

R E S O L U T I O N

WHEREAS, Willie K. Goode is the owner of a 2.84-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned I-2/I-D-O; and

WHEREAS, on May 11, 2006, Willie K Goode filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of building an addition to an existing house in the Chesapeake Bay Critical Area; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-06007 for Lawrence Street Enterprises Resource Recovery and Processing Facility, including Variance Request VC-06007, 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 30, 2006, 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 30, 2006, 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 the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-06007, for a variance and further APPROVED Conservation Plan CP-06007, Lawrence Street Enterprises Resource Recovery and Processing Facility for Lot 1, Block A with the following conditions:

Prior to signature approval of the conservation plan, the site plan must be revised to:

- a. Correct the site plan general note number 2 and 3 to list the proposed use as "resource recovery and processing facility (recycling plant)" which is an allowed use.
- b. Submit documentation specifying exactly what materials are to be recycled at this site and the finished products.

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

1. Site Description

The subject property is located in the Town of Colmar Manor on the west side of the Baltimore and Ohio Railroad, and west of the terminus of the Lawrence Street Enterprises Resource Recovery and

Processing facility, approximately 3,000 feet south of Annapolis Road, within the Chesapeake Bay Critical Area in the Anacostia River Basin. There are no streams or wetlands on the property. There is no floodplain on the property. Current air photos indicate that the site contains existing structures and is not wooded. No historic or scenic roads are affected by this proposal. There are no significant nearby noise sources except Baltimore and Ohio Railroad and the proposed use is not expected to be a noise generator. No species listed by the State of Maryland as rare, threatened or endangered are known to occur in the in the general region. The subject property has Stormwater Management Concept Approval Letter 10431-2006-00, dated March 28, 2006. The Prince George's County Soils Survey indicates that the principal soil on the site is in the Elsinboro soil series, which poses no significant difficulties to development except steep slopes. The site is in the Developed Tier according to the 2002 Prince George's County Approved General Plan.

2. Background

The lots were recorded on May 8, 1947, and are shown on Record Plat 12-96 in the Prince George's County Land Records. This site is not subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area. There is no minimum net lot area required by Section 27-474 (c) Table II of the Zoning Ordinance. The existing net lot area is 123,777 square feet. The maximum amount of impervious surface permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 100 percent of the gross tract area or 123,777 square feet or 2.8415 acres. The plan proposes total impervious surface areas of 1.41 acres or 77.9 percent. The maximum percentage of lot coverage permitted by Section 27-474 (c) Table II of the Zoning Ordinance is 100 percent of the contiguous net tract area or 2.84 acres. The existing percentage of lot coverage is 1,402 square feet or 35.1 percent. The proposed percentage of lot coverage is 1,474 square feet or 36.9 percent. All other provisions of the Chesapeake Bay Critical Area regulations have been met on-site.

A variance request was received on August 23, 2006, for the 20-foot-side yard setback off the existing building (adjacent to the residential zone) with varied distances of 14, 15, 16, and 19 feet to certify the location of the existing buildings on the site. An examination of property ownership and current air photographs indicates that all neighboring properties are similar. A variance was also submitted for the existing 8-foot high barbed wire on the property boundary line, where the Zoning Ordinance permits a 6-foot high fence.

Variances are required to be approved before any permit may be issued. No variances to any provision of the Chesapeake Bay Critical Area regulations are needed. Variances from other requirements of the Zoning Ordinance are requested as stated below. Because the Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans, it is also the approval authority for the requested variances.

Variances from the Zoning Ordinance are required to:

- A: Validate the location of existing buildings at approximately 1, 4, 5, and 6 feet away from the western boundary line adjacent to open space (O-S) Zone that has an existing side yard of 20 feet by granting a variance of 19, 16, 15, and 14 feet to the minimum side yard setback by Section 27-474 (b) Table I of the Zoning Ordinance of 20 feet.
- B. Validate an existing 8-foot high barbed wire fence, where a 6-foot-high fence is permitted on the property line by Section 27-474 Table IV of the Zoning Ordinance.

3. **Buildable Lot Analysis**

In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. Because it was recognized that some otherwise buildable existing properties could be adversely impacted with the enactment of the new regulations, Section 27-548.10 (c) of the Zoning Ordinance was created to provide grandfathering.

The following is an analysis of Section 27-548.10(c) of the Zoning Ordinance [text in **bold**]. If conformance with the grandfathering provisions can be found, the proposal can move forward.

All buildable lots (except outlots) within subdivisions recorded prior to December 1, 1985, shall remain buildable lots, regardless of lot size, provided:

- (1) **The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;**

Comment: The proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes adverse impacts on water quality.

