

R E S O L U T I O N

WHEREAS, Dwight A. and Rosalee M. Jacobs are the owners of a 0.57-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned Rural Residential (R-R); and

WHEREAS, on August 12, 2011, Dwight A. and Rosalee M. Jacobs filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of adding a gravel driveway, validating a shed, gazebo, and pavilion in the Chesapeake Bay Critical Area, and allowing an accessory building (the pavilion) in the side yard and two structures too close to the streetline; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-11001 for Eagle Harbor, Lots 27–36 (Jacobs Property), including Variance Request VC-11001, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on December 1, 2011, for its review and action in accordance with Zoning Ordinance, Subtitle 27, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on December 1, 2011, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Section 27-548.11 of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-11001, for a variance and further APPROVED Conservation Plan CP-11001, Eagle Harbor, Lots 27–36 (Jacobs Property) for 10 lots with the following conditions:

1. Prior to signature approval of the conservation plan, the plan shall be revised to show the height of the existing structures.
2. Prior to signature approval of the conservation plan, the following note shall be placed on the plan: "The 15% woodland cover requirement per Section 5B-114(e)(6)(D) is met by the existing vegetation shown on this plan."

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The site is a combination of ten lots (Block 17, Lots 27–36, Eagle Harbor) recorded in the Prince George’s County Land Records in Plat Book SDH 3, Plat 22. It contains 25,000 square feet or 0.57 acre.
2. This site is not subject to the provisions of the Woodland Conservation and Wildlife Habitat Ordinance because the entire site is within the Chesapeake Bay Critical Area (CBCA). A letter of exemption will be issued and must accompany any permit applications. According to the Environmental Planning Section, the separate 15 percent woodland cover requirement of Section 5B-114(e)(6)(D) of the County Code is met by the existing vegetation shown on the plan. A note to that effect should be added to the plan.
3. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is 10,000 square feet. The gross lot area, as indicated on the site plan is 25,000 square feet. According to survey information, there is no 100-year floodplain.
4. The maximum amount of impervious surfaces permitted per the CBCA regulations (Section 27-548.17 of the Zoning Ordinance) is 15 percent of the gross lot area or 3,750 square feet. The plan indicates existing impervious surfaces of 2,063 square feet, or 8.25 percent. With the additional 338 square feet from the proposed gravel driveway, the corresponding proposed CBCA impervious surface would be 2,401 square feet or 9.6 percent, well within the 15 percent maximum.
5. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) is 25 percent of the contiguous net tract area or 6,250 square feet. The proposed percentage of lot coverage, which includes the house footprint, gazebo, and driveway, is 2,041 square feet or 9.6 percent.
6. The minimum lot width at the street frontage permitted by Section 27-442, Table III, Footnote 3, of the Zoning Ordinance is 70 feet. The lot width at the street frontage is 250 feet.
7. The minimum lot width at the building line permitted by Section 27-442, Table III, of the Zoning Ordinance is 100 feet. The lot width at the building line is 250 feet.
8. The minimum front yard setback permitted by Section 27-442, Table IV, of the Zoning Ordinance is 25 feet for the residence and 60 feet for the pavilion. The proposed front yard setback is 27.3 feet to the pavilion and 23.8 feet to the existing single-family residence. The applicant seeks a variance from these requirements.
9. The minimum side yards permitted by Section 27-442, Table IV, of the Zoning Ordinance are a total of 17 feet with a minimum of 8 feet. The existing setbacks far exceed this number.
10. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. The existing setback is 20 feet.

11. The minimum setback for accessory structures (sheds) from the rear property line is two feet. The existing sheds are set back a minimum of nine feet.
12. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet. A visit to the site revealed the existing structures to be well under this height, although the dimension must be noted on the plan.
13. The Chesapeake Bay Critical Area Commission requires 3:1 replacement for trees cleared within the 100-foot CBCA buffer. The critical area plan correctly notes that no trees will be cleared as part of this development, nor is there any buffer area on the site.
14. A Variance Request (VC-11001) was received for a variance to Section 27-442(i), Footnote 10, of the Zoning Ordinance. That section requires accessory buildings to be located in the rear yard. Also, variances are required for the front setback for the residence (1.2 feet) and the pavilion (32.7 feet). Because the Planning Board is the final approving authority for CBCA conservation plans, it is also the approving authority for the requested variances.

