



PGCPB No. 14-58

File No. CP-89039-14

RESOLUTION

WHEREAS, Walter T. & Genevive J. During are the owners of a 0.46-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned Rural Residential (R-R) and Limited Development Overlay (LDO); and

WHEREAS, on May 5, 2014, Walter T. & Genevive J. During filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a 3,308-square-foot single-family detached dwelling on a vacant and partially-wooded property within 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-89039-14 for Tantallon on the Potomac, Lot 6, Block E, 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 June 26, 2014, 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 June 26, 2014, 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 Conservation Plan CP-89039-14, Tantallon on the Potomac, Lot 6, Block E with the following conditions:

1. Prior to certificate of approval of the conservation plan, the following revisions shall be made, or information shall be provided:
 - a. Show the limit of the driveway as it was approved in Conservation Plan CP-89039-11.
 - b. Revise the plan to remove the proposed grading beyond the boundary of the limit of disturbance (LOD), specifically with the Afforestation Area #3, shown on plans dated May 27, 2014.
 - c. Revise the plan to identify the planting schedule for Afforestation Area #1 and the afforestation area adjacent to the on-site sewer right-of-way.

- d. Revise Afforestation Area #3 to remove the landscaped planting and show maximized woodland planting in that area. At a minimum the woodland planting shall be located ten feet from the house, walkway and driveway, and abut the public utility easement (PUE).
 - e. Revise the afforestation table for Area #3 to meet the required planting density outlined in Section 5B-121(g)(2).
 - f. Revise the developed woodland calculations table as follows:
 - (1) to account for the unauthorized clearing at a mitigation rate of 3:1.
 - (2) to account for the on-site planting credits.
 - (3) calculate the required fee-in-lieu and/ or off-site credits to be secured at a mitigation bank for the portion of the developed woodland requirement that cannot be met with on-site planting.
 - g. A conservation easement for all developed woodland that is approved to remain on-site (as preservation and/ or planting) as shown on Conservation Plan CP-89039-14 shall be recorded in the land records.
 - h. A Chesapeake Bay Conservation and Planting Agreement revised to meet the requirements of Conservation Plan CP-89039-14 shall replace the Chesapeake Bay Conservation and Planting Agreement recorded in the land records at Liber 35309 Folio 069.
2. Prior to the issuance of the building permit, the applicant shall secure a Site Development Fine Grading permit; reforest cleared areas to the satisfaction of the DPIE Inspections Division; install protective fencing on lot to demark all tree save and reforestation areas to remain protected; and submit evidence such as photos to the M-NCPPC Environmental Planning Section.
 3. Prior to the issuance of the building permit, the applicant shall demonstrate to the satisfaction of the Planning Director or Designee that all required woodland planting has been installed. Afforestation Area 3 and the afforestation area adjacent to the sewer right-of-way shall be provided with semi-protective fencing. The fencing shall remain in place for a minimum of five years unless the Planning Director or designee authorizes removal of the fencing sooner through written approval.

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

1. **Request:** The proposal is for the construction of a 3,308-square-foot single-family detached dwelling with a garage on a vacant and partially-wooded property within the Chesapeake Bay Critical Area (CBCA). The current application has been submitted for revisions to a previously approved conservation plan (CP) to account for unauthorized clearing; to request approval of an after-the-fact variance from Section 5B-114(e)(5) for clearing in excess of the 55 percent that was

previously approved by the Planning Board; and to request approval of a mitigation plan. The approval of a conservation plan by the Planning Board is required prior to the issuance of permits in the Chesapeake Bay Critical Area (CBCA) because the approval of a revised variance from Subtitle 5B of the Prince George's County Code is required.

2. **Location:** The 0.46-acre property is located on the east side of Firth of Tae Drive 700 feet south of its intersection with Swan Creek Road. The property address is 12308 Firth of Tae Drive, Fort Washington, Maryland.
3. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	R-R/L-D-O	R-R/L-D-O
Use(s)	Vacant	Residential
Acreage	.46	.46
Total Gross Floor Area (GFA)	0	3,308 sq. ft.
Areas not included in GFA		
3-car garage		(638 sq. ft)
Unfinished Basement		(1,536 sq. ft)

OTHER DEVELOPMENT DATA

	PERMITTED	APPROVED
Maximum Building Height	35 ft.	35 ft.
Maximum Lot Coverage (per R-R Zone)	25 percent	21.65 percent
Minimum Front Yard Setback	25 ft.	66 ft.
Minimum Side Yard Setbacks	8 ft./17ft.	18 ft./43 ft.

