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CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-04014 & VC-04014A-E

Application	General Data
Project Name: Treasure Cove Lots 1-17, Block 8 Location: Riverside Drive, between Fortside Drive, Verdun Trail, Argonne Drive, and an abandoned portion of Belleau Trail Applicant/Address: Frances P. Liddy 9112 Riverside Drive Fort Washington, MD 20744	Date Accepted: 7/7/04
	Planning Board Action Limit: N/A
	Plan Acreage: 2.128
	Zone: R-R/L-D-O
	Dwelling Units: 1
	Square Footage: 2,688
	Planning Area: 80
	Council District: 8
	Municipality: N/A
	200-Scale Base Map: 212SW01

Purpose of Application	Notice Dates
This Chesapeake Bay Critical Area Conservation Plan requires Planning Board approval prior to the issuance of a building permit. This application is for the construction of a house addition in the Chesapeake Bay Critical Area. A variance is needed for an existing structure within the required front yard setback. Two variances to front yard setbacks are required for the proposed addition. A variance is required for disturbance to steep slopes. A variance is required for disturbance to the Chesapeake Bay Critical Area Buffer.	Adjoining Property Owners: (CB-15-1998) N/A
	Previous Parties of Record: (CB-13-1997) N/A
	Sign(s) Posted on Site: 08/31/04
	Variance(s): Adjoining Property Owners: N/A

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

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-04014 and VC04014A -E
Treasure Cove, Lots 1-17, Block 8

Council District: 8 Planning Area: 80 Municipality: none

OVERVIEW:

The proposal is for the construction of an addition to a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area. The proposed two-story addition is 26 feet x 46 feet with a three-car garage on the lower level and living area on the upper level. A Chesapeake Bay Critical Area (CBCA) Conservation Plan is required prior to the issuance of any permit by the Prince George's County Department of Environmental Resources. The Planning Board is the final approving authority for Chesapeake Bay Critical Area Conservation Plans.

Five variances are requested with this application. The Planning Board is the final approving authority for Conservation Plans and as such is the approval authority for the requested variances. They are:

- A. A variance is requested from the Zoning Ordinance because the existing single-family detached structure intrudes into the 25-foot building restriction line from Riverside Drive.
- B. A variance is requested from the Zoning Ordinance to permit construction of the house addition within the 25-foot building restriction line from Verdun Trail.
- C. A variance is requested from the Zoning Ordinance to permit construction of the house addition within the 25-foot building restriction line from Argonne Trail.
- D. A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow the disturbance of slopes greater than 15 percent for the construction of the house addition.
- E. A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow disturbance to the expanded CBCA buffer for the placement of a gravel driveway.

Record Plat 3-62, recorded on August 26, 1927, contains 25-foot building restriction lines parallel to all streets within the subdivision. These building restriction lines are identical to those required by the Zoning Ordinance. The filing of a new Final Plat will be required if any of the requested variances for building setbacks are approved.

Section 27-230 of the Zoning Ordinance provides the criteria by which the Planning Board may grant variances. Section 27-230(a) sets forth the general criteria and includes a provision in

Paragraph (a)(2) that requires the applicant to demonstrate that the “strict application of [the Zoning Ordinance] will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property....” In the Justification Statement submitted, the applicant correctly points out that Maryland doctrine has interpreted this language to mean that for an area variance, an applicant must show that denial of the variance would result in practical difficulties, a burden less onerous than that of undue hardship.

Section 27-230(b), however, provides for supplemental criteria for granting variances from either the Zoning Ordinance or *Chesapeake Bay Critical Area Conservation Manual* in instances where the property at issue is situated within the Chesapeake Bay Critical Area. Paragraph (b)(1) of this section statutorily mandates that an applicant establish that denial of the variance would result in an “unwarranted hardship,” not merely a practical difficulty.

As the subject addition to the existing home would be located within the Chesapeake Bay Critical Area, and as designed would require a variance from the *Chesapeake Bay Critical Area Conservation Manual*, both the general criteria of Section 27-230(a) and the supplemental criteria of Section 27-230(b) apply. Thus, the applicant must ultimately demonstrate that denial of the requested variance would cause both practical difficulties and an unwarranted hardship.

