

R E S O L U T I O N

WHEREAS, Larney & Janice Gump are the owners of a 0.41-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned R-R (Rural Residential) and in the Limited-Development Overlay Zone (LDO); and

WHEREAS, on September 31, 2009, Andy Bock filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of the constructing of a single-family detached residential structure in the Chesapeake Bay Critical Area (CBCA); and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-09001 for Tantallon on the Potomac, Section 5, Block A, Lot 64, including Variance Request VC-09001, 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 October 1, 2009, 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 October 1, 2009, 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-09001, and further APPROVED Conservation Plan CP-09001, Tantallon on the Potomac, Section 5, Block A, Lot 64 with the following conditions:

1. Prior to signature of the conservation plan, Critical Area Note 15 shall be revised to account for the cutting of 31 trees and the landscape schedule shall be revised to provide more diversity and use only native tree species.
2. The site plan shall be revised to include the dimensions of the proposed house and driveway.
3. Prior to signature approval of the conservation plan, the stormwater management plan shall be approved by the Department of Public Works and Transportation (DPW&T).
4. Prior to signature approval of the Conservation Plan, the applicant shall submit to the Chief Building Inspector for Prince George's County for review and approval a report, prepared by a marine engineer that evaluates the condition of the existing bulkhead and details regarding how the

bulkhead should be repaired to ensure the stability of Lot 64. The plan for the repair of the bulkhead shall be the basis for a separate permit. The repair to the bulkhead shall be completed prior to the issuance of any building permit.

5. Prior to signature approval, the site plan shall be revised to provide appropriate planting densities for mitigation with the remainder of the mitigation in fee-in-lieu.

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 proposal is for the construction of a single-family detached residential structure on a property within the Chesapeake Bay Critical Area (CBCA). A Chesapeake Bay Critical Area conservation plan is required prior to the issuance of any permit by Prince George's County. The Planning Board is the final approving authority for Chesapeake Bay Critical Area conservation plans. The subject property is zoned R-R (Rural Residential) and is within the Limited-Development-Overlay Zone (L-D-O) in the Potomac River basin.

Because variances to the critical area requirements will be necessary, the application was forwarded to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays for their review and comment.

2. The 0.41-acre lot in the R-R/L-D-O Zones is located at the west side of the cul-de-sac of Harbour Circle and is wholly within the Chesapeake Bay Critical Area. There are no streams or wetlands on the property. Two of the property lines are coincident with a concrete bulkhead abutting Swan Creek. The property contains 100-year floodplain and is mostly within the 100-foot CBCA buffer. Current air photos indicate that the western portion of the site is wooded and the eastern portion is a tidal pond. 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 have critical habitat on or near the subject property. The *Prince George's County Soil Survey* indicates that the principal soils on the site are in the Keyport series. The site is in the Developing Tier according to the 2002 *Prince George's County Approved General 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 master plan that relate to the subject property. The 2005 *Approved Countywide Green Infrastructure Plan* indicates that the site is mostly regulated area due to its location in the Chesapeake Bay Critical Area.
3. The lot was recorded in 1967 and is shown on Record Plat WWW 66 @ 85 in the Prince George's County Land Records containing 17,726 square feet or 0.41 acre.
4. 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. Based upon information provided by the State of Maryland, the plan correctly indicates that there are no threatened or endangered species, no colonial water bird nesting sites, no forests with interior

dwelling bird species, no natural heritage areas, no waterfowl staging areas, and no wetlands on the site. The plan correctly indicates that Swan Creek is a tributary stream.