4. **Surrounding Uses:** The subject property is located within the Rural-Residential (R-R) and Limited-Development-Overlay (L-D-O) Zone within the Chesapeake Bay Critical Area (CBCA) and is surrounded by identically-zoned properties within the Tantallon on the Potomac Subdivision. Swan Creek Road is located north of the subject property. A tributary of the Potomac River is located south and east of the subject property, beyond which to the east is the Tantallon Marina. The Potomac River is located approximately 0.4 miles west of the subject property.
5. **Previous Approvals:** The site was previously reviewed as part of Detailed Site Plan, SP-90076 with a Type II Tree Conservation Plan TCPII-183-90. A Chesapeake Bay Critical Area Conservation Plan, CP-89036 (Battersea on the Bay, Lot 17B), was approved by the Planning Board on December 21, 1989, and included approximately 38.6 acres of Parcel 52 of Tax Map

131. The Preliminary Plan of Subdivision 4-89176 was approved by PGCPB Resolution No. 89-652 on December 21, 1989. A limited Detailed Site Plan, DSP-90076, was approved by the Planning Board on October 18, 1990 and incorporated into the revised Conservation Plan, CP-89036-01, which was approved the same day. The subject lots were recorded by Final Plat VJ 157-36 on February 25, 1991.

Detailed Site Plan DSP-90076 was vested by the construction of residential structures on Lot 8 and Lot 9. The subject property was included in Conservation Plan CP-89039, but not in any subsequent revisions.

The approved Type II Tree Conservation Plan TCPII-183-90 for the site became invalid with the current regulations when Type II Tree Conservation Plans were no longer required for applications within the Chesapeake Bay Critical Area.

The site is subject to the current Chesapeake Bay Critical Area (CBCA) regulations in Subtitle 5B of the Prince George's County Code. This lot had a previous approval for a single-family dwelling with a driveway to an attached garage in October 1990, which was revised in August 2005. According to Section 5B-116(g), this approval has since expired because the plan validity period is only for three years after approval. No one-year extensions were received after the three year approval time expired.

On June 6, 2013, the Planning Board approved Detailed Site Plan DSP-90076-04 (PGCPB Resolution No. 13-69) and Conservation Plan CP-89039-11 (PGCPB Resolution No. 13-68), Tantallon on the Potomac, Lot 6, Block E, which approved a 3,308-square-foot single-family detached dwelling with a garage and a variance request from Section 5B-114(e)(5) for removal of 55 percent of the existing woodlands on the site.

Subsequent to the Planning Board approval of DSP-90076-04 and CP-89039-11, Violation Notice 1703-2014 was issued by the Department of Permitting, Inspections and Enforcement (DPIE) on January 17, 2014 for failure to fulfill the mandatory pre-construction meeting requirement (Section 5B-116) as well as failure to obtain a grading permit prior to the disturbance/construction activities (Section 32-126). Among other violation citations that are not related to the plan review and approval authority of the M-NCPPC, the violation notice states that unauthorized clearing exceeding the maximum area of clearing allowed through the approved Conservation Plan (CP-89039-11) occurred on-site. Additionally, several trees that were approved on the plan to meet the landscape requirements were not present. At the applicant's request, an on-site meeting was held on March 21, 2014, with the applicant and representatives from EPS and DPIE to inspect the unauthorized activities that occurred on the site. The extent of the violation was confirmed by all parties present and the mitigation requirements were discussed and outlined in a General Inspection Report issued on-site by DPIE.

6. **Design Features:** The 0.46-acre, wooded property is located on the east side of Firth of Tae Drive. The applicant proposes to construct a two-story, brick, 3,308-square-foot, single-family

detached dwelling with a hip roof. A driveway that varies from 18 feet in width to 12 feet in width and includes a wider asphalt area for vehicular turnaround is proposed to lead to an attached three-car-garage on the northwestern corner of the dwelling. The current application shows a proposed revision to the configuration of the driveway (from what was previously approved by the Planning Board), resulting in an increase in impervious lot coverage and a decrease in the area available for mitigation planting. This widened driveway shall be removed from the plan.

