



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 11-92

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File No. CP-96002/01

R E S O L U T I O N

WHEREAS, Joseph C. Lomax, Jr., is the owner of a 0.43-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned Rural Residential (R-R) and Chesapeake Bay Critical Area Limited Development Overlay (L-D-O); and

WHEREAS, on April 22, 2011, Joseph C. Lomax, Jr., filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of amending the existing CBCA conservation plan to validate an existing gazebo and update the plan to show current conditions. The applicant also seeks a variance from Section 5B-121(a)(1)(A) of the County Code to allow development within the primary buffer; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-96002/01 for Eagle Harbor, Lots 12-18, Block 23, including Variance Request VC-96002/01, 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 October 6, 2011, 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 October 6, 2011, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Section 27-548.11 of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-96002/01, for a variance and further APPROVED Conservation Plan CP-96002/01, Eagle Harbor, Lots 12-18, Block 23 with the following conditions:

1. Prior to certification of the conservation plan, the plan shall be revised follows:
 - a. Show the aerial extent of canopy cover, or a drip-line measurement, for all existing trees on-site and provide a label for each tree with the associated measurement in square feet.
 - b. Revise the calculations provided in the Planting and Buffer Management Plan Notes as follows:
 - (1) Show the use of one-inch cherry trees at a credit ratio of 100 square feet per tree.

- (2) Demonstrate that the mitigation requirement can be met with the planting of one-inch cherry trees as shown on the plan because mitigation must be met with planting. Additional planting may be added if necessary to meet this requirement.
 - (3) Demonstrate that the 15 percent afforestation requirement can be met with a combination of the existing vegetation (as measured by the canopy coverage or drip line) and the planting shown on the plan. Additional planting may be added if necessary to meet this requirement.
- c. Revise Table B-1 to reflect the correct amount of total proposed lot coverage (3,470 square feet).
 - d. Revise Table A to reflect calculations based on the net lot area.

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

1. The site consists of Lots 12-18, Block 23, of Eagle Harbor (Plat Book 3, Plat 22) and is recorded in the Prince George's County Land Records at Liber 30607, Folio 350. The site contains 18,730 square feet or 0.43 acre.
2. This site is not subject to the provisions of the Woodland Conservation and Wildlife Habitat Ordinance because the entire site is within the Chesapeake Bay Critical Area (CBCA). A letter of exemption will be issued and must accompany any permit applications.
3. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is 10,000 square feet. The gross lot area, as indicated on the deed for the property is 18,730 square feet. According to survey information, the 100-year floodplain occupies 3,630 square feet of the property. The net tract area is 15,100 square feet.
4. The maximum amount of impervious surfaces permitted per the CBCA regulations (Section 27-548.17 of the Zoning Ordinance) is 25 percent of the gross lot area or 4,683 square feet. The plan indicates existing impervious surfaces of 3,350 square feet, or 17.89 percent. With the additional 120 square feet from the existing gazebo, the corresponding proposed CBCA impervious surface would be 3,470 square feet or 18.53 percent, well within the 25 percent maximum.
5. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) is 25 percent of the contiguous net tract area or 3,775 square feet. The proposed percentage of lot coverage, which includes the house footprint, gazebo, and driveway, is 2,620 square feet or 17.35 percent.
6. The minimum lot width at the street frontage permitted by Section 27-442, Table III, Footnote 3, of the Zoning Ordinance is 70 feet. The lot width at the street frontage is 120 feet.

7. The minimum lot width at the building line permitted by Section 27-442, Table III, of the Zoning Ordinance is 100 feet. The lot width at the building line is 100 feet.
8. The minimum front yard setback permitted by Section 27-442, Table IV, of the Zoning Ordinance is 25 feet. The proposed front yard setback is 80 feet to the gazebo and 105 feet to the existing single-family residence.
9. The minimum side yards permitted by Section 27-442, Table IV, of the Zoning Ordinance are a total of 17 feet with a minimum of eight feet. One of the side yard setbacks was reduced to five feet by the Prince George's County Board of Appeals in 1996 when the house was built (Appeal No.V-210-96).
10. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. This requirement was reduced to 11 feet by the Board of Appeals in 1996 when the house was built (Appeal No.V-210-96).
11. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet. The proposed height is 15 feet for the gazebo and 26 feet for the existing single-family residence.
12. The Chesapeake Bay Critical Area Commission requires 3:1 replacement for trees cleared within the 100-foot CBCA buffer. The critical area plan correctly notes that no trees will be cleared as part of this development.
13. The plan has been correctly labeled as a "Conservation, Buffer Mitigation and Management, and Planting Plan" because these requirements are needed as part of the overall conservation plan for this site.

Buffer mitigation is a required part of the conservation plan based on the proposed area of disturbance within the buffer on the site. The limit of disturbance (LOD) has been shown on the plan as the footprint area of the gazebo (120 square feet). This area has been used as the basis for buffer mitigation calculations, at a 3:1 ratio, for a total planting requirement of 360 square feet to mitigate for the buffer disturbance associated with the construction.

A 15 percent afforestation requirement applies to this site. The plan correctly shows that 2,810 square feet of vegetative cover is needed to meet this requirement.

