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CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-05007 & VC05007

Application	General Data
Project Name: Swan Creek Club Development Lot 14, Section 1 Location: 12409 Shore Drive Fort Washington, MD Applicant/Address: Emerge Homes, Inc. 1025 Connecticut Avenue SW, Suite 1012 Washington, D.C. 20036	Date Accepted: 04/19/05
	Planning Board Action Limit: N/A
	Plan Acreage: 0.60
	Zone: R-R/L-D-O
	Dwelling Units: 1
	Proposed Dwelling Square Footage: 5,600
	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 renovation of a fire-damaged structure and additions to a single-family detached residential structure in the Chesapeake Bay Critical Area. Variances are required for impervious surface coverage, for the setback for an existing accessory structure 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: 06/14/05
	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-05007 and VC05007
Swan Creek Club Development, Lot 14, Section 1

Council District: 8 Planning Area: 80 Municipality: none

OVERVIEW:

The proposal is for the renovation of a fire-damaged structure and additions to a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area (CBCA). A 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 CBCA 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 because the impervious surface coverage is more than that permitted in the L-D-O Zone.
- B. A variance is requested from the Zoning Ordinance and the "Chesapeake Bay Critical Area Conservation Manual" to allow disturbance to the CBCA buffer.
- C. A variance is requested from the Zoning Ordinance because an accessory structure is closer to a rear yard line than that permitted in the R-R Zone.

With regard to the amount of impervious surfaces allowed in the Chesapeake Bay Critical Area, 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 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, as 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 1954. 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. 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 “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 0.60-acre property in the R-E/L-D-O and R-C-O Zones is on the west side of Shore Drive approximately 200 feet south of its intersection with Harbour Road and is located within the Chesapeake Bay Critical Area. There are no streams, 100-year floodplain or wetlands on the property. The steep slopes on the property are contiguous with the 100-foot Chesapeake Bay Critical Area Buffer. Current air photos indicate that the site is developed with a single-family detached residential structure and a deck in the rear yard, and that it is mostly unwooded. The property is flanked by platted lots developed with single-family detached residential structures. The rear yard line is shared with a parcel used as open space by a group of local homeowners. 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, #43957-2004-00, has been approved by the Prince George's County Department of Environmental Resources. The "Prince George's County Soils Survey" indicates that the principal soils on the site are in the Sassafra series. The site is in the Developing Tier according to the General Plan.
2. **Findings:** The property is currently developed with a fire-damaged, single-family detached residential structure and an accessory deck. A portion of the existing structure and all of the deck are located within the 100-foot Chesapeake Bay Critical Area buffer. The existing structures were constructed prior to the enactment of the Chesapeake Bay Critical Area regulations. The property contains a total area of 26,180 square feet as shown on Record Plat WWW 26-81 that was recorded in the land records in 1954. The net lot area exceeds the minimum required for a residential lot in the R-R Zone.

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(b) of the Zoning Ordinance is 15 percent of the gross tract area, or 4,293.0 square feet. The existing impervious surface areas contain a total of 5,879 square feet (22.4 percent). The plan proposes removing 1,663 square feet and adding 1,051 square feet for a total proposed impervious surface area of 5,258 square feet, or 20.1 percent. Even though the plan proposes a reduction in impervious areas, the total area proposed will exceed the maximum permitted and a variance is required.

The maximum percentage of lot coverage permitted by the Zoning Ordinance for Lot 14, per Section 27-442 Table II of the Zoning Ordinance, is 25 percent of the contiguous net tract area (6545 square feet). The proposed percentage of lot coverage is 6,518 square feet (24.9 percent).

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 and deck were constructed prior to the enactment of the Chesapeake Bay Critical Area program and are grandfathered structures; however, the plan proposes disturbance within the 100-foot Chesapeake Bay Critical Area buffer to install a drywell for stormwater management and requires a variance

to allow that disturbance. The existing house foundation is not a new disturbance and as such does not require a variance. In order to comply with the approved Stormwater Management Plan, #43957-2004-00, the applicant must install the drywell.

Section 27-442, Table VIII, of the Zoning Ordinance requires accessory structures in the R-R Zone to be set back at least two feet from any property line. The existing deck touches the rear property line. The rear yard line is shared with a parcel used as open space by a group of local homeowners. A variance is needed to certify the existing deck or that portion of the deck within the setback will need to be removed.

A variance request was received on May 23, 2005, to exceed the maximum permitted impervious surface coverage in the L-D-O Zone, to allow disturbance within the Chesapeake Bay Critical Area buffer, and to certify the location of an existing accessory structure.

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. The proposed installation of two drywells will reduce the existing impact from runoff.

