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CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-02005 AND VARIANCE APPLICATION VC-02005

Application	General Data
Project Name Tantallon on the Potomac (Lot 42) Location Cul-de-sac of Haxall Court, known as 12501 Haxall Court. Applicant/Address Emerge Homes, Inc. 1025 Connecticut Avenue, N.W. #1012 Washington, D.C. 20036	Date Accepted 10/9/02
	Planning Board Action Limit n/a
	Plan Acreage 0.95
	Zone R-R/L-D-O
	Dwelling Units 1
	Square Footage 4,558
	Planning Area 80
	Council District 08
	Municipality n/a
	200-Scale Base Map 216SW1

Purpose of Application	Notice Dates
Construction of a single-family detached residential structure on a property within the Chesapeake Bay Critical Area. Variance from the 100 foot setback from the Critical Area Buffer. Variance from the 100-year floodplain setback. Variance from lot coverage over 25 percent.	Adjoining Property Owners (CB-15-1998) n/a
	Previous Parties of Record (CB-13-1997) n/a
	Sign(s) Posted on Site n/a
	Variance(s): Adjoining Property Owners 10/21/02

Staff Recommendation			Staff Reviewer: Jim Stasz
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

Agenda Date: 10/31/2002

Agenda Item:

**THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Chesapeake Bay Critical Area
Conservation Plan and Conservation Agreement CP-02005; VC-02005
Tantallon on the Potomac, Lot 42

Council District: 8 Planning Area: 80 Municipality: None

OVERVIEW:

The proposal is for construction of a single-family residential structure on a lot recorded prior to December 1, 1985. A Chesapeake Bay Critical Area Conservation Plan is required prior to the issuance of a permit by the Prince George's County Department of Environmental Resources. A variance is required for disturbance of the critical area buffer, for development within the 25-foot floodplain setback, and for development above the minimum net lot area requirements. The Planning Board is the final approving authority for Chesapeake Bay Critical Area Conservation Plans.

SITE DESCRIPTION:

The 0.95-acre property is on the south side of Swan Creek at the end of Haxall Court. There are no streams or wetlands on the property. There is floodplain on the property. Current air photos indicate that the site is mostly wooded. 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 occur in the general region. According to the sewer service and water service maps produced by DER, the property is in categories S-3 and W-3. A Stormwater Design Plan is under review by DER. The Prince George's County Soils Survey indicates that the principal soils on the site are in the Keyport soil series. The site is in the Developing Tier according to the adopted General Plan.

FINDINGS:

This lot is considered grandfathered with respect to the Chesapeake Bay Critical Area regulations because it was recorded prior to December 1, 1985, and continues as a buildable lot. On September 27, 2002, the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the R-R Zone, but not the L-D-O Zone or the *Conservation Manual*. Some minor technical changes have been made to bring the plan into complete conformance with the plan information requirements. The revised plan, accepted by the Prince George's County Department of Environmental Resources on October 9, 2002, has been determined to meet all applicable requirements, except that three variances are required to construct the home as shown on the Conservation Plan.

A variance is needed to permit development within the 100-foot critical area buffer as required by the *Chesapeake Bay Critical Area Conservation Manual*. A variance is needed to construct within 25 feet of

the platted 100-year floodplain easement as required by Section 24-129(a)(5) of the Subdivision Regulations. A variance is needed to allow a net lot coverage of 31 percent instead of the 25 percent maximum set by Table II of Section 27-442(c) of the Zoning Ordinance.

Staff recommends approval of Conservation Plan, CP-02005 and VC-02005, dated January 21, 2002.

Notification was sent to concerned parties in accordance with Section 27-231 of the Zoning Ordinance for the request for variances.

ENVIRONMENTAL REVIEW:

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. The subject lot is grandfathered because it was recorded prior to December 1, 1985. If conformance with the grandfathering provisions can be found, the proposal can move forward. The following is an analysis of the text (shown in italics) from the Zoning Ordinance. The lot meets all of the requirements of the Zoning Ordinance to be considered a buildable lot in the R-R Zone.

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 incorporates stormwater management controls to minimize 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 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 was recorded prior to December 1, 1985, and is shown on Record Plat NLP 103-1 in the Prince George's County land records with a gross tract area of 41,540 square feet and a net tract area of 21,485 square feet for this property, based upon the 100-year floodplain easement established at that time. The lot size, frontage, and vehicular access are in accordance with the requirements of the R-R Zone, and development of this lot requires no use of growth allocation.

Variance Analysis: Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance or the *Conservation Manual* for property within the Chesapeake Bay Critical Area only where an applicant 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 conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section (a). The following is an analysis of the application's conformance with the Zoning Ordinance requirements.

- (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 lot is irregularly shaped with the narrowest side fronting the cul-de-sac of Haxall Court. The gross tract area is 41,450 square feet, and 20,057 square feet of this lot is within the 100-year floodplain, resulting in a net tract area of 21,483 square feet. Of that net tract area, 8,222 square feet of the land is within the required 25-foot residential setback from the 100-year floodplain, and 14,348 square feet are within the critical area buffer (all of the 100-year floodplain setback area is also in the critical area buffer). These are unusually extensive areas of floodplain and critical area buffer for a lot of this size. The maximum building envelope is further reduced by front and side yard setbacks to a resulting building envelope of 6,021 square feet of area in an irregular shape.

- (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 were similarly developed prior to the enactment of the Chesapeake Bay Critical Area Program.

- (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 neither creates a need for other variances nor establishes a special treatment.

- (4) *The variance requests are not based upon conditions or circumstances that 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;*

Comment: The applicant has taken no action on this property to date, and the current request is 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.

- (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 approved Chesapeake Bay Critical Area Plan incorporates stormwater management controls to minimize adverse impacts on water quality.

- (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 there are no fish, plant or wildlife habitats 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 of a single-family residence 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.

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 topographic conditions, or other extraordinary situations or conditions;*

Comment: Because of the shape of the parcel, location of the floodplain that reduces the buildable area, and extent of critical area buffer, development with any reasonable single-family residential structure would require some variances.

- (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 strict application of the *Conservation Manual*, Section 24-129(a)(5) of the Subdivision Regulations, and Sections 27-548.17 and Table II of Section 27-442(c) of the Zoning Ordinance would result in the building area of the lot being reduced to an amount significantly less than lots with similar gross and net tract areas.

- (3) *The variances 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 residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Summary:

The granting of these variances is appropriate to permit reasonable development of the site with a single-family residence that is similar in character to those in the neighborhood. Staff recommends approval of VC-02005.

RECOMMENDATION:

APPROVAL of CP-02005 and VC-02005.