

R E S O L U T I O N

WHEREAS, a 5.40-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned R-R/L-D-O; and

WHEREAS, on May 11, 2007, Roger Builder & Design, Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a single-family detached residential structure 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-07002 for Riverview, Part of Parcel 52, including Variance Request VC-07002, 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 September 20, 2007, 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 September 20, 2007, 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 27-239.03 of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-07002, for a variance:

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

Comment: The property has its sole frontage on Swan Creek Road. A small stream and wetland system that is part of the expanded CBCA buffer parallels Swan Creek Road along the property's entire frontage. The placement of these features results in only two very small developable areas that are separated by a stream.

- (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 single-family detached residential is in complete conformance with 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: The property has its only frontage on Swan Creek Road. A small stream and wetland system that is part of the expanded CBCA buffer parallels Swan Creek Road along the property's entire frontage. A literal interpretation of the provisions of the Chesapeake Bay Critical Area regulations would deny any application for a permit.

- (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 states 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 R-R and L-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.

SUMMARY

The granting of the variance is appropriate to permit reasonable development of the site with a single-family detached residential structure that is similar in character to those in the neighborhood.

The Chesapeake Bay Critical Area Commission has not yet sent comments regarding the variance.

The application was forwarded on July 19, 2007, to the state Chesapeake Bay Critical Area Commission for their review and comment.

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-07002 for a variance, and further APPROVED Conservation Plan CP-07002, Riverview, Part of Lot 52 with the following conditions:

1. Prior to signature approval of the conservation plan, the plan must be revised to:
 - a. Have Note 25 clearly indicate that the total area of proposed impervious surface areas is 5,833 square feet or 2.48 percent.
 - b. Have Note 26 revised to show the correct amount of net lot area as 131,084.6 square feet.
 - c. Have Note 27 clearly indicate that the total area of proposed lot coverage is 5,833 square feet or 5.60 percent.
 - d. Add the following note: "All permit applications shall include a copy of the executed Conservation Agreement."
 - e. Add a note stating how the woodland afforestation requirements will be met.
 - f. Clearly label the secondary CBCA buffer.
 - g. Show compliance with the *Landscape Manual*.
2. Prior to signature approval of the conservation plan, the concurrence of the Chesapeake Bay Critical Area Commission, or designated staff, shall be received in writing by the Environmental Planning Section. Any conditions imposed by the state shall be addressed on the conservation plan prior to signature approval.
3. Prior to signature approval of the conservation plan, a conservation easement shall be recorded in the land records and be shown by metes and bounds on the conservation plan. The land records shall indicate that the property is subject to Conservation Plan CP-07002. The following note shall be placed on the conservation plan:

"Conservation easements described on this plan are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

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 5.40-acre parcel is on the north side of Swan Creek Road about 1,500 feet west of its intersection with Autumnwood Lane. There are streams, wetlands, and 100-year floodplain on the property. Current air photos indicate that the western portion of the site is wooded and the eastern portion is a tidal pond. 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. No species listed by the State of Maryland as rare, threatened, or endangered are known to have critical habitat on or near the subject property. The "Prince George's County Soils Survey" indicates that the principal soils on the site are in the Galestown and Bibb series. The site is in the Developing Tier according to the General Plan. Except for noting that the property is within the Chesapeake Bay Critical Area, there are no specific recommendations pertaining to the environmental elements of the master plan that relate to the subject property. The *Countywide Green Infrastructure Plan* indicates that the site is mostly regulated area due to its location in the Chesapeake Bay Critical Area.