VARIANCE ANALYSIS

Section 27-230(a) of the Zoning Ordinance contains findings required for all variances. A variance must be obtained to allow the carport to be in the front yard. 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;**

The subject property has exceptional conditions not ordinarily found on lots in the R-R Zone. The property is located wholly within the Chesapeake Bay Critical Area (CBCA), with a maximum lot depth of 100 feet. The residence, pavilion, and sheds have existed on this site for many decades. The only new impervious surface the applicant is proposing is 338 square feet of gravel for a driveway. There will be no adverse environmental impact.

- (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**

The strict application of the Zoning Ordinance would result in undue hardship upon the owner of the property. The plan, as submitted, reflects a reasonable use of the property and is in keeping with the character of the existing neighborhood. The strict application of the Zoning Ordinance would require the applicant to remove the long-existing (more than 50 years) structures or, in the case of the pavilion, move them to the rear yard.

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

The variance will not substantially impair the integrity of the General Plan or master plan. The use of the site for single-family detached residential development with an accessory pavilion and sheds is in complete conformance with the recommendations of the General Plan and master plan. Section 27-230(b) permits that a variance may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* for properties within the CBCA 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). The following is an analysis of the application's conformance with the Zoning Ordinance requirements.

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;

Circumstances peculiar to the subject property would cause an unwarranted hardship if the County Code were literally enforced. The property will remain unchanged other than the addition of a small gravel driveway. If the variance is not granted, the applicant would be required to move two structures in order to place 338 square feet of gravel on the site, an unreasonable burden. The variance being sought does not involve a CBCA regulation.

(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 Overlay Zones;

A literal interpretation of the Code would deny the applicant of rights enjoyed by others in the CBCA. Most of the other properties are similarly developed, some of which have similar deficiencies in structure setbacks. What the applicant is proposing is in keeping with the character of the surrounding neighborhood, while avoiding additional impacts.

(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 Overlay Zones;

Granting this variance does not establish a special privilege. The slight increase to the impervious surface for the gravel driveway is in keeping with the character of the existing neighborhood. In addition, the variance being sought is not from the provisions related to CBCA regulations.

(4) The variance requests is 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;

The variance request is not based upon circumstances which are the result of actions by the applicant or neighboring properties. When Eagle Harbor was laid out more than 70 years ago, the lots that were created

were uniformly 25 feet in width and 100 feet in depth. With a lot width requirement at the front building line of 100 feet, the building envelopes (i.e., the combination of lots making up a buildable area) in Eagle Harbor are almost always wider than they are deep. This fact, combined with the 20-foot setback required for the rear yard and 25-foot setback for the front yard makes for narrow front and rear yards and wide side yards. As a result, many accessory buildings in Eagle Harbor are found in the side yard. The applicant realizes that they must gain the approval of the Planning Board prior to issuance of a permit.

- (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;**

The CBCA conservation plan submitted minimizes adverse impacts on water by proposing development on an unencumbered area on the site, and does not significantly impact fish, plant, or wildlife habitat. The proposed conservation plan generally minimizes adverse impacts on water quality. In addition, the conservation plan is required to be in conformance with the stormwater management requirements of Prince George's County.

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

The applicant is required to meet the requirements of the Stormwater Management Ordinance to address issues of water quality for the site. The plan has been reviewed by the Environmental Planning Section, the Chesapeake Bay Critical Area Commission, and the Prince George's County Health Department. No adverse impacts on water quality have been identified.

- (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;**

The conservation plan states that there are no fish, plant, or wildlife habitats, as described in the Conservation Manual 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**

The use, as proposed in this submittal, is in complete conformance with the R-R and L-D-O Zones. The long-existing, single-family residence, pavilion, and sheds at this location have not appeared to create any adverse environmental impact. There is nothing to suggest that the addition of 338 square feet of gravel base for a driveway will change this fact.

- (9) The growth allocations for Overlay Zones within the County would not be exceeded by the granting of the variance.**

No use of growth allocation is needed to proceed with the proposed development.

SUMMARY

Granting of the variance is appropriate to permit reasonable development of the site with a gravel driveway to serve the single-family detached residence existing on the site. Validation of the long-existing structures on the site will allow this modest accommodation.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the adoption of this Resolution.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Bailey, seconded by Commissioner Washington, with Commissioners Bailey, Washington, Squire, Shoaff and Hewlett voting in favor of the motion at its regular meeting held on Thursday, December 1, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of January 2012.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator