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CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-04021 & VC04021A

Application	General Data
Project Name: Tantallon on the Potomac Section 12, Lot 21 Location: North side of Monterey Circle abutting the cul-de-sac Applicant/Address: Emerge Homes, Inc. 1025 Connecticut Avenue N.W. #1012 Washington, DC 20036	Date Accepted: 11/18/04
	Planning Board Action Limit: N/A
	Plan Acreage: 0.55
	Zone: R-R/L-D-O
	Dwelling Units: 1
	Proposed Dwelling Square Footage: 4,328
	Planning Area: 80
	Council District: 8
	Municipality: N/A
	200-Scale Base Map: 216SW01

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 single-family residence in the Chesapeake Bay Critical Area. A variance is requested to exceed the maximum impervious surface area.	Adjoining Property Owners: (CB-15-1998) N/A
	Previous Parties of Record: (CB-13-1997) N/A
	Sign(s) Posted on Site: 01/18/05
	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 CP-04021 and Variance VC04021A
Tantallon on the Potomac, Lot 9

Council District: 8 Planning Area: 80 Municipality: None

OVERVIEW:

The proposal is for the construction of a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area. A Chesapeake Bay Critical Area 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.

One variance is requested with this application. The Planning Board is the final approval authority for conservation plans, and as such is the approval authority for the requested variances. A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow the amount of impervious surfaces to exceed the maximum of 15 percent of the gross tract as required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*.

When the Chesapeake Bay Critical Area Program was adopted in Prince George's County, CB-72-1987 amended the Zoning Ordinance and created Section 27-548.17 to establish limits on the amount impervious surfaces permitted under certain circumstances in the Chesapeake Bay Critical Area of Prince George's County.

House Bill 1060, passed by the Maryland General Assembly, required local Chesapeake Bay Critical Area Programs to be amended by December 31, 1990, to meet certain provisions of the bill. The bill relaxed the impervious surface limitation in the Chesapeake Bay Critical Area Limited Development Overlay Zone and Resource Conservation Overlay Zone, under certain conditions. In compliance with HB 1060, CB-8-1991 and CB-101-1992 amended Section 27.548.17 to allow the increase in maximum impervious surface areas for some lots within the L-D-O Zone to 25 percent of the gross tract area.

Senate Bill 657, passed by the Maryland General Assembly, required local Chesapeake Bay Critical Area Programs to be amended by December 31, 1996, to meet certain provisions of the bill. The mandatory provisions of the bill were already included in the Zoning Ordinance at the time of adoption by the state. Also included were changes to impervious surface limitations that individual counties could adopt if desired, but these provisions are not mandatory.

In summary, the regulations in the Zoning Ordinance that apply to the subject property today are noted in Table 1 in 27-548.17(b): the maximum impervious surface ratio is 15 percent in the L-D-O Zone with footnote 4 that reads:

Section 27-548.17(b) footnote 4.

Impervious areas may be increased to twenty-five percent (25%) of the site if any one of the following applies:

- (A) The parcel or lot is one-half (1/2) acre or less in size and either:**
 - (i) Existed in its present configuration and was in residential use on or before December 1, 1985, and continues to be in the same residential use; or**
 - (ii) Existed in its present configuration and was in a Residential Zone on or before December 1, 1985; is currently in a Residential Zone; and is being developed with a one-family detached dwelling, or additions or accessory structures thereto;**
- (B) The parcel or lot is one-quarter (1/4) acre or less in size and was in nonresidential use on or before December 1, 1985; or**
- (C) The lot is one (1) acre or less in size and is part of a preliminary plat of subdivision approved after December 1, 1985. The impervious area of the entire subdivision shall not exceed fifteen percent (15%).
(CB-8-1991; CB-101-1991)”**

Subparagraphs A and B do not apply because the subject property is greater than one-half acre in size. Subparagraph C would apply if the lot was part of a preliminary plat approved after December 1, 1985, but the lot was platted in 1974. With none of the allowable increases in impervious surface amounts to 25 percent being applicable to the subject property, if the applicant wants to exceed this limitation, a variance is required.