Site Description

The 2.13-acre property is comprised of 17 lots and is located in the R-R/L-D-O Zones. It is bounded by Fortside Drive, Riverside Drive, Verdun Trail, Argonne Trail, and a portion of abandoned Belleau Trail and is entirely located within the Chesapeake Bay Critical Area. Fortside Drive is paved, Riverside Drive is maintained by the Department of Public Works and Transportation as a gravel road, and both Verdun Trail and Argonne Trail are “paper streets” that are used as pathways. A portion of the property is within the 100-foot Chesapeake Bay Critical Area buffer. There are extensive areas of slopes greater than 15 percent on the property. The property is currently developed with a single-family detached residential structure that is served by public water and a private septic system. There are no streams, wetlands or 100-year floodplain on the site. 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. A Stormwater Design Plan has been approved by DER. The *Prince George’s County Soils Survey* indicates that the principal soils on the site are in the Keyport series. The site is in the Developing Tier according to the General Plan.

Background

The lots were recorded on August 26, 1927 and are shown on Record Plat 3-62 in the Prince George’s County Land Records. The abandoned portion of Belleau Trail was created by C-7276 on October 13, 1965. The existing residential structure can be seen on the M-NCPPC 1965 air photos and, according to the Maryland Department of Assessments and Taxation, was constructed in 1954. Permit #21380-2002 was approved by the Prince George’s County Department of Environmental Resources for the construction of the retaining wall shown on the current application and a second-story addition. A waiver from the requirement for a Conservation Plan was granted by the Prince George’s County Department of Environmental Resources for this work. The stormwater concept was approved by the Prince George’s County Department of Environmental Resources as part of the approval of Permit #21380. The approval limits the total area of impervious surface and requires the planting of additional trees. Permit #37143-2002, proposing a 25-foot by 46-foot freestanding storage shed/garage in the approximate location of the house addition shown on the current application, was placed on hold by the

M-NCPPC Permit Review Section on November 15, 2002, and no further action has been taken on that application.

Because the proposed construction is directly attached to the existing structure, it must meet all requirements of the Zoning Ordinance for a principal structure. The property is unusual because it fronts on four streets: Fortside Drive, Riverside Drive, Verdun Trail, and Argonne Trail. Because the property fronts on more than three streets, the lot is defined as a “through lot” by Section 27-107.01 of the Zoning Ordinance and requires minimum building restriction lines of 25 feet from all streets by Section 27-442(e) Table IV of the Zoning Ordinance, and the maximum permitted height of the structure is 35 feet. Access to the property is from Riverside Drive. All of Riverside Drive and a portion of the subject property is within the 100-foot Chesapeake Bay Critical Area buffer. More than half of the property contains wooded slopes in excess of 15 percent. A designated septic system recovery area and the existing single-family detached residential structure are located on the flattest portion of the site.

Findings

1. This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area and as such is subject to the stricter requirements of the Chesapeake Bay Critical Area Program.
2. The maximum amount of impervious surfaces permitted by Section 27-548.17 of the Zoning Ordinance for the property is 25 percent of the gross tract (23,175.59 square feet). The area of existing impervious surfaces is 3,005.42 square feet and the area of proposed impervious surfaces is 5,447.42 square feet. The increase in impervious surface includes only the proposed addition to the house.
3. The maximum amount of net lot coverage permitted by the Zoning Ordinance for the property is 25 percent of the net tract (23,175.59 square feet). The existing net lot coverage is 3,005.42 square feet and the proposed net lot coverage is 6,347.42 square feet. The additional net lot coverage includes the area of the proposed addition and the proposed driveway.
4. No clearing of woodland is proposed. The current amount of existing woodland, 65,000 square feet, exceeds the 15 percent of the gross tract (13,905.35 square feet) required by the Prince George’s County Chesapeake Bay Critical Area Program.
5. The existing structure and proposed addition do not exceed the maximum height of 35 feet that is set by the Zoning Ordinance.

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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380. The approval limits the total area of impervious surfaces and requires the planting of additional trees. These trees are shown on the Conservation Plan to be planted.