- (2) **The applicant has identified fish, plant, and wildlife habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of affected species to sustain themselves; and**

Comment: The Chesapeake Bay Critical Area Plan submitted includes an inventory that indicates there are no fish, plant, or wildlife habitats, as defined by the Chesapeake Bay Critical Area Program, that could be adversely impacted by the proposed development.

- (3) **The lot size, frontage, and vehicular access are in accordance with the requirements of the underlying zone. Development of these lots shall not count towards the growth allocation of the applicable overlay zone.**

Comment: The lots were recorded on February 19, 1947, and are shown on Record Plat 12-96 in the Prince George's County Land Records. The lot size, frontage, and vehicular access were in accordance with the requirements in effect at the time of initial development and the application submitted requires no use of growth allocation.

Recommended Finding: The subject property was recorded prior to December 1, 1985, and at that time was a "legally buildable lot" with a gross tract of 2.84 acres and a net tract area of 2.84 acres. When it was platted the Chesapeake Bay Critical Area regulations were not in effect.

4. Variance Analysis

A variance from the Zoning Ordinance is required to validate the location of existing buildings at approximately 1, 4, 5, and 6, feet away from the western boundary line adjacent to open space (O-S) Zone that has an existing side yard of 20 feet by granting a variance of 19, 16, 15, and 14 feet to the minimum side yard setback by Section 27-474 (b) Table I of the Zoning Ordinance of 20 feet. These buildings are shown in this configuration on 1965 air photos.

A variance from the Zoning Ordinance is required to validate an existing 8-foot high barbed wire fence, where a 6-foot-high fence is permitted on the property line by Section 27-474 Table IV of the Zoning Ordinance. The fence separates the subject property from the WSSC facility abutting on the west.

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. The following is an analysis of the application's conformance with these requirements.

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

Comment: The extraordinary condition of this lot is that it was platted 62 years ago and the original structure was built prior to 1950, long before the Zoning Ordinance was adopted and the Chesapeake Bay Critical Area requirements were envisioned. The building is located near the narrowest portion of the site of this oddly shaped triangular property. The building as proposed is in keeping with the character of the surrounding neighborhood.

- (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**

Comment: The plan as submitted reflects a reasonable use of the property and is in keeping with the character of the existing neighborhood. The strict application of the Zoning Ordinance would deny any application for a permit.

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

Comment: The use of the site for a recycling plant is in complete conformance with the General Plan.

Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance or the Conservation Manual for properties within the Chesapeake Bay Critical Area only where an applicant demonstrates that provisions have been made to minimize any adverse environmental impacts of the variance and where the Prince George's County Planning Board (or its authorized representative) has found conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section 27-230(a). The following is an analysis of the application's conformance with the Zoning Ordinance requirements. Because all of the variances requested are similar in nature, the variances are evaluated together below.

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship;

Comment: None of the variances being sought are from provisions related to the Chesapeake Bay Critical Area regulations. This lot is peculiar in that it was platted in 1947 and fully developed prior to 1965; long before the Chesapeake Bay Critical Area regulations were envisioned.

(2) A literal interpretation of this subtitle would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area;

Comment: Other properties nearby are similarly developed and the proposed building is in keeping with the character of the surrounding neighborhood.

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

Comment: The granting of these variances does not establish a special privilege because the building proposed is in keeping with the character of the existing neighborhood.

- (4) **The variance requests are not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property;**

Comment: The applicant has taken no action on this property to date, and the current requests are not related to uses on adjacent properties.

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

Comment: The Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat. The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and generally minimizes adverse impacts on water quality.

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

Comment: The applicant is required to meet the requirements of the Stormwater Management Ordinance to address issues of water quality for the site.

- (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;**

Comment: The Chesapeake Bay Critical Area plan includes an inventory that indicates that there are no fish, plant or wildlife habitats, as described in the "Chesapeake Bay Critical Area Conservation Manual," that could be adversely impacted by the proposed development.

- (8) **The number of persons, their movements and activities, specified in the development plan, are in conformity to established land use policies and would not create any adverse environmental impact; and**

Comment: The use as proposed in this submittal is in complete conformance with the I-2 and I-D-O Zones.

(9) The growth allocations for overlay zones within the county would not be exceeded by the granting of the variance.

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

5. Summary

On June 2, 2006, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the I-D-O Zone and the "Chesapeake Bay Critical Area Conservation Manual," however, the plans required numerous technical revisions. Revised plans and a variance application were accepted for processing on September 13, 2006. Technical errors remain; however, these are minor.

The granting of these variances is appropriate to permit reasonable development of the site with a one story industrial building that is similar in character to those in the neighborhood.

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 Vaughns, seconded by Commissioner Eley, with Commissioners Vaughns, Eley, Squire, Clark and Parker voting in favor of the motion at its regular meeting held on Thursday, November 30, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 21st day of December 2006.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:JS:bjs