The revised plan also indicates grading within a developed woodland area. This same area is the subject of the violation for vegetation clearing. The applicant shall revise the plan to eliminate grading that is proposed beyond the limits of disturbance (LOD) within the afforestation areas. The plan indicates that one forest stand totaling 0.39 acres (17,291 square feet) existed on the property. The canopy is generally dominated by American Elm, Black Locust, and Virginia Pine trees with an average diameter at breast height (DBH) of four to twelve inches. The applicant's plan also indicated that approximately 4,609 square feet of the existing vegetation is invasive species. The current plan shows an additional ten percent clearing of on-site developed woodland for a total variance clearing area of 65 percent of the on-site developed woodland. This clearing is in addition to the previously approved off-site clearing of 1,026 square feet for an off-site sewer connection.

The approval of a Conservation Plan by the Planning Board for mitigation purposes is required prior to the issuance of permits because the additional clearing associated with the violation exceeds the 55 percent that was previously authorized by the Planning Board, and the 54 percent that was shown on the previously approved conservation plan.

7. **The Chesapeake Bay Critical Area Ordinance:** The site is located within the Limited Development Overlay (L-D-O) Zone; therefore, the site is subject to the Chesapeake Bay Critical Area regulations. The purposes of the L-D-O Zone, as outlined in Section 27-548.14 are to: maintain or, if possible, improve the quality of runoff and groundwater entering the tributaries of the Chesapeake Bay; maintain existing areas of natural habitat; and accommodate additional low- or moderate-intensity development. The regulations concerning the impervious surface ratio, density, slopes, and other provisions for new development in the L-D-O Zone are contained in Subtitle 5B of the Prince George's County Code, as follows:

Section 5B-114, Limited Development Overlay (L-D-O) Zones.

- (e) **Development standards. An applicant for a development activity shall meet all of the following standards of environmental protection in the L-D-O Zone:**

- (1) **All development sites that are within the designated network of the Countywide Green Infrastructure Plan shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Subtitle. The wildlife corridors shall be included and identified on the Conservation Plan. The**

maintenance of the wildlife corridors shall be ensured by the establishment of conservation easements.

The developed woodlands that were cleared under violation were located on the eastern portion of the site and the area of focus for preservation under the previous approval. The developed woodlands that were approved to be preserved at the rear of the lot remain. During the review and approval process for the previous application, the proposed dwelling was relocated to allow for additional developed woodland preservation on the east. The entire site is located within a Network Gap of the 2005 *Approved Countywide Green Infrastructure Plan*. The woodlands on the subject site are connected to existing tracts of connected woodland on developed lots that consist of a habitat corridor leading to the open waters associated with the main channel of the Potomac River Basin. The submitted plan for the current review now shows landscaping in the cleared area on the eastern portion of the site. It is important to provide woodland planting in this area to reestablish the wildlife corridor that was disrupted by the unauthorized clearing. Planting in this area will meet the intent of 5B-114(e)(1).

Because the mitigation replacement rate for clearing without a permit is 3:1, there is a significant planting requirement. On-site planting must be maximized to the extent practicable. Planting shall be placed at a minimum of ten feet from the house, walkway, and driveway on the eastern portion of the site. The planting shall be located up to the public utility easement (PUE) to maximize the planting area. The developed woodland calculations shall be updated to include the clearing that occurred under violation and to account for the on-site planting credits recommended to restore the site in accordance with the previous approval. The developed woodland requirement that cannot be met with on-site planting shall be met with fee-in-lieu and/ or off-site credits secured at a mitigation bank.