RECOMMENDED FINDINGS

1. On June 1, 2007, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the L-D-O Zone and the "Chesapeake Bay Critical Area Conservation Manual;" however, the plans required some technical revisions. Revised plans and a variance application were accepted for processing on July 19, 2007.
2. This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area. The requirements of the "Chesapeake Bay Critical Area Manual" apply. A letter of exemption from the Woodland Conservation Ordinance, dated May 29, 2007, is valid until May 29, 2009.
3. The maximum amount of impervious surfaces permitted per Section 27-548.17 of the Zoning Ordinance is 15 percent of the gross tract area, or 35,283.6 square feet. The plan indicates impervious surfaces for the house footprint of 3,073 square feet and a walkway of 360 square feet, for a total of 3,333 square feet. An additional 2,500 square feet is proposed for a gravel driveway. The Chesapeake Bay Critical Area Commission requires that gravel driveways be included as part of the calculation of impervious surface areas. The total proposed impervious surface area is 5,833 square feet, or 2.48 percent of the gross tract area. Note 25 needs to be revised to clearly indicate the total area of proposed impervious surfaces.
4. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is 20,000 square feet. The net lot area is 131,084.6 square feet. The plan shows the wrong information in Note 26. A condition is required to correct this error.
5. The maximum percentage of lot coverage permitted by Section 27-442, Table II, of the Zoning Ordinance is 25 percent of the contiguous net tract area, or 32,771.2 square feet. The proposed percentage of lot coverage, which includes the house footprint, walkway and driveway, is 5,833

square feet, or 5.60 percent. Note 27 needs to be revised to clearly indicate the total area of proposed lot coverage.

6. The minimum lot width at the street frontage permitted by Section 27-442, Table III, of the Zoning Ordinance is 70 feet. The lot width at the street frontage is approximately 440 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 proposed building line is approximately 400 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 approximately 175 feet.
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 8 feet. The proposed side yards are 11 and 236 feet, for a total of 247 feet.
10. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. The proposed rear yard is approximately 507 feet.
11. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet. The proposed height is 35 feet.
12. Approximately 10,700 square feet of woodland will be removed to allow construction. The “Chesapeake Bay Critical Area Manual” requires replacement on-site or the use of a fee-in-lieu for the total area of woodland cleared. The plan does not indicate how the requirement will be met. Regulations require any required fee be collected by the Department of Public Works and Transportation prior to the issuance of any permit and that all planting be completed prior to the issuance of a use and occupancy permit. The conservation agreement will contain the specific details of how the removal of woodland will be mitigated and a note to this affect need to be added to the plan.
13. The approved CBCA plan, CP-89039, permits the construction of a driveway to serve two lots; however, variances must be obtained for impacts to the secondary CBCA buffer. The design of the bridge must be approved by DPW&T. The current design is for one driveway to serve one lot.
14. A variance request was received on July 19, 2007, for impacts to wetlands, wetland buffers, and the secondary CBCA buffer in order to construct the driveway to serve the subject property. The secondary CBCA buffer includes the limit of the 100-year floodplain, the contiguous wetlands, and the 25-foot wetland buffers; however, it is not clearly labeled on the plan. 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.
15. The *Landscape Manual* requires a minimum of four major shade trees and three ornamental or evergreen trees per lot. Additionally, three of the major shade trees must be located in the front yard.

The landscape table on the plan indicates the planting of two shade trees and two evergreen trees. Existing trees on-site may be used to meet the requirements of the *Landscape Manual* if they are clearly indicated on the plan.

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 conservation plan submitted meets the stormwater management requirements of the Prince George's County Department of Public Works and Transportation 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 conservation plan submitted states that 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 lot size, frontage, and vehicular access are in accordance with the requirements of the R-R Zone and the application submitted requires no use of growth allocation. No variances to the Zoning Ordinance are requested.

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 5.40 acres, a net tract area of 3.01 acres, and adequate frontage on a public street.

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 Clark, seconded by Commissioner Vaughns, with Commissioners Clark, Vaughns, Squire, Cavitt and Parker voting in favor of the motion at its regular meeting held on Thursday, September 20, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 11th day of October 2007.

R. Bruce Crawford
Executive Director

By Frances J. Guertin
Planning Board Administrator

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