5. The minimum net lot area required by Section 27-442, Table I of the Zoning Ordinance is 15,000 square feet. The gross lot area, as indicated on Record Plat WWW 66 @ 85, is 17,726 square feet. The 100-year floodplain occupies 2,406 square feet of the property. The net tract area is 15,320 square feet.
6. The maximum amount of impervious surfaces permitted per Section 27-548.17 of the Zoning Ordinance is 25 percent of the gross tract area or 4,431.5 square feet. The plan indicates impervious surfaces for the house footprint of 2,911 square feet and a driveway/walkway of 1,002 square feet, for a total of 3,913 square feet or 22 percent.
7. 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 4,431.5 square feet. The proposed percentage of lot coverage, which includes the house footprint, walkway, and driveway, is 3,913 square feet or 22 percent.
8. The minimum lot width at the street frontage permitted by Section 27-442, Table III, Footnote 3 of the Zoning Ordinance is 60 feet. The lot width at the street frontage is 60.03 feet.
9. The minimum lot width at the building line permitted by Section 27-442, Table III, Footnote 20 of the Zoning Ordinance is 35 feet. The lot width at the proposed building line exceeds 90 feet.
10. The minimum front yard setback permitted by Section 27-442, Table IV of the Zoning Ordinance is 25 feet. The proposed front yard setback is 30 feet.
11. 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 eight and 13 feet for a total of 21 feet.
12. The minimum rear yard required by Section 27-442, Table IV of the Zoning Ordinance is 20 feet. The proposed rear yard is 41 feet.
13. The maximum height permitted by Section 27-442, Table V of the Zoning Ordinance is 35 feet. The proposed height is 28 feet.
14. Although there is no woodland on-site, the Chesapeake Bay Critical Area Commission requires 3:1 replacement for trees cleared within the 100-foot CBCA buffer. Critical Area Note 15 indicates 26 trees that will be removed and indicates that a minimum of 76 trees are required to be planted; however, the plan shows 31 trees to be removed which would result in the need to plant at least 93 trees. The landscape schedule proposes the planting of 94 trees. The landscape schedule has three symbols for Willow Oak and includes a non-native tree, Crepe Myrtle.

A condition is recommended to account for the cutting of 31 trees and to provide more plant diversity including the use of only native tree species. During the public hearing on October 1, 2009, the Planning Board indicated that the applicant should provide the appropriate planting densities for mitigation and use fee-in-lieu for planting that cannot be accommodated on the subject property.

15. A variance request was received on July 19, 2007 for impacts to the 100-foot CBCA buffer. 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 variances.
16. The *Prince George's County Landscape Manual* requires a minimum of four major shade trees and three ornamental or evergreen trees per lot. The plan and the landscape schedule show planting in excess of 94 trees.
17. During the public hearing on October 1, 2009 an adjacent property owner raised concerns about the condition of an existing bulkhead on the subject property. The Planning Board included a condition of approval to require that the bulkhead be repaired.
18. **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.

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

(c) **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;**

The proposed conservation plan submitted meets the stormwater management requirements of the Prince George's County Department of Public Works and Transportation (DPW&T) 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 populations of affected species to sustain themselves; and

The conservation plan submitted 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.

- (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. (CB-72-1987)**

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.

Finding: The subject property was recorded prior to December 1, 1985, and at that time was a “legally buildable lot” with a gross tract of 17,726 square feet, a net tract area of 15,320 square feet, and adequate frontage on a public street.

VARIANCE ANALYSIS

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. A variance must be obtained for impacts to the 100-foot CBCA buffer. The lot cannot be developed without some impact. 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 property is located at the west side of the cul-de-sac of Harbour Circle and is wholly within the Chesapeake Bay Critical Area.

- (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 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 deny any application for a permit.

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

The use of the site for single-family detached residential development is in complete conformance with General Plan.

Section 27-230(b) 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). The following is an analysis of the application's conformance with the Zoning Ordinance requirements. Because all of the variances requested are similar in nature, the variances are evaluated together below:

- (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;**

The property has its only frontage on Harbour Circle. The property lies within the 100-foot critical area buffer for Swan Creek. A literal interpretation of the provisions of the Chesapeake Bay Critical Area regulations would deny any application for a permit.

- (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;**

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;**

The granting of these variances does not establish a special privilege because the building proposed is in keeping with the character of the existing neighborhood.

- (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 applicant has taken no action on this property to date, and the current requests are 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;**

The Chesapeake Bay Critical Area plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat. The proposed Chesapeake Bay Critical Area plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and generally minimizes adverse impacts on water quality.

(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.

(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 Chesapeake Bay Critical Area 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.

(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.

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 Squire, seconded by Commissioner Cavitt, with Commissioners Squire, Cavitt, Clark, Vaughns and Parker voting in favor of the motion at its regular meeting held on Thursday, October 1, 2009, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 22nd day of October 2009.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

OSR:FJG:JJ:arj

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