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CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN VARIANCE REQUEST

CP-89039/08
VC-89039/08

Application	General Data	
Project Name: Tantallon on the Potomac, Lot 14 Location: 704 Moyer Court Fort Washington, MD 20744 Applicant/Address: Carver E. and Ollie L. Poindexter 1013 Sero Estates Drive Fort Washington, MD 20744-6084	Date Accepted:	02/18/09
	Planning Board Action Limit:	N/A
	Most Recent Revision:	03/17/09
	Plan Acreage:	1.00
	Zone:	R-R/L-D-O
	Square Footage of Proposed Structure:	3,340
	Planning Area:	80
	Council District:	08
	Municipality:	N/A
200-Scale Base Map:	216SW01	

Purpose of Application	Notice Dates	
This Chesapeake Bay Critical Area conservation plan requires Planning Board approval prior to the issuance of a building permit. This application is for the construction of a single-family residence in the Chesapeake Bay Critical Area. A variance to a front yard setback is requested.	Adjoining Property Owners: (CB-15-1998)	N/A
	Previous Parties of Record: (CB-13-1997)	N/A
	Sign(s) Posted on Site:	04/21/09
	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 Variance Request
CP-89039/08 and VC-89039/08
Tantallon on the Potomac, Lot 14

Council District: 08 Planning Area: 80 Municipality: N/A

OVERVIEW

The proposal is for the construction of a single-family detached dwelling on a property in the Rural Residential (R-R) Zone and is within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone, recorded after December 1, 1985. The approval of a conservation plan by the Planning Board is required prior to the issuance of permits in the Chesapeake Bay Critical Area. Because the Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans, the Planning Board is the approving authority for variances. The applicant has requested a variance to the minimum front yard setback required by Section 27-442, Table IV of the Zoning Ordinance. No variance to any provision of the Prince George's County Chesapeake Bay Critical Area Program is requested.

SITE DESCRIPTION

The one-acre property in the R-R and L-D-O Zones is located at 704 Moyer Court, Fort Washington, Maryland in the Potomac River basin. There are steep slopes and 100-year floodplain on the property. There are Chesapeake Bay Critical Area buffers on the property. 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 on this property or on adjacent properties. The *Prince George's County Soil Survey* indicates that the principal soils on the site are in the Sassafras series.

Conformance with the Henson Creek Master Plan

Except for noting that the property is within the Chesapeake Bay Critical Area, there are no specific recommendations pertaining to the environmental elements of the *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* that relate to the subject property.

Conformance with the Countywide Green Infrastructure Plan

The *Approved Countywide Green Infrastructure Plan* indicates that the site is mostly designated as regulated area due to its location in the Chesapeake Bay Critical Area. Except for the area of clearing required for construction, the majority of the property will be retained in natural vegetation and areas not vegetated are required to be planted.

RECOMMENDED FINDINGS

1. A Chesapeake Bay Critical Area Conservation Plan, CP-89039, was approved by the Planning Board on December 21, 1989 and included approximately 38.60 acres of Parcel 52 of Tax Map 131. The subject property was included in CP-89039, but not in any subsequent revisions. Detailed Site Plan DSP-90076 included approximately 37.20 acres of the subject property. The approved conservation plan serves as a revision to DSP-90076.
2. This site is not subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance because the entire site is within the Chesapeake Bay Critical Area. The Chesapeake Bay Critical Area expanded buffer is correctly shown on the plan. No disturbance to the expanded buffer is proposed and the currently unforested area of the buffer is the focus of the replanting proposed on the site.

Based upon information provided by the State of Maryland, there are no threatened or endangered species, no colonial waterbird nesting sites, no forests with interior dwelling bird species, no Natural Heritage areas, no waterfowl staging areas, no anadromous fish spawning streams, no wetlands, and no tributary streams on the site. The 100-year floodplain has been platted. The site contains 100-year floodplain and steep slopes which are included within the expanded buffer shown on the plan. No disturbance is proposed or permitted to the expanded buffer or steep slopes.

