

R E S O L U T I O N

WHEREAS, Florida on the Potomac, LLC is the owner of a 23.60-acre parcel of land known as River's Edge, said property being in the 5th Election District of Prince George's County, Maryland, and being zoned R-E; and

WHEREAS, on October 19, 2004, Land & Commercial, Inc. filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 8 lots; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-04162 for River's Edge 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 February 24, 2005, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, 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 February 24, 2005, 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 the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED Preliminary Plan of Subdivision 4-04162, for River's Edge with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision, the plan shall be revised as follows:
  - a. To label a building restriction line for the dwelling unit consistent with the R-C-O zoning line. Remove "CBCA."
  - b. To label private water access point "for Lot 5 only."
2. Any abandoned well or septic system shall be pumped, backfilled and/or sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative of the Health Department prior to final plat approval.
3. In conformance with the adopted and approved Subregion VII master plan and the 1985 Equestrian Addendum to the adopted and approved Countywide Trails Plan, the applicant and the applicant's heirs, successors, and/or assignees shall provide the following:
  - a. Riverview Road to be designated as a Class III bikeway with appropriate signage.

Because Riverview Road is a county right-of-way, the applicant, and the applicant's heirs, successors, and/or assignees shall provide a financial contribution of \$210 to the Department of Public Works and Transportation for the placement of this signage. A note shall be placed on the final plat for payment to be received prior to the issuance of the first building permit.

- b. A minimum five-foot-wide (including the gutter pan), hard-surface shoulder (Class III bikeway) shall be constructed along the subject property's entire frontage of Riverview Road, per the concurrence of DPW&T.
4. If any evidence of burials comes to light during development, state law requires cessation of work and appropriate treatment pursuant to Article 27 of the Annotated Code of Maryland, Sections 265 and 267A. Proposed treatment shall be reviewed and approved by the M-NCPPC archeologist prior to resumption of activity.
5. Development of this site shall be in conformance with the Stormwater Management Concept Plan, #3374-2003-00 and any subsequent revisions.
6. The following note shall be placed on the Final Plat of Subdivision:

“Development is subject to restrictions shown on the approved Chesapeake Bay Critical Area Plan (CP-04008).”
7. Development of Lot 5 shall be in accordance with the limits established with this preliminary plan. Development to the west of the building restriction line established on Lot 5 may require a new preliminary plan of subdivision.
8. In the area surrounding the existing structures on the western portion of Lot 5, a limited Phase II investigation shall be carried out prior to approval of raze permits for those structures. If the area to be disturbed on the western portion of Lot 5 does not include the area of high concentration as shown on Figure 12 of the 1988 Phase I report, no Phase II investigation will be required. A copy of the raze permit will be submitted to the DRD. The raze permit application will demonstrate that silt fencing will be installed to visibly delineate the proposed line of disturbance.
9. The sensitive area of Lot 5, identified as “areas of high artifact concentration” on Figure 12 of the 1988 Phase I report, shall be left undisturbed thus preserving whatever archeological features exist. Prior to final plat, the applicant shall provide a conservation easement that ensures that the area will be left undeveloped and undisturbed, unless a limited Phase II archeological investigation has occurred prior to final plat demonstrating that no further investigation is necessary.

The archeological conservation easement shall be reflected on the final plat. The following note shall be placed on the final plat:

“The archeological conservation easement described on this plat covers an area of high artifact concentration where disturbance is prohibited without prior written consent from the M-NCPPC Planning Director or designee. Disturbance shall require the approval of a limited Phase II investigation and possible Phase III treatment.”

10. Prior to final plat, the applicant shall present to Historic Preservation staff of M-NCPPC the wording, location and design of a sign commemorating the site of the Lyles Family Cemetery. Prior to issuance of a building permit for Lot 1, the applicant shall erect the sign.

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 subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	R-E (23.50 acres)	R-E (23.50 acres)
	R-E/R-C-O (13.64 acres)	R-E/R-C-O (13.64)
Use(s)	Residential	Residential
Acreage	23.50	23.50
Lots	0	8
Parcels	1	0
Dwelling Units:		
Detached	1 (to be razed)	8 (proposed)

3. **Historic Preservation**—The preliminary plan of subdivision for the subject 23.5-acre property (Tax Map 122, Parcel 153) is for seven approximately one-acre lots, and one approximately 15-acre lot (Lot 5) located partly in the R-E Zone and partly in the R-C-O Zone. Pursuant to Planning Board directive (2004), evidence of the existence of slave or native American occupation and/or burials must be investigated on any developing property.