- (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 1954 as shown on Record Plat 26-81 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 Swan Creek Club Development, Lot 14, Section 1, was recorded prior to December 1, 1985, and at that time was a "legally buildable lot" with a gross tract of 26,180 square feet, a net tract area of 26,180 square feet, and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

4. **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." The maximum amount of impervious surfaces permitted per Section 27-548.17(b) of the Zoning Ordinance is 15 percent of the gross tract area, or 4,293.0 square feet. The existing impervious surface areas contain a total of 5,879 square feet (22.4 percent). The plan proposes removing 1,663 square feet and adding 1,051 square feet for a total proposed impervious surface area of 5,258 square feet, or 20.1 percent. Even though the plan proposes a reduction in impervious areas, the total area proposed will exceed the maximum permitted and a variance is required.

The maximum amount of impervious surfaces permitted per Section 27-548.17 for lots of one-half acre or less in the L-D-O zone is 25 percent of the gross tract (i.e., a lot of one-half acre could have impervious surfaces covering 5,445 square feet). If a property were one-half acre plus one square foot, the maximum impervious surface areas permitted would drop to 3,216 square feet, or 15 percent. It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one acre in size are severely limited.

It should be noted that the comments received from the Chesapeake Bay Critical Area Commission include no objection to the variance for the impervious surface limitation imposed by the Zoning Ordinance so long as the total amount approved did not exceed the 5,445 square feet that would be permitted by Maryland regulations.

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 (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 26,180-square-foot lot has existing impervious surface areas covering a total of 5,879 square feet (22.4 percent). The plan proposes removing 1,663 square feet and adding 1,051 square feet for a total proposed impervious surface area of 5,258 square feet, or 20.1 percent. Because the structure was fire-damaged, the applicant could replace it in kind and retain the existing 5,893 square feet of impervious surfaces. The proposal is to replace the existing house on the existing foundation and reduce the overall amount of impervious surface areas.

- (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: Because the lot is 26,180 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17(b) of the Zoning Ordinance is 15 percent of the gross tract area, or 4,293.0 square feet. If the lot were only 21,870 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17(b) of the Zoning Ordinance would be 25 percent of the gross tract area, or 5,445 square feet, thus allowing more impervious surface areas on a smaller lot. This is a peculiar and unusual difficulty because if the lot were smaller, the same size house could be built as proposed and not require a variance.

It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one acre in size are treated substantially differently than lots that are larger or smaller. This is a special circumstance that is peculiar to this lot because the lot is only slightly larger than one-half acre and the large reduction to the maximum permitted impervious surface area results in an unwarranted hardship. In a similar situation, a variance to the maximum impervious surface area was granted by the Planning Board with Chesapeake Bay Critical Area Conservation Plan CP-04021.

- (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: It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one acre in size are treated substantially differently than lots that are larger or smaller.

This is a special circumstance that is peculiar to this lot because the lot is only slightly larger than one-half acre and the large reduction to the maximum permitted impervious surface area results in an unwarranted hardship. In a similar situation, a variance to the maximum impervious surface area was granted by the Planning Board with Chesapeake Bay Critical Area Conservation Plan CP-04021.

- (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: Because the structure was fire-damaged, the applicant could by right replace it in kind and retain the existing 5,893 square feet of impervious surfaces. Houses of similar sizes have been built throughout the neighborhood, and denying this applicant the ability to construct a similarly sized home would deprive the applicant of rights commonly enjoyed by other property owners within the Critical Area and within the subject community.

- (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: In a similar case for Chesapeake Bay Critical Area Conservation Plan CP-04021, the Planning Board found that the granting of this particular kind of variance would not confer on the applicant any special privilege because of the peculiar language of the Zoning Ordinance that disproportionately reduces the amount of impervious surfaces allowed on lots between one-half acre and one acre in size.

- (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 habitats. 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. The stormwater concept was approved by the Prince George's County Department of Environmental Resources.

- (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. The proposed installation of two drywells will reduce the existing impact from runoff.

- (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.

5. **Variance Analysis—Disturbance to the Chesapeake Bay Critical Area Buffer: Variance B:**

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 installation of a drywell in compliance with the approved Stormwater Management Plan #43957-2004-00. Regulations prohibit new construction within the 100-foot Chesapeake Bay Critical Area buffer unless a variance is approved. The proposal is to replace the existing house on the existing foundation and reduce the overall amount of impervious surface areas. The new additions are not within the buffer and construction on top of that portion of the existing foundation that is within the buffer is not considered to be new disturbance.

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: The high part of the property is near its center. Runoff flows toward Shore Drive and toward Swan Creek. Two individual drywells are required to capture runoff from existing impervious surfaces. The only suitable location in the subdrainage area that flows toward Swan Creek is within the 100-foot Chesapeake Bay Critical Area buffer. There is insufficient area in the subdrainage that flows toward Shore Drive to construct a reasonably sized, single-family detached residential structure.

