

R E S O L U T I O N

WHEREAS, a 2.5-acre parcel of land in the Election District of Prince George's County, Maryland, and being zoned I-2/I-D-O; and

WHEREAS, on March 20, 2007, Criss Brothers Partnership filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of continued use as an industrial manufacturing and storage site within the Chesapeake Bay Critical Area; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-07005 for Edmond's Subdivision, including Variance Request VC-07005, 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 November 8, 2007, 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 November 8, 2007, 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-07005, for 5 variances, and further APPROVED Conservation Plan CP-07005, Edmond's Subdivision for 2 industrial lots.

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

1. **Site Description:** The subject property is located on the east side of the Baltimore & Ohio Railroad and on the west side of Kenilworth Avenue, approximately 3,000 feet south of Annapolis Road, within the Chesapeake Bay Critical Area in the Anacostia River basin. There are no streams or wetlands on the property. There is no floodplain on the property. Current air photos indicate that the site contains existing structures and is not wooded. No historic or scenic roads are affected by this proposal. There are no significant nearby noise sources except the Baltimore & Ohio Railroad 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 the subject property or on adjacent properties. The Prince George's County Soils Survey indicates that the principal soil on the site is in the Elsinboro soil series, which poses no significant difficulties to development except steep slopes. The site is in the Developed Tier according to the adopted 2002

General Plan. The western three-quarters of the property are designated as a network gap in the *Countywide Green Infrastructure Plan*.

RECOMMENDED FINDINGS

- a. The lots were recorded on May 8, 1947, and are shown on Record Plat 12-96 in the Prince George's County Land Records.
- b. This site is not subject to the provisions of the Woodland Conservation Ordinance because the entire site is within the Chesapeake Bay Critical Area.
- c. There is no minimum net lot area required by Section 27-474(c), Table II, of the Zoning Ordinance. The existing net lot area is 109,052 square feet.
- d. The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4A(ii) of the Zoning Ordinance is 100 percent of the gross tract area or 109,052 square feet or 2.50 acres. The plan proposes to maintain the existing amount of impervious surface areas of 2.35 acres or 94 percent.
- e. The maximum percentage of lot coverage required by Section 27-474(c), Table II, of the Zoning Ordinance is 100 percent of the contiguous net tract area or 2.50 acres. The existing percentage of lot coverage is 102,569 square feet or 35.1 percent.
- f. All other provisions of the Chesapeake Bay Critical Area regulations have been met on site.
- g. A variance request was received on May 3, 2007, and was subsequently revised on May 10, 2007. An additional revised variance request was received on September 13, 2007.

No variances to any provision of the Chesapeake Bay Critical Area regulations are needed. Variances from other requirements of the Zoning Ordinance are requested as stated below. 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.

The existing building was constructed in 1952 and is clearly visible in the 1965 and 2005 air photos available on pgatlas.com. When the structure was built, it met all requirements of the Zoning Ordinance that were in effect. Subsequent changes to the Zoning Ordinance have resulted in the existing structure being nonconforming.

All required setbacks in the Zoning Ordinance must be evaluated with regard to the ultimate right-of-way for any roadway shown on the General Plan, functional master plans, and area master plans or the deemed right-of-way for other roads that may be improved to meet the standards of the County Road Code.

Any variance approved will allow continuation of the existing conditions and permit repair or replacement in-kind; however, any new structures will be required to adhere to the provisions of the Zoning Ordinance.

Variations from the Zoning Ordinance are required to:

- (1) Validate the location of the existing building on proposed Lot 6 adjacent to Kenilworth Avenue and Lloyd Street that has front and side yard setbacks of 25 feet required by Section 27-474(b).
 - (a) The building is setback three feet from the existing right-of-way of Lloyd Street and intrudes nine feet into the deemed right-of-way of Lloyd Street.
 - (b) The building is set back 36 feet from the existing right-of-way of Kenilworth Avenue; however, it will intrude nine feet into the required 25-foot setback from the ultimate right-of-way of Kenilworth Avenue.
- (2) Validate the location of the existing building on proposed Lot 6 adjacent to Kenilworth Avenue and Lloyd Street that has existing side yards totaling three feet, where Section 27-474(b) of the Zoning Ordinance requires the side yards to total 30 feet.
- (3) Validate existing ten-foot-high chain-link fences on proposed Lot 7. A six-foot-high fence is permitted on the property line by Section 27-474 Table IV of the Zoning Ordinance; however, all fences greater than six feet must adhere to all building restriction lines.
 - (a) The fence on proposed Lot 7 along Lloyd Street is along the existing property line and is not set back 25 feet as required. The fence is within the deemed right-of-way of Lloyd Avenue.
 - (b) The fence on the east side of proposed Lot 7 is along the proposed boundary line; however, the Zoning Ordinance requires a setback of 30 feet. A portion of this fence is within the deemed right-of-way of Lloyd Avenue.
 - (c) The fence along the west side of proposed Lot 7 varies from 16 feet to 25 feet from the property line, where the Zoning Ordinance requires 30 feet. A portion of this fence is within the deemed right-of-way of Lloyd Avenue.

2. **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 is required to be in conformance with the stormwater management requirements of Prince George's County. Because no new construction is proposed, no additional management is required. Any new construction will be required to provide additional stormwater management.

- (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, which 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 lots were recorded on February 12, 1947, and are shown on Record Plat 12-96 in the Prince George's County Land Records. The lot size, frontage, and vehicular access were in accordance with the requirements in effect at the time of initial development and the application submitted requires no use of growth allocation.

Recommended 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 2.50 acres, a net tract area of 2.50 acres and when it was platted the Chesapeake Bay Critical Area regulations were not in effect.

3. **Variance Analysis:** Because all of the variances that are the subject of this application are for the purpose of validating existing conditions, they are analyzed together below.

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 conditions or other extraordinary conditions or conditions;**

Comment: The extraordinary condition of this lot is that it was platted 62 years ago and the original structure was built prior to 1950, long before the Zoning Ordinance was adopted and the Chesapeake Bay Critical Area requirements were envisioned. No new buildings are proposed. The existing structures are in keeping with the character of the surrounding neighborhood.

- (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. Failure to grant the variances would require the removal of existing structures.

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

Comment: Both the General Plan and Master Plan allow for this property to be used for light-industrial purposes. As such, the proposed use conforms with both the General Plan and Master Plan.

Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance or the 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 based on variances as submitted. Because all of the variances requested are similar in nature, to validate existing conditions on-site, 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 interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship;**

Comment: None of the variances being sought is from provisions related to the Chesapeake Bay Critical Area regulations. This lot is peculiar in that it was platted in 1947 and developed prior to 1965; long before the Chesapeake Bay Critical Area regulations were envisioned. Failure to grant the variances would require the removal of structures that violate the provisions of the Zoning Ordinance for development in the I-2 Zone.

- (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: Other properties nearby are similarly developed and the existing 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;**

Comment: The granting of these variances serves to validate structures that were legally built but have become nonconforming due to subsequent changes in the Zoning Ordinance. Other properties within the Chesapeake Bay Critical Area have similar nonconforming structures. The approval of the variances will allow continuation of the existing conditions and permit repair; however, any new structures will be required to adhere to the provisions of the Zoning Ordinance and a major revision to the conservation plan.

- (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, 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;**

Comment: The proposed Chesapeake Bay Critical Area plan is required to be in conformance with the stormwater management requirements of Prince George's County. Because no new construction is proposed, no additional management is required. Any new construction will be required to provide additional stormwater management.

- (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 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;**

Comment: The Chesapeake Bay Critical Area 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” 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 as proposed in this submittal is in conformance with the I-2 and I-D-O Zones and would not create any adverse environmental impact, as this Conservation Plan would merely validate an existing condition.

- (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.

4. **Summary:** On April 6, 2007, the Subdivision Review Committee determined that the conservation plan was in general conformance with the requirements of the I-D-O Zone and the “Chesapeake Bay Critical Area Conservation Manual;” however, the plans required numerous technical revisions. Revised plans and a revised variance application were accepted for processing on May 3, 2007, and revised on May 10, 2007. Revised plans and a revised variance were accepted for processing on September 13, 2007.

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 Clark, seconded by Commissioner Cavitt, with Commissioners Clark, Cavitt, Squire, Vaughns and Parker voting in favor of the motion at its regular meeting held on Thursday, November 8, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 29th day of November 2007.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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