In 2003, the applicant applied for a change in the Chesapeake Bay Overlay Zone for the central section of the subject property from R-E/R-C-O to L-D-O (the area between 300 feet and 1,000 feet from the bank of the Potomac River). A decision on this rezoning application has not yet been made.

**Findings**

During the antebellum period, the subject property was part of a 424-acre plantation owned by

the Lyles family. Records indicate that during the early nineteenth century at least 17 African-American slaves were working at Tent Landing Farm. Phase I and II archeological investigations have been carried out on much of the 23.5-acre subject property and have not revealed any evidence of slave housing or burials.

Archeological investigation during the period 1987 to 1990 identified several archeological sites, including 18PR131, a site of prehistoric occupation, and 18PR319, a site that yielded a small number of both historic and prehistoric artifacts. The 18PR319 site extends into the northeasterly section of the subject property and straddles the fence line between the subject property and the property adjoining to the north. Both Phase I and Phase II investigations of 18PR319 were carried out; no further archeological work was recommended because archeological site 18PR319 is disturbed and its archeological resources lack integrity. M-NCPPC archeological staff agreed with this conclusion.

The Phase I survey of the entire 23.5-acre property identified significant concentrations of artifacts in the area of the first terrace and the western part of the second terrace of Lot 5. (This is the area within approximately 750 feet of the Potomac River bank, up to the westernmost boundary of the Phase II investigation of 18PR131.) However, no investigation beyond shovel test pits has been undertaken in this part of the property. If the Chesapeake Bay Overlay rezoning is approved, development could be allowed in part of this area where concentrations of artifacts have been identified.

As part of a previous subdivision application, 4-04003, the applicant proffered that he would conduct a ground penetrating radar study for the 9.8 acres that lie east of the Chesapeake Bay critical area line. The applicant also committed to providing a sign to be erected in the area of proposed Lot 1, commemorating the site of the Lyles Family Cemetery.

The resulting geophysical investigation was guided by a working group that arose from a request by the Planning Board for the applicant to seek input from individuals that have an expertise and/or interest in the process. During a series of meetings held between June and October, the applicant worked with staff, representatives of the Potomac Valley Citizens Association, and Mr. W. Maurice Thomas, Jr., to agree on the scope of the study and the methodology to address specific research questions, especially focusing on whether there might be burials on the property, and whether a Revolutionary War skirmish might have occurred on the property.

The report of Dr. Joseph Hopkins, consulting archeologist for Land & Commercial, Inc., analyzes research regarding the Revolutionary War skirmish. He concludes: "Since Mr. Lyles acquired the property in 1802, and was first associated with the property in 1796, 15 years after the skirmish with the British, it seems clear that this incident did not happen on the subject property." Also, the official reports of the incident indicate that "The British ships did not leave this place [Piscataway Creek] until early Sunday Morning (15 April) and therefore could not have made their way 2½ miles up the Potomac to Tent Landing on Saturday, 14 April.'..." (p.4, *A Geophysical Investigation for the Detection of Burials on the River's Edge Property: Archeology and History*, by Joseph W. Hopkins, III, Ph.D., for Land & Commercial, Inc.)

Dr. Hopkins' report reviews the comments of a number of oral informants. Regarding the question of a slave cemetery, he notes that "Mr. Carl Birckner, formerly a longtime resident in the area, now of Alexandria, Virginia, reported that his mother had reported that 'the graves of the slaves of the former Lyles 500-acre farm are located down below the former house known as 10937 Riverview Road, beyond the end of what is known as Schwatze Lane, approximately 600 feet up from the Potomac River.'" (Brickner letter appended to Hopkins Report).

Between October 30 and November 19, 2004, the field work was carried out by D'Appolonia Environmental Services, Inc., a geophysical consulting firm. Three methods of geophysical analysis were used: (1) ground penetrating radar (GPR), (2) DC resistance mapping, and (3) magnetic gradiometry.