The applicant has requested a variance to the above referenced section of the Zoning Ordinance. A letter was received with the variance application, and a revised letter was received February 9, 2005. The reason stated is the reference made in SB 657 that local jurisdictions are required to amend their programs on or before December 31, 1996, to address certain provisions of the bill. As of that date the Zoning Ordinance contained the mandatory portions of the bill and did not contain the optional portions of the bill. The optional portions of the bill contain the language that would allow for the amount of impervious surfaces requested by the applicant. The Annotated Code of Maryland clearly states:

- (f) A local jurisdiction *may* allow a property owner to exceed the impervious surface limits provided in subsection (d)(2) and (3) of this section if the following conditions exist:**
 - (1) New impervious surfaces on the property have been minimized**
 - (2) For a lot or parcel one-half acre or less in size, total impervious surfaces do not exceed impervious surface limits in subsection (d)(2) of this section by more than 25% or 500 square feet, whichever is greater;**
 - (3) For a lot or parcel greater than one-half acre and less than one acre in size, total impervious surfaces do not exceed impervious surface limits in subsection (d)(3) of this section or 5,445 square feet, whichever is greater...”
[emphasis added]**

To date this optional portion of the Annotated Code of Maryland has not been adopted by the County Council and incorporated into the Zoning Ordinance.

In 2001, an interagency team was formed to prepare a comprehensive update to the Chesapeake Bay Critical Area Program and the Conservation Manual. This effort, lead by the Department of Environmental Resources, resulted in CB-32-2002, which was not adopted. This Council bill contained the optional provisions of the state law.

It is important to note that since its initial adoption in 1987, no application for any CBCA Plan has ever found the need to exceed the impervious surface regulations set by the Zoning Ordinance.

1. Site Description

The 0.55-acre property in the R-R/L-D-O Zones is on the north and east sides of Monterey Circle by the cul-de-sac and is located within the Chesapeake Bay Critical Area. The 100-foot-wide critical area primary buffer and expanded buffer do not occur on the property. There are no streams, wetlands, 100-year floodplain or steep slopes on the site. 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.

2. Background

The Final Plat of Subdivision was approved on July 13, 1974, as shown on Record Plat WWW 89-29 in the Prince George's County Land Records. Lot 21 has a gross tract area of 23,974 square feet. There is no 100-year floodplain on the property, so the net tract area is also 23,974 square feet.

3. Findings

- a. This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area.
- b. The plan correctly indicates there are no threatened or endangered species, no colonial waterbird nesting sites, no forests with interior dwelling bird species, no Natural Heritage Areas, no waterfowl staging areas, no anadromous fish spawning streams, no wetlands, no tributary streams and no critical area buffers on the site.
- c. The gross tract is 23,974 square feet and the net tract is 23,974 square feet. The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15 percent of the gross tract area or 3,596 square feet. The proposed amount of impervious surfaces is 4,328 square feet or 18.1 percent. The proposed impervious surface areas are more than the maximum permitted within the L-D-O Zone. A variance to the impervious surface area maximum has been submitted.
- d. The maximum percentage of lot coverage permitted by the Zoning Ordinance for Lot 21, per Section 27-442 Table II of the Zoning Ordinance, is 25 percent of the contiguous net

tract area or 5,993.5 square feet. The proposed percentage of lot coverage is 5,430 square feet or 22.6 percent. The proposed net lot coverage for each lot is less than the maximum permitted in the R-R Zone.

- e. The plan proposes the clearing of 18,930 square feet of the existing 21,090 square feet of forest. Because the clearing is more than 30 percent, a 3:1 replacement (56,790 square feet) is required. The plan proposes to meet part of the afforestation requirement by providing 7,930 square feet of on-site planting. A fee-in-lieu for the remaining 48,860 square feet (\$19,544) is required.
- f. Architectural plans were reviewed in detail. The garage nearest to Monterey Circle is clearly attached and meets the required setback from the front yard line. The plans show that the height of the house is 35 feet and conforms to the maximum set by the Zoning Ordinance.

4. **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.

- (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 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: Tantallon on the Potomac, Section 12, Lot 21, was created prior to the enactment of the Chesapeake Bay Critical Area regulations. 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, Tantallon on the Potomac, Section 12, Lot 21, was recorded prior to December 1, 1985, and at that time was a “legally buildable lot” with a gross tract of 23,972 square feet, a net tract area of 23,972 square feet, and when it was recorded the Chesapeake Bay Critical Area regulations were not in effect.