3. The minimum net lot area required by Section 27-442, Table I of the Zoning Ordinance is 20,000 square feet. The gross tract area is 43,586.13 square feet. The area of the 100-year floodplain is 12,636.76 square feet. The net lot area is 30,949.94 square feet, which is greater than the minimum 20,000 square feet required.
4. The maximum amount of impervious surfaces permitted per Section 27-548.17 of the Zoning Ordinance is 15 percent of the gross tract area or 6,537.9 square feet. The maximum amount of lot coverage as defined by Maryland House Bill 1253 is 15 percent of the gross tract area or 6,537.9 square feet. The plan proposes total impervious surfaces, as defined by Subtitle 27 and lot coverage as defined by HB 1253, of 4,492 square feet or 11.41 percent as indicated in Section 27-548.17, Tables B and B1.
5. The maximum percentage of lot coverage permitted by Section 27-442, Table II of the Zoning Ordinance is 25 percent of the contiguous net tract area or 7,737.4 square feet. The proposed percentage of lot coverage is 4,376 square feet or 14.1 percent as indicated in Table A of the conservation plan by the line "lot size in square feet." This needs to be clarified prior to signature approval.

Recommended Condition: Prior to signature of the conservation plan, Table A shall be revised to read "net lot area in square feet" instead of "lot size in square feet."

6. The minimum lot width at the street frontage permitted by Section 27-442, Table III of the Zoning Ordinance is 70 feet. The lot width at the street frontage is approximately 169 feet.
7. The minimum lot width at the building line permitted by Section 27-442 Table III, Footnote 2 of the Zoning Ordinance is 80 feet. The lot width at the proposed building line is 107 feet.
8. 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 eight feet. The proposed side yards are 8.5 and 16.67 feet for a total of approximately 25 feet.

9. The minimum rear yard setback required by Section 27-442, Table IV of the Zoning Ordinance is 20 feet. The proposed rear yard is in excess of 300 feet.
10. The maximum height permitted by Section 27-442, Table V of the Zoning Ordinance is 35 feet. The proposed height is 32.5 feet.
11. Some woodland will be removed to allow construction. The Chesapeake Bay Critical Area Manual requires replacement on-site or the use of a fee-in-lieu. The plan proposes 10,505 square feet of on-site planting and a fee-in-lieu for \$3,131.00 or the use of off-site mitigation in an area approved by the Department of Public Works and Transportation. This mitigation proposal is consistent with the original conservation plan approval for the entire subdivision.

Based upon 218 square feet per tree planted, a minimum of 48 trees are required to satisfy the planting requirements for 10,505 square feet. Staff previously visited the property and determined that the proposed planting area requires the use of native water-tolerant species. The mitigation planting schedule proposes planting 69 trees; however, all of the trees to be planted in the wetland area are a single species which will not mimic natural woodland. The existing tree line symbol on the plan does not clearly depict which side of the line is wooded.

The note under the tree mitigation table is not clear with regard to the previous approvals. Revise the note to read: “All plantings are in conformance with the approved Conservation Plan, CP-89039, as shown on Sheet 6 of 6, which covered the entire subdivision and allowed for mitigation at the ratio of 1.5 to 1.”

Recommended Condition: Prior to signature approval of the conservation plan, the planting schedule shall be revised to replace some of the red maple with willow oak, sweet gum, and other water-tolerant species, so that there is an even mix of the three species. The symbol for the existing tree line shall be revised to use a traditional scallop pattern that clarifies which side of the line is the woodland edge. Revise the note under the tree mitigation table to read:

“All plantings are in conformance with the approved Conservation Plan, CP-89039, as shown on Sheet 6 of 6, which covered the entire subdivision and allowed for mitigation at the ratio of 1.5 to 1.”

12. The site has an approved Stormwater Management Concept Plan, CSD 36529-2003, which gives credits for substantial preservation and sends some stormwater into Moyer Court and then into a structure on a nearby property.
13. The plan conforms to the *Prince George’s County Landscape Manual* by providing landscaping in excess of the minimum required for a residential structure in the R-R Zone.
14. The *Prince George’s County Soil Survey* indicates that the principal soils on the site are in the Sassafras series; however, the approved Chesapeake Bay Critical Area Conservation Plan, CP-89039, shows an area that was previously a borrow pit and a disturbed area with unknown soils. A soils report is required by Prince George’s County during the permit process.
15. The lot was recorded on February 25, 1991 and is shown on Record Plat VJ 157 @ 36 in the Prince George’s County Land Records. The subject lot has frontage on Firth of Tae Drive, the stem of Moyer Court, and the cul-de-sac of Moyer Court. So situated, the lot meets the definition of a through lot as stated in Section 27-107.144 of the Zoning Ordinance which requires 25-foot

front yard setbacks on the three sides that abut the streets. The setback adjacent to Firth of Tae Drive is not correctly shown.