- (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 Final Plat of Subdivision was approved on August 26, 1927, as shown on Record Plat 3-62 in the Prince George's County Land Records. 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.

Recommended Finding: The subject property, containing Lots 1-17 of Treasure Cove, was recorded prior to December 1, 1985, and at that time was a "legally buildable lot" with a gross tract of 92,702.36 square feet, a net tract area of 92,702.36 square feet, and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

Variance Analysis – Setback of Existing Structure: Variance A

A variance is requested from the Zoning Ordinance because the existing single-family detached structure intrudes 2.40 feet into the 25-foot building restriction line from Riverside Drive required by the Zoning Ordinance. The variance is for an existing condition along the Riverside Road frontage of the property that does not significantly impact any nearby properties or affect travel along Riverside Drive.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area 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).

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: The lot is exceptional because the extent of steep slopes creates a shallow area of flat land for development. Portions of the flat area of the property are within the 25-foot building restriction lines associated with Fortside Drive, Riverside Drive and Verdun Trail.

- (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 existing structure has been in this location since before 1965. If the variance to the front setback is not granted, a portion of the existing structure would have to be removed. This creates peculiar and unusual practical difficulties to and undue hardship upon the owner of the property.

- (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 as a single-family residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these 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 existing structure has been in this location since before 1965. If the variance to the front setback is not granted, a portion of the existing structure would have to be removed. This creates unwarranted hardship to the owner of the property. Some similarly situated properties built before 1989, when the Chesapeake Bay Critical Area regulations took effect, exist within the Chesapeake Bay Critical Area.

- (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: A literal interpretation of this Subtitle would require the applicant to remove a small portion of a structure that has been in place since before 1965.

- (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 the variance would not create a special treatment because all other lots within the vicinity are developed with single-family detached residential structures.

- (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: According to public records, the existing structure was built in 1954 and the applicant purchased the property in 1980. The applicant has taken no action on this property to date with regard to the requested variance, 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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380. The granting of this variance is in harmony with the general spirit and intent of the Critical Area regulations because it serves to validate a condition that existed before the Chesapeake Bay Critical Area Regulations were adopted.

- (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 Chesapeake Bay Critical Area Plan recommended for approval incorporates stormwater management controls to minimize adverse impacts on water quality. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 defined by the Chesapeake Bay Critical Area Program, 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 the property as a single-family residence is in complete conformance with land use policies and the requirements of 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 denial of the variance would result in the need for the applicant to, at a minimum, remove the portion of the existing structure that intrudes into the required setback. The granting of the variance would not affect neighboring properties.

Recommended Action: Staff recommends approval of a variance of 2.40 feet from the 25-foot building restriction line for the existing structure within the 25-foot building restriction line from Riverside Drive.

Variance Analysis –Setback of Proposed Addition from Verdun Trail: Variance B

A variance is requested from the Zoning Ordinance to permit construction of a house addition within the 25-foot building restriction line from Verdun Trail. This variance differs from VC-04014A in that it is for proposed new construction.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area 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 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 27-230(a).

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: Although the lot as a whole has unusual characteristics, they are not so severe that the proposed addition could not be designed in such a way as to eliminate the need for the variance.

- (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 applicant has not demonstrated conformance with this required finding. The property is currently developed with a single-family detached residential structure.

- (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 residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these 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 applicant has not demonstrated unwarranted hardship. The cases referenced in the Letter of Justification do not support the required finding of unwarranted hardship.

- (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: The proposed building is within a required setback. Denial of the variance would not deprive the applicant of rights enjoyed by others because the property is currently developed with a single-family detached structure. The Letter of Justification does not reference the locations of other properties where new construction has been placed within required building setbacks.

- (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 the variance would create a special privilege, because the proposed addition could be designed in such a way so as to eliminate the need for this variance.

- (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 related to this variance request, 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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 Chesapeake Bay Critical Area Plan recommended for approval incorporates stormwater management controls to minimize adverse impacts on water quality. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 defined by the Chesapeake Bay Critical Area Program, 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 the property as a single-family residence is in complete conformance with land use policies and the requirements of 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 denial of the variance would result in the need for the addition to be designed outside of the required 25-foot setback from Verdun Trail.