D'Appolonia then processed and analyzed the resulting data from the three methods to identify potential targets for ground truthing. The consultants identified 35 anomalies for possible ground truthing. The consultants' observations about the results (page 2 of *Report: Geophysical Survey, River's Edge Property, Prince George's County, Maryland*, January 2005. Prepared for Land & Commercial, Inc., Upper Marlboro, Maryland by D'Appolonia, Monroeville, PA) follow:

The basic result of the geophysical surveying is that the site has been strongly influenced by 20<sup>th</sup> century activities. Most of the GPR anomalies appear to be related to the presence of metal in the subsurface, or are found as linear features that appear to be related to a large degree to the presence of drainage structures, such as buried pipes or excavated channels. Old roads and the former barn structures also affect the geophysical results. None of the data strongly suggests the presence of burials and the anomalies identified for subsequent ground truthing do not exhibit patterns commonly associated with burials. Nevertheless, these anomalies have been identified, as they cannot be ruled out with 100 percent confidence, until they are ground truthed. Based on our own experience, we do not consider that it is likely that any of the features identified are actually burials, because they are isolated features with no organization.

At the Planning Board's hearing on January 6, 2005, on this case, the applicant asked for and was granted a continuance in order to complete the ground truthing. The hearing was rescheduled for February 24, 2005.

On Friday, February 11, 2005, M-NCPPC staff and consultants and representatives of the applicant and of the Potomac Valley Citizens Association met to review the consultants' study and to agree upon the time frame for the ground truthing. Mr. Maurice Thomas came to the meeting but left before discussions began, after reading a statement stating that he had not been given enough time to analyze the data himself, and that he would not have any opinion ready until February 24<sup>th</sup>.

At the meeting, the attendees first watched a video filmed at the site on the last day of field work, November 19, 2004. Then Mr. Don Johnson presented a Powerpoint, explaining the three geophysical methods used that together provided the basis for the selection of anomalies. Dr. Joseph Hopkins then explained the method used in ground truthing, as described in his report:

[Each anomaly] “will be examined by a gradall or backhoe with a smooth blade. The soil will be removed in layers of 6 to 12 inches, while archeologists observe. Where anomalies are present within 18PR131, anomalies will be investigated by hand by archeological technicians. When an apparent feature is identified, archeological technicians with shovels and trowels will delineate the feature. If there appears to be a grave, further archeological investigation will be suspended for a period not to exceed 10 days and notice will be provided to the State’s Attorney, the Maryland Historical Trust, and the MD Commission on Indian Affairs, and or other pertinent parties so that options for further investigation can be determined. Work conducted by archeological technicians will be under the supervision of Dr. Hopkins. All personnel meet or exceed all state and national standards for such tasks.” (Page 6)

Ms. Dana Kollmann then showed a Powerpoint of the use of a backhoe for a cemetery excavation in Talbot County. The Powerpoint demonstrated how the backhoe operation did not damage the archeological features. The three professional archeologists present discussed the current winter ground conditions and the expected weather. All concurred that any evidence in the ground would not be compromised by the ground truthing.

It was agreed that ground truthing would begin Monday, February 14. Dr. Hopkins expected to conclude the work on Tuesday, February 15, and to provide a summary analysis on February 16, to be followed by a full report before February 24. It was agreed that the M-NCPPC consulting archeologist would observe and monitor the work. As discussed, if any graves were to be found, work would cease and the organizations cited above, as well as the Planning Department’s archeological consultant, would meet to determine the best course of action.

## **Conclusions**

The ground truthing was completed on February 14<sup>th</sup>. As agreed at the February 11<sup>th</sup> meeting, Dr. Bienenfeld was present at the site to observe the excavations. She reported that no evidence of any burials or other significant archeological features was found. A final report is expected to be received before February 24<sup>th</sup>.

The area within 750 feet of the riverbank (part of the Chesapeake Bay Critical Area, zoned R-C-O) has not been investigated beyond Phase I survey, and may include significant archeological features that should be protected. These archeological resources are located in the western portion of proposed Lot 5 and will not be adversely affected by development of the eastern portion of Lot 5 and identified as “areas of high artifact concentration” on Figure 12 of the 1988 Phase I report. However, the existing structures on the western portion of Lot 5 will have to be removed, possibly jeopardizing any remaining archeological features in that area. Therefore, a limited a Phase II and possibly a Phase III investigation may be necessary prior to release of raze permits, if the raze permit shows a limit of disturbance that impacts the “areas of high artifact concentration.”

In order to ensure preservation of any archeological resources in the western portion of Lot 5, the applicant should put this sensitive area under a conservation easement, the area of “high artifact concentration”, or a limited Phase II and possibly a Phase III investigation should be conducted on the area of “high artifact concentration” before it is to be disturbed.

### **Recommendations**

1. In the area surrounding the existing structures on the western portion of Lot 5, a Phase II and possibly a Phase III investigation shall be carried out prior to approval of raze permits for those structures. Excavations shall be limited to the areas of high artifact concentration as shown on Figure 12 of the 1988 Phase I report.
2. The sensitive area of Lot 5, between 300 feet from the riverbank and the westernmost boundary of the Phase II investigation, should be left undisturbed; thus preserving whatever archeological features exist. Prior to final plat, the applicant shall provide a conservation easement that ensures that the area within approximately 750 feet of the Potomac River bank (i.e., between 300 feet from the riverbank and the westernmost boundary of the Phase II investigation of 18 PR 131) will be left undeveloped and undisturbed.
3. Prior to final plat, the applicant shall present to Historic Preservation staff of M-NCPPC the wording, location, and design of a sign commemorating the site of the Lyles Family Cemetery. Prior to issuance of a building permit for Lot 1, the applicant shall erect the sign.
4. **Environmental**—The Environmental Planning Section previously reviewed a Zoning Map Amendment A-9955 for a portion of this property. This 23.50-acre property includes 13.64 acres of land in the Chesapeake Bay Critical Area (CBCA) that is currently zoned R-E/R-C-O and is the subject of A-9955 for a rezoning to R-E/L-D-O which is pending.

The property does not include streams, wetlands, floodplains or the associated buffers to these features. No areas of steep slopes with highly erodible soils or areas of severe slopes have been found to occur on the property. There are no nearby sources of traffic-generated noise. Marlboro clay is not found to occur in the vicinity of this property. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program publication entitled “Ecologically Significant Areas in Anne Arundel and Prince George’s Counties,” December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic or historic roads in the vicinity of the property.

A simplified Forest Stand Delineation (FSD) was submitted for review with A-9955 and was found to satisfy the requirements for an FSD in accordance with the *Prince George’s County Woodland Conservation and Tree Preservation Technical Manual*. The entire 23.50-acre property is exempt from the requirements of the Prince George’s County Woodland Conservation and Tree Preservation Ordinance because 13.64 acres is located in the Chesapeake Bay Critical

Area, which has more stringent requirements than the Woodland Conservation Ordinance, and the 9.86-acre portion of the property located outside the CBCA has less than 10,000 square feet of existing woodland.

A portion of the property is within the Chesapeake Bay Critical Area. Section 24-151 of the Subdivision Regulations requires the approval of a Chesapeake Bay Critical Area Conservation Plan by the Planning Board prior to the approval of a Preliminary Plan of Subdivision. The Planning Board approved Chesapeake Bay Critical Area Plan, CP-04008.

#### **Water and Sewer Categories**

The water and sewer service categories are W-3 and S-3 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003.

5. **Community Planning**—The subject property is located within the limits of the 1981 Master Plan for Subregion VII, Planning Area 80, in the Broad Creek Community. The land use recommendation for the property is residential estate at a density of up to one dwelling unit per acre. The 2002 General Plan locates the property in the Developing Tier. The vision for portions of the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities. The proposed preliminary plan is consistent with the recommendation of the master plan and the General Plan.
6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Subdivision Regulations, the proposed preliminary plan is exempt from the requirements of the mandatory dedication of parkland because all of the proposed lots exceed one acre in size.
7. **Trails**—The adopted and approved Subregion VII master plan and the 1985 Equestrian Addendum to the adopted and approved Countywide Trails Plan recommend that Riverview Road be designated as a Class III bikeway. Riverview Road was also recently included as part of the Potomac Heritage Trail on-road bicycle route. In keeping with a prior approval along Riverview Road (4-01027), wide asphalt shoulders are recommended to safely accommodate bicyclists. “Share the Road” signage is also recommended to alert motorists to the possibility of in-road bicycle traffic.
8. **Transportation**—The transportation staff determined that a traffic study was not warranted by the size of the proposed development. However, a recent traffic count was available to staff for the intersection of Fort Washington Road and Livingston Road. This was used to determine adequacy. Therefore, the findings and recommendations outlined below are based upon a review of relevant materials and analyses conducted by the staff of the Transportation Planning Section, consistent with the “Guidelines for the Analysis of the Traffic Impact of Development Proposals.”