The minimum front yard setback required by Section 27-442, Table IV of the Zoning Ordinance is 25 feet. The proposed front yard setback along Moyer Court and its cul-de-sac is approximately 28 feet. The front yard setback along Firth of Tae Drive is 8.6 feet. An application for a variance to Section 27-442, Table IV was submitted on March 23, 2009.

16. An application for a variance was submitted on March 23, 2009 to the minimum front yard setback required by Section 27-442, Table IV of the Zoning Ordinance. No variances to any provision of the Chesapeake Bay Critical Area regulations are needed. Because the Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans, it is also the approval authority for the requested variance.

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 of the Zoning Ordinance was created to provide grandfathering of lots that were created before December 1, 1985. Because this lot was created after December 1, 1985, no variances to any provision of the Prince George's County Chesapeake Bay Critical Area Program are permitted. The requested variance is not related to the Prince George's County Chesapeake Bay Critical Area Program, including the L-D-O Zone and the *Chesapeake Bay Critical Area Conservation Manual*, but is related to the base zone, R-R.

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. The following is an analysis of the application's conformance with these requirements.

- (1) **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

Comment: The lot was recorded on February 25, 1991 and is shown on Record Plat VJ 157 @ 36 in the Prince George's County Land Records. The lot is exceptionally long and narrow and is extraordinarily a "through lot" which results in the need for three front yard setbacks, 25 feet in depth.

- (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 plan as submitted reflects a reasonable use of the property and is in keeping with the character of the existing neighborhood. Moving the structure towards the rear yard would increase the lot coverage and impervious surface coverage, both of which should be avoided in the Chesapeake Bay Critical Area. Shifting the orientation of the structure would present incompatibilities with the orientation of existing structures on neighboring properties.

- (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 detached residential structure is in complete conformance with the General Plan and the master plan.

Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance with regard to Chesapeake Bay Critical Area Overlay Zone requirements or the Conservation Manual for properties within the Chesapeake Bay Critical Area where an applicant demonstrates that provisions have been made to minimize any adverse environmental impacts of the variance and where the 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 requirements of Section 27-230(b) of the Zoning Ordinance, based on the variance submitted for relief from the front yard setback.

- (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;**

Comment: The variance being sought is not from the provisions related to the Chesapeake Bay Critical Area regulations.

- (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;**

Comment: Other properties nearby are similarly developed and the proposed building is in keeping with the character of the surrounding neighborhood.

- (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;**

Comment: The variance being sought is not from provisions related to the Chesapeake Bay Critical Area regulations.

- (4) **The variance request 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 nonconforming, on any neighboring property;**

Comment: The applicant has taken no action on this property to date 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, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the 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 proposed Chesapeake Bay Critical Area 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;**

Comment: The applicant is required to meet stormwater management approval requirements to address issues of water quality for the site. The site has an approved Stormwater Management Concept Plan, CSD 36529-2003.

- (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 conservation plan includes an inventory that indicates that there are no fish, plant, or wildlife habitats, as described in the *Chesapeake Bay Critical Area Conservation Manual*, which 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 as proposed in this submittal is in conformance with 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.

RECOMMENDATION:

APPROVAL of Chesapeake Bay Critical Area Conservation Plan CP-89039/08 and Variance Request VC89039/08 subject to the following conditions:

1. Prior to signature approval of the conservation plan, Table A shall be revised to read “net lot area in square feet” instead of “lot size in square feet.”
2. Prior to signature approval of the conservation plan, the planting schedule shall be revised to replace some of the red maple with willow oak, sweet gum, and other water-tolerant species so that there is an even mix of the three species. The symbol for the existing tree line shall be revised to use a traditional scallop pattern that clarifies which side of the line is the woodland edge. Revise the note under the tree mitigation table to read:

“All plantings are in conformance with the approved Conservation Plan, CP-89039, as shown on Sheet 6 of 6, which covered the entire subdivision and allowed for mitigation at the ratio of 1.5 to 1.”
3. Prior to signature approval of the conservation plan, the plan shall be revised to correctly show all 25-foot setbacks required by Section 27-442, Table IV of the Zoning Ordinance.