- (2) For the cutting or clearing of trees in natural or developed woodland areas in current, planned or future activities in the L-D-O Zone, the following shall be addressed:**
- (A) Development activities shall be designed and implemented to minimize the destruction of woodland vegetation;**
 - (B) Provisions for protection for natural and developed woodlands identified shall be provided;**
 - (C) The total acreage of natural and developed woodlands shall be maintained or preferably increased to the fullest extent practicable; and**
 - (D) Mitigation for woodland impacts shall be within the Critical Area.**

Section 5B-114(e)(2) requires development activities to be designed and implemented to minimize clearing, protect the remaining woodland, and mitigate for losses. The proposed branched driveway and the proposed expansion of driveway width from the previously approved 12 feet to the currently proposed 18 feet, are not designed to promote areas for mitigation planting. The clearing that has occurred on-site is significantly over the maximum (30 percent) allowed by the code without a variance. Specifically, the previous variance allowed for the clearing of up to 55 percent of the on-site developed woodland. Under violation, an additional ten percent has been cleared, for a total clearing area of 65 percent of the on-site developed woodland.

- (3) **For the alteration of natural and developed woodlands in the L-D-O Zone, the following requirements shall apply:**
- (A) **All woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;**
 - (B) **No more than 20 percent of any natural or developed woodland may be removed from forest use, except as provided in paragraph (4) below. The remaining 80 percent shall be maintained through conservation easements; and**
 - (C) **Developed woodlands shall be preserved and/or restored to the greatest extent practicable.**
- (4) **For replacement of natural and developed woodlands, if more than 20 percent is to be removed from forest use, an applicant may clear or develop not more than 30 percent of the total forest area provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both.**

The code requires that woodland be preserved on-site to the greatest extent practicable. As a disincentive and to discourage overdevelopment of a site containing woodlands, the code requires that any on-site clearing in the L-D-O be replaced at a 1:1 ratio for woodland cleared up to 20 percent, and at a 1.5:1 ratio for any woodland cleared over 20 percent. For off-site clearing, the replacement requirement is also 1.5:1, because it is more than 20 percent cumulatively; more than 20 percent of woodland has been cleared for that site (Lot 8). The proposed clearing on the plan exceeds the 20 percent and 30 percent thresholds, and therefore a variance is associated with the subject application.

Lot 6 - ORIGINAL APPROVAL (CP-89039-11)	
Existing gross lot area (SF)	20,072
Area of existing woodland (SF)	17,291
Percent of existing woodland on-site	86%
Proposed woodland clearing (SF) - ORIGINAL APPROVAL	9,306
Percent of approved woodland clearing (%)	54%
Mitigation rate required	1.5
Area of required woodland replacement (SF)	13,959
Credit for off-site mitigation (Liber 35437/ Folio 032)	13,959
Area of mitigation requirement not met	0
CBCA Developed Woodland Calculations Lot 6 - REVISED (CP-89039-14)	
Woodland clearing (SF) - VIOLATION 1703-2014	1,982
Percent of proposed woodland clearing (%) VIOLATION	11%
Mitigation rate required	3
Area of required woodland replacement (SF)	5,946
Credit for on-site planting (SF)	1,982
Area of mitigation requirement not met on-site	3,964
Proposed fee-in-lieu (\$1.50/SF) for required mitigation not met on-site OR off-site mitigation	\$5,946.0 0
Percent of woodland clearing (%)	65%

In a meeting with the Department of Permitting, Inspections and Enforcement (DPIE) on June 4, 2014, DPIE noted that the applicant had not applied for nor been issued the appropriate grading permit required to begin clearing the site. The site currently has a building permit (23846-2013) on hold and DPIE determined that the site first requires the issuance of a Site/Road Fine Grading Permit to clear the site. Because this grading permit is required prior to the permit needed to construct the proposed dwelling, and to avoid any further disturbance to the areas that are to be preserved, the Planning Board finds that the required planting and fencing shall be installed prior to the issuance of the building permit.

As the application is approved with the recommended conditions, the Planning Board finds that developed woodlands have been preserved or restored to the greatest extent practicable.

- (5) Clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance.**

This site has a gross tract area of 20,072 square feet, and previously contained 17,291 square feet of developed woodlands. These developed woodlands were 86 percent of the vegetative coverage on-site subject to the preservation requirements of the code. The applicant has cleared 11,288 square feet of woodlands, which is 65 percent of the existing woodlands. A variance is required. For discussion of the variance request see Finding 8.