The site is within the Developing Tier, as defined in the General Plan for Prince George’s County. As such, the subject property is evaluated according to the following standards:

**Links and signalized intersections:** Level-of-Service (LOS) D, with signalized intersections



operating at a critical lane volume (CLV) of 1,450 or better.

**Unsignalized intersections:** The *Highway Capacity Manual* procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The application is a plan for a residential development of eight single-family dwelling units. The proposed development would generate 6 AM (1 in, 5 out) and 7 PM (5 in, 2 out) peak-hour vehicle trips as determined using the “Guidelines for the Analysis of the Traffic Impact of Development Proposals.”

The traffic generated by the proposed plan would primarily impact the intersection of Fort Washington Road and Livingston Road, which is signalized. The count indicates that the critical intersection currently operates at LOS A (CLV 823) during the AM peak hour and LOS A (CLV 975) during the PM peak hour. With background development, the critical intersection operates at LOS A (CLV 942) during the AM peak hour and LOS B (CLV 1,091) during the PM peak hour. There are no programmed improvements in the county Capital Improvement Program (CIP) or the state Consolidated Transportation Program (CTP).

With the assignment of 6 AM peak-hour trips and 7 PM peak-hour trips, the critical intersection will operate at LOS A (CLV 945) during the AM peak hour and LOS B (CLV 1,094) during the PM peak hour.

Access to the lots would be from River’s Edge Circle, with a 60-foot right of way. The new subdivision road would access existing Riverview Road. The applicant will be responsible for the dedication of 30 feet from the centerline of the existing pavement. This is accurately reflected on the preliminary plan. Riverview Road is maintained by the Prince George’s County Department of Public Works and Transportation. The applicant will be responsible for any associated frontage or road improvements recommended by DPW&T. There are no master plan road issues associated with this proposal. Fort Washington Road (C-228) is the nearest master plan roadway.

Based on the preceding findings, adequate transportation facilities exist to service the proposed subdivision as required under Section 24-124 of the Prince George’s County Code.

9. **Schools**—The Historic Preservation and Public Facilities Planning Section has reviewed this subdivision plan for impact of school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and CB-30-2003 and CR-23-2003 and concluded the following:

**Finding**

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 6	Middle School Cluster 3	High School Cluster 3
Dwelling Units	8 sfd	8 sfd	8 sfd
Pupil Yield Factor	0.24	0.06	0.12
Subdivision Enrollment	1.92	0.48	0.96
Actual Enrollment	4183	4688	8866
Completion Enrollment	158.40	69.06	136.68
Cumulative Enrollment	55.92	39.42	78.84
Total Enrollment	4399.24	4796.96	9082.48
State Rated Capacity	4512	5114	7752
Percent Capacity	97.50%	93.80%	117.16%

Source: Prince George's County Planning Department, M-NCPPC, December 2004

County Council bill CB-31-2003 establishes a school facilities surcharge in the amount of \$7,000 per dwelling if a building is located between I-495 and the District of Columbia; \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority; or \$12,000 per dwelling for all other buildings. The school surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes.

The Historic Preservation and Public Facilities Planning Section staff finds that this project meets the policies for school facilities contained in Section 24-122.02, CB-30-2003 and CB-31-2003 and CR-23-2003.

10. **Fire and Rescue**—The Historic Preservation and Public Facilities Planning Section has reviewed this subdivision plan for adequacy of fire and rescue facilities and concluded the following:
  - a. The existing fire engine service at Allentown Fire Station, Company 47, located at 10900 Fort Washington Road has a service travel time of 4.61 minutes, which is within the 5.25-minute travel time guideline.

- b. The existing ambulance service Allentown Fire Station, Company 47, located at 10900 Fort Washington Road has a service travel time of 4.61 minutes, which is within the 6.25-minute travel time guideline.
- c. The existing paramedic service at Allentown Fire Station, Company 47, located at 10900 Fort Washington Road has a service travel time of 4.61 minutes, which is within the 7.25-minute travel time guideline.

The proposed subdivision will be within the adequate coverage area of the nearest existing fire/rescue facilities for fire engine, ambulance and paramedic services, based on the standards and guidelines in affect when the application was accepted for review (prior to November 11, 2004). These findings are in conformance with the standards and guidelines contained in the *Approved Public Safety Master Plan* (1990) and the “Guidelines for the Analysis of Development Impact on Fire and Rescue Facilities.”