- (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: In order to comply with the approved Stormwater Management Plan, #43957-2004-00, the applicant must install the drywell to control runoff from the existing impervious surfaces. The removal of the existing impervious areas, a significant portion of which are in the 100-foot buffer, would not only pose special engineering problems but result in significantly more disturbance than that proposed for the installation of the drywell.

- (3) **The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.**

Comment: This type of accessory structure with 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 high part of the property is near its center. Runoff currently flows toward Shore Drive and toward Swan Creek. Two individual drywells are required to capture runoff from existing impervious surfaces. The only suitable location in the subdrainage area that flows toward Swan Creek is within the 100-foot Chesapeake Bay Critical Area buffer. In order to comply with the approved Stormwater Management Plan, #43957-2004-00, the applicant must install the drywell. There is insufficient area in the subdrainage that flows toward Shore Drive to construct a reasonably sized, single-family detached residential structure. The removal of the existing impervious areas, a significant portion of which are in the 100-foot buffer, would not only pose special engineering problems but result in significantly more disturbance than that proposed for the installation of the drywell.

- (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: There are similar properties within the Chesapeake Bay Critical Area that have been developed with single-family detached residential structures and decks within the 100-foot buffer both before and 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 in order to copy with the approved Stormwater Management Plan, #43957-2004-00, the applicant must install the drywell in the location shown.

- (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 habitats. 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. The proposed disturbance is specifically intended to improve water quality.

- (6) **The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**

Comment: The proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources. The Prince George's County Department of Environmental Resources has determined that additional stormwater management is required in the locations shown on the plans. The construction requiring the variance will reduce impacts on water quality resulting from runoff.

- (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 with the existing accessory structure 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: A denial of the variance would remove an opportunity to improve quality control of existing runoff.

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 installation of the stormwater management drywell.

6. **Variance Analysis C—Setback for an existing accessory structure: Variance B:** A variance is requested from the Zoning Ordinance because an existing deck does not meet the required setback. Section 27-442 Table VIII of the Zoning Ordinance requires accessory structures in the R-R Zone to be set back at least two feet from any property line. The existing deck touches the rear property line. The rear property line abuts a parcel used as open space by a group of local homeowners.

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 deck is correctly situated behind the principal structure on the site; however, this portion of the property is a steep slope and the deck is constructed on pilings. Section 27-442 Table IV of the Zoning Ordinance requires that in the R-R Zone the principal structure be set back at least 25 feet from the front yard line; however, the Record Plat, WWW 26-81, requires a setback of 50 feet. This particular increased setback forces the principal structure much closer to the rear lot line than is normally required. Because accessory structures are required by the Zoning Ordinance to be behind the principal structure, the unusually large front yard setback creates an unusual condition.

- (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 require the demolition of the existing deck.

- (3) **The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.**

Comment: This type of accessory structure with 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: Record Plat WWW 26-81 requires a setback of 50 feet. This particular increased setback forces the principal structure much closer to the rear lot line than is normally required. The deck is correctly situated behind the principal structure on the site; however, this portion of the property is a steep slope. A denial of the variance would require the removal of that portion of the deck that protrudes within two feet of the rear property line. The remainder of the deck would not be structurally sound without this portion and the result would require demolition of the existing deck.

- (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: Many other lots in the area have decks in the rear yard. Because the deck does not impinge upon other residential lots, this deck meets the intent of the Zoning Ordinance.

- (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 are developed with single-family detached residential structures and have decks in the rear yard.

- (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 habitats. 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.

- (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: A denial of the variance would require the demolition of the existing deck. The granting of the variance would not affect neighboring properties.

Recommended Action: Staff recommends approval of a variance of two feet for the existing deck.

7. **Summary:** On May 6, 2005, 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 and a variance application were accepted for processing on May 23, 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 the appropriate county staff to address replanting for disturbance of any vegetation. The plan proposes clearing 118 square feet of the 1,308 square feet of existing woodland. The area is the equivalent of 16.6 percent of the existing woodland. The plan does not note how it will meet the requirements of Section 4.1c.3 of the “Chesapeake Bay Critical Area Conservation Manual.” This section refers to woodland preservation requirements and is administered by the Prince George’s County Department of Environmental Resources.

In accordance with the request of the CBCA Commission, the plan provides for the installation of low-impact stormwater management facilities to address stormwater flows from impervious surfaces. Finally, the proposed impervious surface area will not exceed the limits that are permitted by state law.

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 drywell, as shown on the submitted Conservation Plan.

APPROVAL of a variance of 965 square feet to the maximum impervious surface areas permitted in the L-D-O Zone.

APPROVAL of a variance of two feet to the minimum rear yard setback to validate the existing deck.

APPROVAL of CP-05007 with the following condition:

1. Prior to signature, the Conservation Plan shall be revised to show conformance with Section 4.2(d)5 of the Chesapeake Bay Critical Area Manual regarding tree planting or an appropriate fee-in-lieu will be provided.