- (6) **In addition, applicants shall adhere to the following criteria for forest and woodland development:**
- (A) **At time of permit issuance, the permittee shall post a bond with DPW&T in an amount equivalent to the cost of completion of the planting requirements for the L-D-O Zone;**
 - (B) **Woodland which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in subsection (3) above shall be replanted at the rate specified in subsection 5B-109(j)(3)(A);**
 - (C) **If the areal extent of the site limits the application of the reforestation standards in this section, alternative provisions or reforestation guidelines may be permitted in accordance with Section 5B-119 Woodland Protection and Planting of this Subtitle. Alternative provisions must conserve, enhance, or increase the natural and developed woodland resources of the Critical Area. Alternative provisions may include fees-in-lieu provisions or use of an off-site conservation bank if the provisions are adequate to ensure the restoration or establishment of the required woodland area;**
 - (D) **If less than 15% natural or developed woodland exists on the proposed development site, the site shall be planted to provide a natural or developed woodland cover of at least fifteen percent (15%);**
 - (E) **All forests designated on a Conservation Plan shall be maintained to the extent practicable, through conservation easements;**
 - (F) **The applicant shall designate, subject to the approval of the County, a new forest area on a part of the site not forested; and**
 - (G) **All forests designated on a Conservation Plan shall be maintained, and to the extent practicable protected through conservation easements.**

A Chesapeake Bay Conservation and Planting Agreement is required to be recorded prior to permit approval for development of the site. This is for all the required tree and shrub plantings as part of the approved Conservation Plan. An agreement based on the previously approved Conservation Plan CP-89039-11 was recorded in the land records at Liber 35309 Folio 069. This agreement shall be voided and a new Agreement shall be recorded based on the requirements of the current CP approval.

Review of the Conservation and Planting Agreement falls under the purview of the County (DPIE) prior to the issuance of the first permit.

A Conservation Easement will be required for the natural woodland that is to remain undisturbed on-site per Section 5B-114(e)(3)(B) of the County Code. This Conservation Easement is solely for the subject lot to prevent a loss of on-site woodlands. A metes and bounds description must accompany the easement.

Review of the easement falls under the purview of the County (DPIE) prior to the issuance of the first permit.

- (7) **Applicants shall adhere to the following standards for development on steep slopes. Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for L-D-O Zones set forth above and with the provisions below.**
- (A) **Consistent with an approved Forest Management Plan, if applicable;**
 - (B) **Consistent with an approve Surface Mining Permit, if applicable;
and**
 - (C) **Consistent with an approved Soil Conservation and Water Quality Plan, if applicable.**

The Planning Board finds that development on slopes greater than 15 percent is not proposed.

- (8) **Critical Area lot coverage shall be limited to 15 percent of the site or as permitted by 27-548.17(c).**

In accordance with Section 5B-114(e)(8) and Section 27-548.17(c)(2) of the County Code, the CBCA lot coverage is limited to no more than 25 percent of the site. A review of the plan and Table B-1 (CBCA Lot Coverage) demonstrates that the proposed development totals 4,828 square feet of lot coverage, which is below the 25 percent requirement.

Due to the unique circumstances of this case, which include a violation and variances for the removal of developed woodland, the Planning Board finds that the applicant shall not increase the environmental impact of the proposal by adding impervious area to the area of the driveway. At the time of the approval of Conservation Plan CP-89039-11, the Planning Board required that the applicant "revise the driveway to remove the branched extension and show only direct access to the garage loading area." The driveway design shall be restored to the limits of the previous approval.

- (9) **Conservation plans and associated development plans may propose modifications in road standards on a case-by-case basis to reduce potential impacts to the site, reduce total lot coverage in the Critical Area, and limit impacts to Critical Area resources, where the reduced standards do not significantly affect safety.**

The Planning Board finds that the above provision does not apply to the subject proposal. Modification of road standards is not proposed.

8. **Required Findings for Approval of a Variance:** The applicant requests approval for clearing 11,288 square feet, or 65 percent, of existing woodlands on the site. The Planning Board previously authorized 55 percent of woodland clearing on the subject site, and the conservation plan (CP) was certified indicating 54 percent of woodland clearing. According to Section 5B-114(e)(5), clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance. Section 27-230 of the Zoning Ordinance contains the following required findings to be made before a variance to Subtitle 5B can be granted.

- (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 Planning Board finds that the site has no significant topographic constraints or other unique conditions that would prohibit the development of a residential dwelling; however, the unauthorized clearing of the site has resulted in an extraordinary situation and the approval of the variance with conditions is necessary to ensure that the site is restored in accordance with its previous approval by the Planning Board.