- 11. **Police Facilities**—The proposed development is within the service area for Police District IV-Oxon Hill. The Planning Board’s test for police adequacy for a development accepted prior to November 11, 2004, is based on a standard for square footage in police stations relative to the number of sworn duty staff assigned. The standard is 115 square feet per officer. As of January 2, 2004, the county had 823 sworn staff and a total of 101,303 square feet of station space. Based on available space, there is the capacity for additional 57 sworn personnel. This police facility will adequately serve the population generated by the proposed subdivision
- 12. **Health Department**—The Health Department notes that a raze permit will be required to remove the existing dwelling on Lot 5 and that the abandoned shallow well and septic tank must be properly backfilled and sealed if the dwelling is to be razed.
- 13. **Stormwater Management**—The Department of Environmental Resources (DER), Development Services Division, has determined that on-site stormwater management is required. Two Stormwater Management Concept Plans have been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. SWM Plan 11933-2004-00 was approved for the area of Lot 5 within the CBCA and 3374-2003-00 has been approved for the development of the area of Lots 1-8, outside of the CBCA. Development must be in accordance with the approved plans and as required to be modified by the DER.
- 14. **Overview**—At the Planning Board hearing of May 6, 2004, for application 4-04003, the Planning Board requested that further archeological investigations be conducted by the applicant on the 9.86 acres of this property located outside the R-C-O Zone, specifically based on testimony of that May 6, 2004, hearing in part, “[t]he 9.56 acres or all that area outside the critical area, which is the lotting pattern . . . .” The attorney for the applicant proffers that “[m]y client is willing to agree to a condition to do ground penetrating radar.” The attorney for the applicant provides: “After consulting with my client and our engineer, what I would recommend is that we will submit a copy of the study that we’ve done so far immediately to staff, have them review it and make sure that they concur with the methodologies that were used, and then what we will do is

consult with staff on a design for the remainder of that area of the property that we're proposing to develop. Then we will go out, and to the extent that we have additional areas that we need to, we will agree to a scope of work, prepare that, and get back to the Board. ...[A]nd doing it in the proper areas where everybody agrees. Staff can consult with whomever they need to in order to make sure we're covering all the proper locations, and then we will conduct the study and get the results back to staff, and then have that report back to the Board...and staff will have the opportunity to review it before we get back to the Board."

In directing the applicant further in the archeological investigation of this site the Planning Board states: "[s]taff, you or whomever, asking Mr. Thomas, or somebody of that expertise to help you map out a determinate grid that's going to give the answers that this body is looking for." The applicant's attorney responds, "[m]y understanding is that the study that's already been done was done under a grid pattern. But Mr. Thomas mentioned a grid size and things like that, I want to make sure that what we've done satisfies the concerns—I don't want to assume at this point in time that a ground penetrating radar study that we've done necessarily answers all the questions, because the goal of doing this is not to come back and have it questioned as to whether it was done properly." Further adds, "I want to give staff an opportunity to review it and with consultation, and make sure that ...any additional work we do, or any additional work we need to do in that same area is done in accordance with it, so that everybody agrees that we've used the proper methodology, the proper equipment, et cetera, to make sure that what the results are accurately satisfy everybody that the results achieve the proper results. Whatever the results are we will be able to abide by them."

The Planning Board states: "(we) want somebody with the expertise to help set that up because you will come in and without some expert talking to that area and maybe we have it on our staff...[T]he closest to an expert that I have here today in the area of what we are speaking right now is Mr. Thomas...Whomever we use... as long as the expertise is there."

Further, in an effort to provide clarification the Chairman of the Planning Board in a letter dated May 24, 2004 (Hewlett to Fligston) provided, in part, the following:

"The Planning Board directed that further archeological investigations be conducted for the proposed subdivision, specifying a ground penetrating radar study of the ten-acre area. Colonel Squire stated that Mr. Maurice Thomas should be included in the research design meeting, because he considered him to be an expert in the field of radar technology."