Recommended Action: Staff recommends disapproval of a variance from the Zoning Ordinance to permit construction of the house addition within the 25-foot building restriction line from Verdun Trail.

Variance Analysis –Setback of Proposed Addition from Argonne Trail: Variance C

A variance is requested from the Zoning Ordinance to permit construction of a house addition within the 25-foot building restriction line from Argonne Trail. This variance differs from VC-04014A and is identical to VC-04014B in that it is for proposed new construction.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area 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 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 27-230(a).

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: Although the lot as a whole has unusual characteristics, they are not so severe that the proposed addition could not be designed in such a way as to eliminate the need for the variance.

- (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 applicant has not demonstrated conformance with this required finding. The property is currently developed with a single-family detached residential structure.

- (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 residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these 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 applicant has not demonstrated unwarranted hardship. The cases referenced in the Letter of Justification do not support the required finding of unwarranted hardship.

- (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: The proposed building is within a required setback. Denial of the variance would not deprive the applicant of rights enjoyed by others because the property is currently developed with a single-family detached structure. The Letter of Justification does not reference the locations of other properties where new construction has been placed within required building setbacks.

- (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 the variance would create a special privilege, because the proposed addition could be designed in such a way so as to eliminate the need for this variance.

- (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 related to this variance request, 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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

(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 Chesapeake Bay Critical Area Plan recommended for approval incorporates stormwater management controls to minimize adverse impacts on water quality. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

(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 defined by the Chesapeake Bay Critical Area Program, 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 the property as a single-family residence is in complete conformance with land use policies and the requirements of 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 denial of the variance would result in the need for the addition to be designed outside of the required 25-foot setback from Argonne Trail.

Recommended Action: Staff recommends disapproval of a variance from the Zoning Ordinance to permit construction of the house addition within the 25-foot building restriction line from Argonne Trail.

Variance Analysis – Disturbance to Steep Slopes: Variance D

A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow the disturbance to slopes greater than 15 percent for the construction of a house addition. Because the subject house addition requires a variance from the *Chesapeake Bay Critical Area Conservation Manual*, both the general criteria of Section 27-230(a) and the supplemental criteria of

Section 27-230(b) apply. Thus, the applicant must ultimately demonstrate that denial of the requested variance would cause both practical difficulties and an unwarranted hardship.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area 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 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 27-230(a).

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: There is an extensive area of steep slopes and the subject property could be considered to have exceptional topographic conditions for a portion of the property. A flat area approximately 100 feet wide at its widest point exists adjacent to Riverside Drive.

(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 applicant has not demonstrated that the denial of a 2,442 square foot addition results in peculiar and unusual practical difficulties to or undue hardship upon the owner of the property. Other portions of the property exist that do not contain slopes of 15 percent or greater that could be built upon.

(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 residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these 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 justification statement submitted with this application has failed to demonstrate unwarranted hardship for the construction of the 2,442-square-foot addition on slopes 15 percent and greater within the Chesapeake Bay Critical Area.

(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: The property is currently developed with a single-family residential structure and has the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area.

- (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 the variance would create a special treatment. Although other lots within the vicinity have disturbed steep slopes in order to be reasonably developed, the development in each case was the first construction of a single-family residential structure on the site and not an addition to an existing structure.

- (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 with regard to the variance request, 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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 Chesapeake Bay Critical Area Plan recommended for approval incorporates stormwater management controls to minimize adverse impacts on water quality. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

- (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 defined by the Chesapeake Bay Critical Area Program, 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 the property as a single-family residence is in complete conformance with land use policies and the requirements of 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 denial of the variance would result in the need for the addition to be designed outside of areas of slopes 15 percent and greater. The applicant has failed to demonstrate unwarranted hardship as required by Section 27-230(b)(1) of the Zoning Ordinance.

Recommended Action: Staff recommends disapproval of a variance for disturbance to steep slopes as generally prohibited by the Chesapeake Bay Critical Area Conservation Manual and Section 27-548.17 of the Zoning Ordinance.

Variance Analysis – Disturbance to the Chesapeake Bay Critical Area Buffer: Variance E

A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow disturbance of the 100-foot Chesapeake Bay Critical Area buffer to allow development in the form of a gravel driveway.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area 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 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 27-230(a).

