



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-05002 & VC05002

| Application | General Data |
|--|---|
| Project Name: Tantallon on the Potomac Lot 65, Block A Location: 12316 Harbour Circle Fort Washington, MD Applicant/Address: Graham R Granger 12316 Harbour Circle Fort Washington, MD 20744 | Date Accepted: 01/07/05 |
| | Planning Board Action Limit: N/A |
| | Plan Acreage: 0.45 |
| | Zone: R-R/L-D-O |
| | Dwelling Units: 1 |
| | Proposed Dwelling Square Footage: 3,370 |
| | 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 an addition to a single-family detached residential structure in the Chesapeake Bay Critical Area. Variances are required for net tract area, for percentage of lot coverage, and 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: 03/13/05 |
| | 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 and Conservation Agreement CP-05005 and VC05002
Tantallon on the Potomac, Lot 65, Block A

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. 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.

Three 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. The following are descriptions of the variances requested:

- A. A variance is requested from the Zoning Ordinance and the "Chesapeake Bay Critical Area Conservation Manual" to allow disturbance to the CBCA buffer.
- B. A variance is requested from the Zoning Ordinance because the net lot area is less than that permitted in the R-R Zone.
- C. A variance is requested from the Zoning Ordinance because the net lot coverage is more than that permitted in the R-R Zone.

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...."

Section 27-230(b), however, provides for supplemental criteria for granting variances from either the Zoning Ordinance or the "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 residential structure would be located within the Chesapeake Bay Critical Area, and as designed, 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.

1. Site Description

The 0.45-acre property in the R-R and L-D-O Zones is located at 12316 Harbour Circle and abuts Swan Creek in the Potomac River basin. The property is currently developed with a single-family detached residential structure and has a bulkhead along Swan Creek. There are no streams or wetlands on the property. There is 100-year floodplain on the property. There is no woodland on the site. 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. The "Prince George's County Soils Survey" indicates that the principal soils on the site are in the Keyport soil series.

2. Findings

When the property was platted on October 25, 1967, no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 65. Only three of those lots have larger gross tract areas than Lot 65. Because no 100-year floodplain was known to occur on the lot when it was platted, the gross tract and net tract were identical. The location of the 100-year floodplain has changed since the lot was created. The current 100-year floodplain elevation for this site has been established by the Prince George's County Department of Environmental Resources as 11 feet. The gross tract area is 19,581 square feet; however, the presence of 7,115 square feet of land area within the 100-year floodplain reduces the net tract to 12,466 square feet.

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.

The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 25 percent of the gross tract area, or 4,895.25 square feet. The existing and proposed impervious surface area is 4,500 square feet, or 22 percent. The garage is proposed to be placed on top of the existing asphalt surface, resulting in no increase in the impervious surfaces.

The gross tract area is 19,581 square feet and the net tract is 12,466 square feet (the area of 100-year floodplain is subtracted to determine the net tract area). A minimum net lot area of 15,000 square feet is required by Section 27-442 Table II of the Zoning Ordinance for a lot in the R-R Zone.

The maximum percentage of lot coverage permitted by the Zoning Ordinance for Lot 65, per Section 27-442 Table II of the Zoning Ordinance, is 25 percent of the contiguous net tract area, or 3,116.5 square feet. The existing and proposed percentage of lot coverage is 4,500.0 square feet, or 36 percent. Even if there were no proposed changes to the property, it would not be in conformance with the Zoning Ordinance, because the proposed addition is to be placed upon the existing driveway, which is already part of the net lot coverage.

Development is proposed within the 100-foot Chesapeake Bay Critical Area buffer. Development within the buffer is generally prohibited by the "Chesapeake Bay Critical Area Conservation Manual." The prohibition is against new development; the existing house was

constructed prior to the enactment of the Chesapeake Bay Critical Area Program and is a grandfathered legal structure.

A variance request was received on May 2, 2005, to allow disturbance within the Chesapeake Bay Critical Area buffer, to allow construction of an addition to a residential structure on a property in the R-R Zone with a net lot area of less than 15,000 square feet, and to allow development to exceed the net lot coverage in the R-R Zone.

3. **Buildable Lot Analysis**

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

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

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

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

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

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

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

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

Comment: The final plat of subdivision was approved in October 25, 1967, as shown on Record Plat 66-85 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 Tantallon on the Potomac, Lot 65, Block A, was recorded prior to December 1, 1985, and at that time was a “legally buildable lot” with a gross tract of 19,581 square feet and a net tract area of 19,851 square feet, and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

4. Variance Analysis—Net Lot Area

A variance is requested from the Zoning Ordinance because the net lot area is less than that permitted in the R-R Zone. A minimum net lot area of 15,000 square feet is required by Section 27-442 Table II of the Zoning Ordinance. The proposed net lot area is 14,953 square feet.