15. **Zoning**—The applicant is proposing to subdivide the property into eight lots. The Lots 1-4 and 6-8 are located wholly outside the Overlay Zone, within the 9.86 acres of the property located in the R-E Zone. Lot 5 is approximately 14.96 acres and contains the entire area of the R-C-O (13.64 acres) and 1.04 of R-E zoned land. The eight lots are proposed in conformance with the conventional standards for development in the R-E Zone. The minimum lot size in the R-E Zone is 40,000 square feet. The proposed lots range in size from 43,700 square feet to 14.96 acres. Access is proposed via Riverview Road. The applicant has proposed to extend a 60-foot-wide

dedicated public street into the property to provide the 50 feet of street frontage required on a public right-of-way for the construction of single-family dwellings in the R-E Zone. The public right-of-way terminates in a cul-de-sac at the boundary between the R-C-O zoned portion of the property and the R-E Zone. Lots 1 and 8 are proposed with direct vehicular access onto Riverview Road a dedicated 60-foot wide public right-of-way.

The property is currently improved with an uninhabitable single-family dwelling unit, an accessory pool, and a boat ramp to the Potomac River. The existing dwelling is located within the R-C-O Zone. The existing pool and boat ramp are located within the 100-foot primary buffer of the Potomac River. Section 27-548.17 of the Zoning Ordinance requires a minimum lot size in the R-C-O of 20 acres for a single-family dwelling unit. However, Section 27-548.10(c) provides for the grandfathering of lots and parcels created prior to the enactment of the CBCA overlay zones. This section provides that all buildable lots (except outlots) within a subdivision recorded prior to December 1, 1985, shall remain buildable lots, regardless of lot size, in certain circumstance. Because the applicant is proposing to subdivide Parcel 153 beyond the configuration that existed in 1985, the applicant is subject to all current code requirements for new lots. Therefore, in order to retain the existing dwelling located within the R-C-O, a 20-acre lot must be created for the dwelling. The grandfather provision is silent to existing dwellings but is specific to grandfathering of existing "lots" and sets forth standards for proposed lots.

Originally the applicant proposed to retain the existing dwelling on an outlot. However, staff advised the applicant that Section 24-101(b)(8) of the Subdivision Regulations defines an outlot as a piece or parcel of land that remains within a subdivision but which does not meet the minimum requirements of the Zoning Ordinance for a buildable lot and is, therefore, not usable as a legal building site. Staff advised the applicant that the existing dwelling and accessory structures must be removed from the R-C-O zoned portion of the property (13.64 acre) prior to the approval of a final plat, pursuant to a legally obtained raze permit issued by the Department of Environmental Resources (DER).

The applicant then considered the creation of a lot instead of an outlot to contain the existing dwelling. However, staff advised the applicant that the creation of a "new" lot within the R-C-O Zone required a minimum lot size of 20 acres. The Chesapeake Bay Critical Area Commission has agreed with staff that a lot can contain portions of land within the R-C-O and not be required to be created at 20 acres, if the dwelling is to be constructed outside the R-C-O-zoned portion of the property. Section 27-118.01 of the Zoning Ordinance provides that a lot may be classified in more than one zone. Further, a determination by the Associate General Council (McIntyre to Von Adelung Bond) dated 1988 sets forth that the location of the principal use of the property may guide the development standards associated with an individual lot. In the case cited in the 1988 memorandum, the property was split-zoned R-A and O-S. The property's street frontage was in the R-A Zone and the dwelling was to be constructed on the R-A-zoned portion of the property. It was determined that the minimum lot size would be consistent with the regulations of the R-A Zone and that the O-S-zoned portion of the property could be utilized in meeting the lot size required in the R-A Zone.

Therefore, the applicant had two options. Revise the preliminary plan to create one 20-acre lot to retain the existing dwelling in the R-C-O Zone and create two new 40,000 square foot lots outside the R-C-O Zone. The second option was to raze the existing dwelling and incorporate the 13.64 of R-C-O-zoned land into one of the proposed 40,000-square-foot lots. This would create a 14.96-acre lot. This lot would be split-zoned, with a portion of the lot being zoned R-C-O and a portion being zoned R-E. The applicant could then propose the construction of the dwelling within the R-E-zoned portion of the property only; a building restriction line consistent with the zoning line between the R-C-O and R-E Zone would preserve the R-C-O-zoned portion of the property and be established with the approval of a record plat. This proposal would then be consistent with the interpretation set forth in the Associate General Council memorandum (McIntyre to Von Adelung Bond) dated 1988. The proposed preliminary plan would then be eight lots and incorporate the outlot into one of the lots located at the end of the cul-de-sac, extending into the property from Riverview Road. The subject preliminary plan is consistent with the second scenario described above.

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 Vaughns, seconded by Commissioner Harley, with Commissioners Vaughns, Harley, Eley, Squire and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, February 24, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 31st day of March 2005.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator