage.

The property is currently developed with a commercial structure and parking. The site is not within the 100-year floodplain; however, The Federal Emergency Management Agency (FEMA) has determined that it falls within Zone AH, with a ponding depth of two feet. The ponding results from an interior drainage analysis on the landward side of the levee. The predominant soils found to occur, according to the U.S. Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Web Soil Survey include the Codorus-Hatboro-Urban land complex (frequently flooded), which are hydric soils. Due to the distance to tidal waters, approximately 590 linear feet, this site is not within the secondary buffer, in accordance with the provisions in Section 5B-121(a)(1)(C)(v) of the County Code. 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. No scenic or historic roads are affected by this proposal. According to the approved 2017 *Countywide Green Infrastructure Plan*, the property is entirely within an evaluation area. 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.

Variances

This approval does not require any CBCA variances for the proposed development.

Chesapeake Bay Critical Area Commission (CAC) Review

Comments were received from the CAC concerning this case. They stated that they had no concerns regarding its approval.

Environmental Review

This approval is to remove existing impervious areas and replace them with landscape areas, for a net decrease in impervious surface. Currently, the site contains 12,108 square feet of impervious surface and, with this approval, the new impervious area will be 10,825 square feet. A reduction of 1,283 square feet of impervious surface is proposed. There is no maximum for CBCA lot coverage within the I-D-O Zone.

Department of Permitting, Inspections and Enforcement (DPIE)–Review

A copy of the approved Stormwater Management Concept Plan (62162-2016-00) and letter dated July 26, 2017 were submitted for the subject approval. The concept plan shows that the site is exempt from stormwater management requirements because the disturbance approved herein will remain below 5,000 square feet.

This property is not located within the FEMA 100-year floodplain; however, it has been determined by DPIE to be within a County floodplain, with a flood protection elevation of 27.1 feet. In the stormwater management concept approval letter, DPIE indicated that a floodplain waiver would not be required, since the existing building is being removed and no fill is proposed.

Prior to certification of the conservation plan, a 10 percent pollutant reduction worksheet is, by condition of this approval, required for review by DPIE, demonstrating that the post-development impervious area of the site will result in at least a 10 percent reduction in pollutant runoff from the site.

The “Conservation Plan–Chesapeake Bay Critical Area Plan for Congressional Commercial, LLC” contains information such as existing and approved conditions, Zoning Ordinance lot coverage calculations, and approved landscape plantings because these requirements are needed as part of the overall conservation plan for this site.

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

Natural Resources Inventory Plan

The subject site has an approved natural resources inventory (NRI-024-2017) dated February 6, 2017, which has been reviewed by the Planning Board. The existing conditions of the site are correctly shown in this conservation plan approval.

Chesapeake Bay Conservation and Planting Agreement

A Chesapeake Bay Conservation and Planting Agreement is required, by condition of this approval, to be executed and recorded prior to certificate approval of the plans for the subject project.

Chesapeake Bay Conservation Easement

A conservation easement is not required. The site does not contain any woodland.

- b. **Prince George's County Department of Permitting, Inspections and Enforcement (DPIE)**—In a memorandum dated October 13, 2017, DPIE noted that, as US 1 is a state road, coordination regarding any required frontage improvements needs to be with SHA and, as 41st Avenue is a Town of Brentwood road, coordination regarding any required frontage improvements needs to be with the Town of Brentwood. Additionally, noting that the subject site is located within the CBCA and contains floodplain, DPIE stated that development of the site requires approval of a CBCA conservation plan prior to issuance of permits for the project, that coordination with DPIE would be necessary at the time of permit, and that the project is in conformance with approved Stormwater Management Concept Plan 62162-2016 dated July 26, 2017.

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 Doerner, with Commissioners Washington, Doerner, Bailey, Geraldo, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, November 9, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of November 2017.

Elizabeth M. Hewlett
Chairman



By Jessica Jones
Planning Board Administrator

EMH:JJ:RG:rpg

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department
Date 11/20/17