

R E S O L U T I O N

WHEREAS, Alice Ferguson Foundation is the owner of a 7.88-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned Open Space (O-S) within the Chesapeake Bay Critical Area Resource Conservation Overlay (R-C-O); and

WHEREAS, on June 19, 2012, Alice Ferguson Foundation filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of adding a boardwalk, gravel walking path, several pole-mounted photoelectric cell arrays and to validate a portion of an existing cottage in 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-10005 for Alice Ferguson Foundation (Hard Bargain Farm), 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 July 26, 2012, 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 July 26, 2012, 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, and further APPROVED Conservation Plan CP-10005, Alice Ferguson Foundation (Hard Bargain Farm) with the following conditions:

1. Prior to certification of the Special Exception, the Conservation Plans shall be revised as follows:
 - a. Revise lot coverage Tables A, B-1, and B to match the lot coverage areas provided in the environmental statement of justification.
 - b. Update the buffer enhancement and mitigation requirements, per Section 5b-121 of the County Code, based on the areas provided in the environmental statement of justification.

- c. Revise the buffer management plan sheets (Sheets 7 and 8) of the plan set to show the calculations for the required buffer establishment per Section 5B-121(j) and mitigation required per Section 5B-115 of the County Code.
- d. Revise the developed woodland calculation worksheet to account for the clearing areas provided in the environmental statement of justification at a 3:1 ratio.
- e. Have the property owner sign the Property Owner's Certification.

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 parts of two parcels (7 and 34) found on Tax Maps 140 and 150, Grids F-4 and F-2. The total site area is 120.05 acres. The area of the companion special exception is 18 acres. The gross lot area within the CBCA is 7.88 acres.
2. This property is subject to the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because the gross tract area is greater than 40,000 square feet and there are more than 10,000 square feet of existing woodlands.
3. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is five acres. The gross lot area within the CBCA, as indicated on the site plan, is 7.88 acres.
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 51,515 square feet. The plan indicates existing impervious surfaces of 863 square feet, or 0.3 percent. With the additional 7,200 square feet from the proposal, the corresponding proposed CBCA impervious surface would be 8,063 square feet or 2.3 percent, well within the 15 percent maximum.
5. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) for "Other allowed uses" in the O-S Zone is 50 percent of the contiguous net tract area or 171,718 square feet. The proposed percentage of zoning lot coverage is 17,797 square feet or 5.2 percent.
6. The subject property meets the requirements for minimum lot width at the street frontage, minimum lot width at the building line, yard widths and setbacks for buildings and accessory structures in the O-S Zone.
7. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet, except for public/quasi-public buildings, which can be up to 120 feet in height so long as the building setback is increased at a 1:1 rate. The proposed "Moss Building," a quasi-public environmental education center for County school children, is 45 feet in height and is set back more than 300 feet from any property line.

8. The Chesapeake Bay Critical Area Commission requires 3:1 replacement for trees cleared within the CBCA Secondary Buffer. The critical area plan shows all remediation to be done on-site.

VARIANCE ANALYSIS

The conservation plan shows 7,797 square feet of temporary secondary buffer impacts for the installation of the walkway on the western portion of the site. A majority of the walkway is proposed to be elevated wood with gaps and not included in the impervious lot coverage calculations; however, one segment of the walkway is proposed to be constructed with aggregate. This new area of impervious lot coverage is 1,335 square feet within the secondary buffer. The conservation plan shows 3,345 square feet of temporary secondary buffer impacts and the addition of 1,119 square feet of impervious lot coverage for the installation of solar panels on the eastern portion of the site.

Section 27-230 of the Zoning Ordinance contains required findings [**text in bold**] to be made before a variance can be granted. The plain text is staff's analysis of the request.

- (a) **A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:**
 - (1) **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

The subject property is a thin sliver at the northern extreme of a much larger, 120-acre site. The stream system, including floodplain and wetlands, located on the western portion of the site comprises the secondary buffer and a large portion of the property south/ west of Bryan Point Road and the nature of the proposal is to provide access to such sensitive features for environmental education purposes.

The solar panels have been proposed in an area of the site that is currently open and available for the necessary panel orientation. No vegetation would need to be removed for installation.

- (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**

Because the nature of the proposal is to provide access to sensitive features for environmental education purposes, it is essential to allow access to the western portion of the site. The solar panels are being proposed in order for the project to be self-sufficient with a renewable energy source. The strict application of this Subtitle would result in

severely restricting the educational curriculum. It would also severely restrict the use of renewable energy on-site.

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

The intent, purpose, or integrity of the General Plan or Master Plan will not be affected by the granting of this variance request. Rather, it would help enhance the rural, historic and agricultural mission of the adjoining properties

(b) Variances may only be granted by the Planning Board from the provisions of this Subtitle or Subtitle 5B for property located within the Chesapeake Bay Critical Area Overlay Zones where an appellant 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, in addition to the findings set forth in Subsection (a), that:

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;

The Alice Ferguson Foundation is proposing new education facilities that will go beyond current standards for green buildings and proposes to generate all of its own energy with renewable sources. The solar panels have been proposed in an area of the site that is currently open and available for the necessary panel orientation. No vegetation would need to be removed for installation. Because the nature of the proposal is to provide access to sensitive features for environmental education purposes, it is essential to allow access to the western portion of the site.

(2) A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;

Other properties with secondary buffer in similar locations on a site would be provided the same considerations during the review of the required variance application.

- (3) The granting of a variance would not confer upon an applicant any special privilege that would be denied by Critical Area Program to other lands or structures within the Critical Area;**

All property owners with secondary buffer located on their property are required to obtain a variance for any disturbance. Each application would be examined based on the parameters that it presents.

- (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;**

The request for secondary buffer impacts does not arise from any condition on a neighboring property.

- (5) The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;**
- (6) The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**
- (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;**
- (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**

All proposed land development activities will require sediment control and stormwater management measures to be reviewed and approved by the County.

The general spirit and intent of the State Critical Area Law is to allow reasonable use of properties within the Critical Area while preserving, enhancing and/or restoring vegetation within the primary and secondary buffers. Because the nature of the proposal is to provide access to sensitive features for environmental education purposes, it is essential to allow access to the western portion of the site. A majority of the walkway is proposed to be elevated wood with gaps and not included in the impervious lot coverage calculations; however, one segment of the walkway is proposed to be constructed with aggregate. The solar panels are being proposed in order for the project to be self-sufficient with a renewable energy source as part of a green building/ living building program.

Mitigation for the proposed impacts to the secondary buffer has been proposed on-site as shown on the Conservation Plan.

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

No growth allocation is proposed for this property

Summary of the Critical Area Primary Buffer Impact Variance Request

The Planning Board finds that the requested variance should be approved because the nature of the proposal is to provide access to sensitive features for environmental education purposes as well as to provide a renewable energy source. The proposed impacts have been minimized and mitigation has been proposed on-site. The required findings of Section 27-230 of the Zoning Ordinance regarding disturbances to the secondary buffer of the Chesapeake Bay Critical Area (CBCA) have been met to allow the construction of an aggregate path, elevated walkway, and solar panels.

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.

* * * * *

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 Geraldo, with Commissioners Bailey, Geraldo, Shoaff, Washington and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 26, 2012, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of September 2012.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:TL:arj