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 [text in **BOLD**]. 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 has exceptional conditions because when the property was platted on October 25, 1967 no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 65. Three of those lots have larger gross tract areas than Lot 65. The location of the 100-year floodplain has changed since the lot was created. The current 100-year floodplain elevation for this site has been established by the Prince George’s County Department of Environmental Resources as 11 feet. The gross tract area is 19,581 square feet; however, the presence of 7,115 square feet of land area within the 100-year floodplain reduces the net tract to 12,466 square feet.

(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 denial of this variance would result in having the existing single-family detached residential structure become a nonconforming use and result in the denial of almost any permit for this 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 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: The property has exceptional conditions because when the property was platted on October 25, 1967, no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 65. Three of those lots have larger gross tract areas than Lot 65. The location of the 100-year floodplain has changed since the lot was created. The current 100-year floodplain elevation for this site has been established by the Prince George's County Department of Environmental Resources as 11 feet. The gross tract area is 19,581 square feet; however, the presence of 7,115 square feet of land area within the 100-year floodplain reduces the net tract to 12,466 square feet. Staff recommends that the Planning Board find that this constitutes a special circumstance that is peculiar to the subject property and that the denial of this variance would result in an 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: When Lot 65 was created, no 100-year floodplain was known to occur on the lot and the gross tract and net tract were identical. Other waterfront lots that were created at the same time are similarly affected by the change in the delineation of the 100-year floodplain. An identical variance was granted by the Planning Board for Chesapeake Bay Critical Area Conservation Plan CP-03014 to permit the construction of an entire single-family detached residential structure on Lot 45. The denial of this variance would result in having the existing single-family detached residential structure become a nonconforming use and result in the denial of almost any permit for this property.

- (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 and several of the lots do not meet the current minimum net lot area because of the newly delineated 100-year floodplain elevation.

- (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. Because no changes to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required. The granting of this variance is in harmony with the general spirit and intent of the Critical Area regulations because it permits orderly development of a platted lot that is impacted by 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 proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources. Because no changes to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required.

- (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.

Recommended Action: Because the denial of a variance to the net lot area would result in the denial of any reasonably sized single-family detached residential structure on the subject property, staff recommends approval of a variance of 5,047 square feet to the minimum net tract area required in the R-R Zone.

5. Variance Analysis—Percentage of Lot Coverage

A variance is requested from the Zoning Ordinance because the net lot area is less than that permitted in the R-R Zone, which results in the percentage of net lot coverage to exceed the maximum allowed. A minimum net lot area of 20,000 square feet is required by Section 27-442 Table II of the Zoning Ordinance. The proposed net lot area is 14,953 square feet because of the

new delineation of the 100-year floodplain. The maximum percentage of lot coverage permitted by the Zoning Ordinance for Lot 65, per Section 27-442 Table II of the Zoning Ordinance, is 25 percent of the contiguous net tract area, or 3,116.5 square feet. The existing and proposed percentage of lot coverage is 4,500.0 square feet, or 36 percent. Even if there were no proposed changes to the property, it would not be in conformance with the Zoning Ordinance, because the proposed addition is to be placed upon the existing driveway that is already part of the percentage of lot coverage. The construction of the addition on an existing paved driveway area does not change the percentage of lot coverage.

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 [text in **BOLD**]. 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 has exceptional conditions because when the property was platted on October 25, 1967, no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 65. Three of those lots have larger gross tract areas than Lot 65. The location of the 100-year floodplain has changed since the lot was created. The current 100-year floodplain elevation for this site has been established by the Prince George’s County Department of Environmental Resources as 11 feet. The gross tract area is 19,581 square feet; however, the presence of 7,115 square feet of land area within the 100-year floodplain reduces the net tract to 12,466 square feet. The maximum percentage of lot coverage permitted by the Zoning Ordinance for Lot 65, per Section 27-442 Table II of the Zoning Ordinance, is 25 percent of the contiguous net tract area, or 3,116.5 square feet. The existing and proposed percentage of lot coverage is 4,500.0 square feet, or 36 percent. Even if there were no proposed changes to the property, it would not be in conformance with the Zoning Ordinance. If there had been no change in the floodplain elevation and the original net tract area remained, then the existing development would be in complete conformance to the Zoning Ordinance with regard to percentage of lot coverage.

- (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 denial of this variance would result in the denial of almost any permit for the subject 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 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: The property has exceptional conditions because when the property was platted on October 25, 1967, no 100-year floodplain was known to encroach on the property. Twenty-five lots are shown on Record Plat 66-85 that created Lot 65. Three of those lots have larger gross tract areas than Lot 65. The location of the 100-year floodplain has changed since the lot was created. The current 100-year floodplain elevation for this site has been established by the Prince George's County Department of Environmental Resources as 11 feet. The gross tract area is 19,581 square feet; however, the presence of 7,115 square feet of land area within the 100-year floodplain reduces the net tract to 12,466 square feet. Staff recommends that the Planning Board find that this constitutes a special circumstance that is peculiar to the subject property and that the denial of this variance would result in an 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: When Lot 65 was created, no 100-year floodplain was known to occur on the lot and the gross tract and net tract were identical. Other waterfront lots that were created at the same time are similarly affected by the change in the delineation of the 100-year floodplain. An identical variance was granted by the Planning Board for Chesapeake Bay Critical Area Conservation Plan CP-03014 to permit the construction of an entire single-family detached residential structure on Lot 45. The denial of a variance to the net lot area would result in the need for the applicant to reduce the area of the existing residential structure or driveway.