- (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 Planning Board finds that the strict application of this subtitle will result in a lot that cannot be developed. The variance is necessary in order to approve a mitigation plan.

At minimum the additional 10 percent of unauthorized clearing shall be restored through woodland planting.

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

This site is within a Network Gap Area of the Countywide Green Infrastructure Plan (GIP), a functional Master Plan. Network Gaps are areas critical to the connection of Regulated and Evaluation areas that are usually associated with a regulated water feature. The site contains woodland connected to a habitat corridor that leads to the Patuxent River Basin. Replanting of the removed woodland will contribute to this connection. Additionally, by preserving the woodlands in the rear of the site the conservation plan will meet the intent of the GIP and the CBCA Code.

The variance will not substantially impair the intent or purpose of the General or Master Plan because the variance is needed to mitigate the unauthorized clearing, to restore and enhance the site, and to reconnect the habitat corridor to meet the intent of the applicable code.

(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 applicant states that "without the requested variance, construction cannot commence and this lot cannot be improved. As such, we will be denied reasonable use of the lot." The applicant was granted reasonable development of the lot for the proposed residential use through the approval of Conservation Plan CP-89039-11; however, the approved limit of clearing was violated by commencing construction activities without a permit and clearing beyond the approved limit of woodland clearing.

Because of the illegal clearing, the site has been altered such that a variance is necessary to mitigate and restore the site. Without the variance the lot will be unbuildable, the applicant would be denied use of the entire lot, and no mitigation will take place.

- (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;**

The applicant states that “enforcement of this recently enacted rule would render this lot unbuildable and deprive my family and me of the opportunity to build our family house.”

Planning Board previously found that the 55 percent clearing, which exceeded the maximums of 20 and 30 percent, was sufficient to allow for reasonable development of the site. While the additional clearing was not necessary, the Planning Board finds that the a variance is needed to restore the site to the previously approved percentage of clearing, so the applicant is not deprived the right to develop a single-family home on the subject lot.

- (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;**

The Planning Board finds that granting of the variance would not represent a special privilege that would be denied by the Critical Area Program because the site cannot be mitigated or restored without the approval of a variance.

- (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 Planning Board finds that the entirety of the variance request is not based upon conditions that are the direct result of the applicant. The subject lot is 0.46 acres and was analyzed to be 86 percent wooded. Clearing for the development of the site is necessary.

While the additional 11 percent developed woodland that has been cleared on Lot 6 is a result of actions by the applicant; the proposed mitigation and replanting will achieve a better quality woodland than previously existed. The applicant would not be able to proceed with the mitigation measures, or any further development on the property, without the subject revision to the CP and approval of a variance by the Planning Board.

- (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;**

With regard to Findings 5–7, adverse water quality impacts are not anticipated. The site has an approved Stormwater Management Concept Plan and Letter Approval (31182-2005-01) that shows infiltration using drywells and recommends a fee of \$500 in lieu of providing on-site attenuation/quality control measures.

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 of existing areas of natural habitat. The subject lot at its closest point to open water is 414 feet away from tidal waters. This entire 414 feet length is comprised with developed woodlands. The entire project area is within the Network Gap area of the 2005 *Approved Countywide Green Infrastructure Plan*. The on-site developed woodlands as well as the woodlands that were cleared under the violation are part of a riparian wooded corridor around the adjacent tidal waters. The Planning Board finds that the violation has resulted in a disruption of that corridor which shall be restored.

- (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 proposal for a residential use is in conformance with established land use policies. No adverse environmental impacts are anticipated with the land use.

- (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.

9. **Further Planning Board Findings and Comments from Other Entities:** The subject application was referred to the concerned agencies and divisions. The referral comments are summarized as follows:

a. **Environmental Planning**—The Planning Board adopts the following:

- (1) **Existing Conditions:** The Conservation Plan is a development plan that also serves as the site's existing conditions plan which was reviewed for verification prior to the acceptance of the previously approved application. The plan accepted for review of the previous application showed that the 20,072-square-foot site was 86 percent wooded and contained no development. The on-site woodlands were assigned a Priority 3 rating because they are not associated with any Waters of the U.S. and also because of the presence of invasive species within the woodlands.