5. **Variance Analysis – Maximum Impervious Surface Area: Variance A**

A variance is requested to the maximum limit of 15 percent of the gross tract area for impervious surface areas required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*. Because the variance is 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: The property is roughly triangular in shape with 381.26 feet of frontage on Monterey Circle, 200 feet along the east boundary and 146.35 feet along the north boundary. The property has no steep slopes and is essentially flat with a maximum elevation of approximately 28 feet and a minimum elevation of approximately 21 feet.

The applicant states that the shape of the lot is exceptional because it is located on the inside radius of a curve. Staff does not believe this to be an exceptional lot shape with regard to the variance requested, which is for impervious surface amounts. If the variance was, for example, for a setback, the shape of the lot might come into consideration; however, the shape of this lot does not have a bearing on the amount of impervious surfaces proposed.

- (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 maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15 percent of the gross tract area or 3,596 square feet. Several hundred Chesapeake Bay Critical Area Conservation Plans have been approved, including 28 single-family residential structures in Section 12 of Tantallon on the Potomac, but none has ever requested a variance to the impervious surface areas. The applicant has not demonstrated that a slightly smaller development proposal would result in peculiar and unusual practical difficulties, or exceptional or undue hardship.

In the justification statement, the applicant claims that the development area of this lot is reduced to an area smaller than others within the subdivision and less than intended when the lot was created. The development potential of this lot was changed when the Chesapeake Bay Critical Area regulations were first adopted in 1987, due to the limitations placed on the amount of impervious surfaces. These limitations have not changed since 1987. All other lots within the subdivision have adhered to the same impervious surface regulations and none have requested or received a variance for impervious surface amounts.

- (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 (text in bold). 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: Of the 15 lots shown on the record plat for a portion of Section 12 of Tantallon on the Potomac, WWW 89-29, 6 lots have smaller gross tract areas. The applicant has not provided sufficient information regarding this required finding. The letter of justification states that because the county has not opted to adopt the optional provisions of the state law, that this constitutes unwarranted hardship. Staff does not concur with this statement because the provisions of the state law referenced by the applicant were optional for jurisdictions to adopt, and to date the county has not done so.

- (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 could be developed with a slightly smaller single-family residential structure and have the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area. The letter of justification states: "Since

this lot was zoned and recorded in 1974, houses of similar sizes and shapes have been built on lots of similar and smaller size in the same section of the same subdivision.” Staff agrees that this is a true statement and notes that none of these lots have requested or received a variance to the requirement for minimizing impervious surfaces.

- (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: To date no application for a variance for an increase in the amount of impervious surfaces has been requested or approved for any Chesapeake Bay Critical Area Plan submitted for review. Limiting impervious surface areas is a cornerstone of the Chesapeake Bay Critical Area Program because of their direct correlation with runoff and water pollution.

- (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 property owner purchased the land in its current state and 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 generally minimizes adverse impacts on water quality, except in the area of added impervious surfaces. The stormwater concept was approved by the Prince George’s County Department of Environmental Resources.

However, as stated above, the limits placed on impervious surfaces are a cornerstone of the Chesapeake Bay Critical Area Program because of their direct correlation with runoff and water pollution. Allowing a variance from the requirements on limitations to the appropriate amounts of impervious surfaces is contrary to the intent of the program.

- (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 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, except that it does not minimize impervious surfaces.

- (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 a statement 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.

Recommended Action: Staff recommends disapproval of a variance to the maximum permitted impervious surface area required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the Chesapeake Bay Critical Area Conservation Manual because the required findings cannot be made.

3. **Summary**

On December 3, 2004, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the L-D-O Zone and the *Conservation Manual*; however, the plan showed that area of proposed impervious surfaces permitted by the Zoning Ordinance for Lot 21, per Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*, was exceeded. Revised plans were accepted for processing on January 21, 2005. A variance application was accepted for processing on December 23, 2004.

RECOMMENDATION:

DISAPPROVAL of VC04021

DISAPPROVAL of CP-04021