- (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 and several of the lots do not meet the current minimum net lot area because of the new location of the 100-year floodplain.

- (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. Because change to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required. The granting of this variance is in harmony with the general spirit and intent of the Critical Area regulations because it permits orderly development of a platted lot that is impacted by 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 proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources. Because change to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required.

(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 a variance to the net lot area would result in the denial of any reasonably sized single-family detached residential structure on the subject property.

Recommended Action: Staff recommends approval of a variance of 5,047 square feet to the minimum net tract area required in the R-R Zone.

6. Variance Analysis—Disturbance to the Chesapeake Bay Critical Area Buffer

A variance is requested from the Zoning Ordinance and the “Chesapeake Bay Critical Area Conservation Manual” to allow disturbance to the Chesapeake Bay Critical Area buffer for the addition to a house that is wholly within the 100-foot Chesapeake Bay Critical Area buffer. Regulations prohibit new construction within the 100-foot Chesapeake Bay Critical Area buffer unless a variance is approved.

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 [text in **BOLD**]. 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: When the lot was created and when the existing house was constructed, the Chesapeake Bay Critical Area regulations did not exist. The mandated 100-foot Chesapeake Bay Critical Area buffer includes almost the entire area of the lot.

- (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: A denial of the variance would result in the denial of almost any permit for this 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 [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: When the lot was created and when the existing house was constructed, the Chesapeake Bay Critical Area regulations did not exist. The mandated 100-foot Chesapeake Bay Critical Area buffer includes almost the entire area of the lot. A denial of the variance would result in the denial of almost any permit for this property. This creates unwarranted hardship to the owner of the property.

- (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 prohibit the applicant from obtaining almost any permit for this property. There are similar properties within the Chesapeake Bay Critical Area that have been developed with single-family detached residential structures after the Chesapeake Bay Critical Area regulations took effect.

- (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 and some have existing single-family detached residential structures within the 100-foot Chesapeake Bay Critical Area buffer.

- (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 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. Because no changes to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required. The granting of this variance is in harmony with the general spirit and intent of the critical area regulations because it permits orderly development of a platted lot that is impacted by 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 proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources. Because no changes to the total impervious surface areas are proposed, the Prince George's County Department of Environmental Resources has determined that additional stormwater management is not required.

- (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 denial of almost any permit for this property. The granting of the variance would not affect neighboring properties.

Recommended Action: Staff recommends approval of a variance for disturbance to the 100-foot Chesapeake Bay Critical Area buffer as generally prohibited by the conservation manual for the addition to the existing single-family detached residential structure.

7. Summary

On May 25, 2001, the Subdivision Review Committee determined that, in addition to the variances noted above, the conservation plan required technical changes to be in 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 December 23, 2003. Revised plans were received October 11, 2004. A variance application was accepted for processing on January 18, 2005. Because variances to the Chesapeake Bay Critical Area Program are required, a referral has been sent to the Chesapeake Bay Critical Area Commission.

The Chesapeake Bay Critical Area Commission has requested that the applicant should work with appropriate county staff to address stormwater runoff and that replanting for disturbance of any vegetation be provided. As noted previously, the Prince George's County Department of Environmental Resources has determined the plan meets all requirements for stormwater management.

The Permits Section has noted that the existing shed does not meet the requirements of the Zoning Ordinance. It is not clear from the plans if the site meets the requirement that woodland vegetation covers 15 percent of the gross tract.

RECOMMENDATIONS:

APPROVAL of a variance for disturbance to the 100-foot Chesapeake Bay Critical Area buffer as generally prohibited by the conservation manual for the house addition, as shown on the submitted conservation plan.

APPROVAL of a variance of 2,534 square feet to the minimum net tract area required in the R-R Zone.

APPROVAL of a variance of 1,383.5 square feet to the maximum net lot coverage permitted in the R-R Zone.

APPROVAL of CP-05002 with the following conditions:

1. Prior to signature approval, the conservation plan shall be revised to show the shed at least two feet from any property line and entirely at or behind the rear building line.
2. Prior to signature approval, the conservation plan shall be revised to show conformance with Section 4.2(d)5 of the "Chesapeake Bay Critical Area Conservation Manual" or an appropriate fee-in-lieu will be provided.
3. Prior to signature approval, the conservation plan shall be revised to clearly note the net lot area.