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: The extraordinary conditions on and adjacent to this property relate to the position of the primary access to the site. The access is via Riverside Drive, which is completely located within the 100-foot Chesapeake Bay Critical Area buffer. Access for the driveway would be off of Verdun Trail, a portion of which is located within the 100-foot Chesapeake Bay Critical Area buffer. Because the access to the property is from the 100-foot Chesapeake Bay Critical Area buffer, the driveway must also be placed there.

- (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: If the variance for the placement of the house addition (and three-car garage) is approved, practical difficulties would result if the variance from the driveway construction is not also approved. If the variance for the addition is not approved, no practical difficulty exists.

(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 residence is in complete conformance with the General Plan and the Subregion VII Master Plan.

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area. The following is an analysis of the application's conformance with these 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: Disturbance to the Chesapeake Bay Critical Area Buffer is prohibited by the Chesapeake Bay Critical Area Conservation Manual. When the property was created in 1927, the Chesapeake Bay Critical Area Program did not exist. The site does not have a parking area. Riverside Drive is a narrow gravel street and both Verdun Trail and Argonne Trail are paper streets. Although parking on Riverside Drive is legal, it can create an unsafe condition for other properties in the neighborhood by interfering with fire, police and rescue vehicles. Because all of Riverside Drive, a portion of the subject property, and a portion of Verdun Trail are within the 100-foot Chesapeake Bay Critical Area buffer, there are no reasonable alternatives.

(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: Almost all of the properties in the area have on-site parking.

(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 the variance would not create a special treatment because other lots within the vicinity along Riverside Drive have disturbed the CBCA buffer in order to be reasonably developed with a parking area.

(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 with regard to this variance, 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. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

(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 Chesapeake Bay Critical Area Plan recommended for approval incorporates stormwater management controls to minimize adverse impacts on water quality. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources as part of the approval of Permit #21380.

(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 defined by the Chesapeake Bay Critical Area Program, 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 the property as a single-family residence is in complete conformance with land use policies and the requirements of 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: Failure to grant the variance to permit the construction of an on-site parking area would not degrade water quality or impact other properties.

Recommended Action: Staff recommends approval of a variance for disturbance to the expanded Chesapeake Bay Critical Area Buffer for the construction of a gravel drive and parking area.

Summary

On July 30, 2004, the Subdivision Review Committee determined that, except for the variances noted above, the Conservation Plan was in general conformance with the requirements of the R-R Zone, the L-D-O Zone, and the *Chesapeake Bay Critical Area Conservation Manual*. Revised plans were received September 14, 2004. Because variances to the Chesapeake Bay Critical Area Program are

required, a referral has been sent to the Chesapeake Bay Critical Area Commission. At the present time, no response from the Chesapeake Bay Critical Area Commission has been received.

RECOMMENDATIONS:

APPROVAL of a variance of 2.4 feet to the minimum front yard setback from Riverside Drive required in the R-R Zone for the existing structure.

DISAPPROVAL of a variance of 10.10 feet to the minimum front yard setback from Verdun Trail required in the R-R Zone for the proposed addition.

DISAPPROVAL of a variance of 7.14 feet to the minimum front yard setback from Argonne Trail required in the R-R Zone for the proposed addition.

DISAPPROVAL of a variance for disturbance to steep slopes as generally prohibited by the Conservation Manual and Section 27-548.17 of the Zoning Ordinance.

APPROVAL of a variance for disturbance to the 100-foot Chesapeake Bay Critical Area buffer as generally prohibited by the Chesapeake Bay Critical Area Conservation Manual Conservation Manual for the installation of a gravel drive and parking area.

APPROVAL of CP-04014 subject to the following conditions:

1. Prior to signature approval, written approval from the Critical Area Commission shall be obtained for the two variances that involve CBCA regulations. If approval is not obtained, the Conservation Plan shall be considered null and void.
2. Prior to issuance of any building permit, a minor plat to remove the 25-foot building restriction lines from Fortside Drive, Riverside Drive, Verdun Trail, Argonne Trail, and Belleau Trail shown on Record Plat 3-62 shall be approved.