The previously approved CP for this lot showed the limits of developed woodland as delineated by a Qualified Professional and confirmed by staff. A site visit was conducted on April 19, 2013 by the M-NCPPC Environmental Planning Section staff to investigate the on-site woodlands. These woodland areas meet the definition of developed woodland from Section 5B-108(a)(29):

- **Developed woodlands:** Those areas of vegetation that do not meet the definition of woodlands, but which contain trees and other natural vegetation and which also include residential, commercial, or industrial structures and uses.

In total, 17,291 square feet of on-site developed woodlands were determined to have existed on the site as referenced in the approval of Detailed Site Plan DSP-90076-04 and Conservation Plan CP-89039-11.

A site visit was conducted with a county inspector on March 21, 2014 and it was determined that trees within the area to remain preserved were removed. Although the applicant claims otherwise in the submitted statement of justification, that statement is not correct.

- b. **Permit Review**—In a memorandum dated June 6, 2014, the Permit Review Section staff stated that all zoning issues appear to be addressed.

- c. **Critical Area Commission**—At the time of this writing a referral from the State of Maryland Critical Area Commission has not been received.

- d. **The Department of Permitting, Inspections, and Enforcement (DPIE)**—In comments dated June 6, 2014, DPIE provided an evaluation of the subject proposal, summarized as follows:

- (1) The proposed revision is to widen the driveway to 18 feet, as well as provide a five-foot connectivity sidewalk consistent with the Department of Public Works and Transportation's (DPW&T) Standard No. 200.09. DPIE has been advised that the CBCA Conservation Plan, as previously approved, reflected a 12-foot-wide

driveway and that in general, lots in the L-D-O Zone of the Chesapeake Bay Critical Area are normally approved to allow 20 percent clearing. Since the CBCA Conservation Plan was previously approved with approximately 50 percent clearing, the ability to approve additional clearing is not recommended. DPIE, in consideration of this limitation, recommends reduction of the driveway to match with the previously approved CBCA Conservation Plan.

As an alternate, if the house and driveway is revised to a front loaded garage, to remove the impervious area in the side yard, and trade this impervious area for a modified driveway, consistent with DPW&T Standard 200.09, DPIE will support this alternate configuration, so long as it does not result in impervious area in excess of what was previously approved on the Conservation Plan.

The Planning Board notes that no additional clearing is proposed in the area of the driveway; however the expanded driveway reduces the area for mitigation planting.

- (2) This lot has been issued a violation due to clearing activity without a Site Development Fine Grading permit issued. Furthermore, the clearing on this lot is in violation of the limits of disturbance (LOD) of the approved CBCA Conservation Plan. To bring this site into compliance, we recommend that the applicant secure a Site Development Fine Grading permit, reforest cleared areas to the satisfaction of the DPIE Inspections Division, and install protective fencing on lot to demark all tree save and reforestation areas to remain protected. All corrective actions specified in Notice of Violation No. 1703-2014 must be implemented.
- (3) No private structure is allowed within the County right-of-way or Public Utility Easement (PUE), except for a mailbox in accordance with DPW&T Standard No 300.34 (attached). Revise plans to move private lamp posts and mailbox out of the public right-of-way and behind ten-foot PUE.

Also, in a memorandum dated May 27, 2014, Inspector Wertz provided a Construction Inspection Report. The violation has not been satisfied. No sediment run-off has been observed. The disturbed areas have been naturally stabilized through the regeneration of vegetation on site. There has been no recent activity on the lot. This violation will be satisfied when the conservation plan is revised and approved by the Planning Board. There are no outstanding or pending fines.

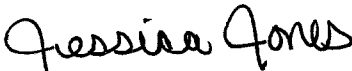
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the adoption of this Resolution.


* * * * *

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 Washington, seconded by Commissioner Shoaff, with Commissioners Washington, Shoaff, Bailey and Hewlett voting in favor of the motion, and with Commissioner Geraldo absent at its regular meeting held on Thursday, June 26, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17th day of July 2014.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator


APPROVED AS TO LEGAL SUFFICIENCY
M-NCPPC Legal Department
Date 7/7/14

PCB:JJ:MF:arj