The buffer mitigation and afforestation requirements appear to be adequately met with the vegetation shown on the plan; however, the calculations appear to have been based on a credit ratio of 200 square feet for each tree shown on the plan, regardless of size. Credit for existing vegetation should be based on the aerial extent of existing canopy cover or measured from the drip-line of each the tree. Each proposed one-inch tree should be counted as 100 square feet of credit. The one-inch trees are currently labeled as cherry trees on the plan.

The cherry trees were installed prior to the application of this conservation plan. Because trees needed to meet the buffer mitigation requirements have already been planted, the draft conservation and planting agreement appropriately shows that no bond is required for mitigation planting.

14. A Variance Request (VC-96002-01) was received for a variance from Section 5B-121(a)(1)(A) of the County Code to allow development within the primary buffer. Because the Planning Board is the final approving authority for CBCA conservation plans, it is also the approving authority for the requested variance.

Section 27-230 of the Zoning Ordinance contains findings required for all variances. A variance must be obtained to allow for a building permit which validates the existing gazebo. The following is an analysis of the application's conformance with these requirements.

(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 entire property is located within the Critical Area primary buffer, which triggers the requirement of a variance for any disturbance on the property.

- (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 allowable CBCA lot coverage for this property is 25 percent and the current application proposes a total of only 18.53 percent lot coverage. The strict application of this Subtitle would result in the allowance of less lot coverage than would be allowed if the property was not located entirely in the Critical Area primary buffer, which would constitute an unreasonable hardship. Additionally, there is no location on this site where an owner can build a screened-in structure without requiring approval of a variance.

- (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. These plans recommend residential uses for the site, which the applicant proposes, at a level well below the permitted lot coverage and CBCA impervious surface maximums.

- (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;**

The special circumstance that exists is the fact that the entire property is located within the Critical Area primary buffer and the primary structure was legally constructed under a previously approved conservation plan. The strict and literal application of the CBCA Program would result in this property not being able to have a screened-in area on property that is located directly adjacent to open water.

Properties that contain areas both within and outside the buffer are required to concentrate impervious surfaces outside of the buffer; however, properties that are located entirely within the buffer cannot relocate such uses and must therefore seek a variance. There is no location on the property where the screened-in gazebo can be constructed outside the buffer. While the property has existing decks and patios, none of the existing structures are enclosed.

- (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;**

It is a rare occurrence that a property would be located completely within the primary buffer, resulting in a majority of property owners having options of places to construct accessory structures outside the buffer. The subject property does not have this option.

- (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 with property located entirely within the CBCA primary buffer are required to obtain a variance for any disturbance. Each application would be examined based on the parameters that it presents. As noted above, properties that are wholly within the CBCA primary buffer are rare.

- (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;**

The fact that the entire site is within the primary buffer is the condition which triggers the need for this variance, not the applicant's proposed development itself. Any development in the primary buffer requires this variance be granted. In 1996, when the previous property owner sought this very same variance to build the 2,100-square-foot house on the site, the Planning Board and Board of Zoning Appeals found this to be the case. Similarly, the need for the same variance for a 120-square-foot gazebo is not based upon conditions created by the applicant. As to the additional 635 square feet of CBCA lot coverage, the former owner obtained two building permits for the construction of a retaining wall and a wooden deck (Permits 11656-2004 and 26207-2004, respectively), each of which added CBCA lot coverage but did not trigger an amendment to the approved conservation plan since they were not covered structures. The applicant has submitted a building permit for the gazebo and realizes that they must gain the approval of the Planning Board prior to the issuance of a permit.

- (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**

The general spirit and intent of the State Critical Area Law is to allow reasonable use of properties within the CBCA while preserving, enhancing, and/or restoring vegetation within the primary and secondary buffers. Because this property does not currently contain a vegetated buffer, preservation is not an option, nor is enhancement because the natural buffer was replaced several decades ago with a residential structure. The best option is to restore vegetation where possible on the subject lot.

The conservation plan shows the preservation of large canopy trees which will intercept rainwater and reduce stormwater runoff. Nine additional trees are shown at a size of one-inch in caliper. As these trees mature they will provide additional tree canopy and stormwater interception.

The mitigation planting for the disturbance associated with the gazebo is required at a 3:1 ratio will be provided on-site within the primary buffer.

- (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 Primary Buffer Impact Variance Request

The required findings of Section 27-230 regarding disturbances to the primary buffer of the CBCA have been met to allow the construction of a gazebo 120 square feet in size within the primary buffer. A request has been made for the construction of a screened gazebo 120 square feet in size within the Critical Area primary buffer. The Planning Board approves the requested variance because the entire property is located within the primary buffer; the addition of 120 square feet is minimal and retains the overall CBCA lot coverage below the 25 percent maximum, and there are no alternative locations for the screened-in gazebo on the subject property.

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

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Squire, with Commissioners Washington, Squire and Hewlett voting in favor of the motion, with Commissioner Cavitt opposing the motion, and with Commissioner Bailey absent at its regular meeting held on Thursday, October 6, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 27th day of October 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:TL:arj

APPROVED AS TO LEGAL SUFFICIENCY.


M-NCPPC Legal Department

Date 10/14/11