

R E S O L U T I O N

WHEREAS, Kayleigh Kulp is the owner of a 7,500-square-foot parcel of land in the 16th Election District of Prince George's County, Maryland, and being zoned One-Family Detached Residential (R-55) within the Chesapeake Bay Critical Area (CBCA) Intense Development Overlay (I-D-O) Zone; and

WHEREAS, on November 7, 2018, Kayleigh Kulp filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing of a single-family detached dwelling; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-18001 for Munch Kulp Residence, including a Variance to Section 27-442(c), 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 January 17, 2019, 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 January 17, 2019, 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 a Variance to Section 27-442(c) and further APPROVED Conservation Plan CP-18001, for Munch Kulp Residence, with the following conditions:

1. Prior to certification of the conservation plan, the plan shall be revised as follows:
 - a. Provide notes on the landscape plans showing the applicability of Section 4.7 of the 2010 *Prince George's County Landscape Manual*.
 - b. Provide a note on the plan indicating the applicable exemption from the Prince George's County Tree Canopy Coverage Ordinance.
2. Prior to certification of the conservation plan, the applicant shall execute and record a Chesapeake Bay Conservation and Planting Agreement. The agreement shall be reviewed by Prince George's County prior to recordation. The applicant shall provide a copy of the recorded agreement to The Maryland-National Capital Park and Planning Commission, and the Liber/folio shall be shown below the conservation plan approval block.

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 subject application is for the construction of a single-family detached dwelling on vacant property within the Chesapeake Bay Critical Area (CBCA) Intense Development Overlay (I-D-O) and One-Family Detached Residential (R-55) Zones. Construction of the single-family detached dwelling will exceed the 30 percent lot coverage maximum established in the R-55 Zone, requiring a variance which was heard by the Prince George's County Planning Board, pursuant to Section 27-239.03 of the Prince George's County Zoning Ordinance as part of this application.
2. **Location:** The subject property is located on the south side of 40th Avenue, approximately 97 feet southeast of its intersection with Crittenden Street. The property address is 4709 40th Avenue, Hyattsville, Maryland 20781.
3. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	R-55/I-D-O/D-D-O	R-55/I-D-O/D-D-O
Use(s)	Vacant	Residential
Acreage	7,500 sq. ft.	7,500 sq. ft.

OTHER DEVELOPMENT DATA

	PERMITTED	APPROVED
Maximum Building Height	35 feet	34 feet
Maximum Lot Coverage (per R-55 Zone)	30%	32.1%
Minimum Front Yard Setback	25 feet	26 feet
Minimum Side Yard Setbacks	8 feet/17 feet	9 feet/18 feet

4. **Surrounding Uses:** The subject property is located within the R-55 and I-D-O Zones within the CBCA, and is surrounded by identically-zoned, developed single-family residential properties within the Holladay Company's Addition to Hyattsville, Maryland Subdivision. Additionally, the property is in the Development District Overlay (D-D-O) Zone of the 2004 *Approved Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District* (Gateway Arts District Sector Plan and SMA), which locates the subject site in the Traditional Residential Neighborhood (TRN) Character Area. Footnote 2 on page 144 of the sector plan states that properties in the TRN Character Area within the City of Hyattsville, such as this property, are exempt from the development district standards and will abide by the requirements of the R-55 Zone.

5. **Previous Approvals:** The subject property is located on Tax Map 50 in Grid B1, consists of one lot, and contains a total of 0.17 acre or 7,500 square feet. The subject property is known as Lot 2, Block 4, of Holladay Company’s Addition to Hyattsville, Maryland, enrolled on May 19, 1887, and recorded in Plat Book LIB A-30 in September 1930. The record plat does not contain any conditions. The subject property was previously improved with a 1920s bungalow structure, which was constructed prior to adoption of the Zoning Ordinance. In 2014, the blighted structure was determined to be unfit for habitation and was subsequently razed by the City of Hyattsville.

6. **Design Features:** The conservation site plan shows the lot bearings and distances consistent with the record plat and meets the requirements of the Zoning Ordinance for development in the R-55 Zone regarding setbacks, but not lot coverage, as discussed within the findings of this resolution. The site plan illustrates the grading of the lot and construction of a 27-foot-high, single-family detached dwelling. A 361-square-foot parking area, with permeable interlocking concrete pavers, accessed by a 15-foot-wide alleyway in the rear of the lot, will provide parking for the subject property. Architecture for the single-family dwelling was not submitted with the subject application.

COMPLIANCE WITH EVALUATION CRITERIA

7. **Environmental Review and Conformance with Subtitle 5B**

Background

The following applications and associated plans were previously reviewed for the subject site:

Development Review Case	Associated Tree Conservation Plan	Authority	Status	Action Date	Resolution Number
NRI-075-2018	N/A	Staff	Approved	5/3/2018	N/A
CP-18001	N/A	Planning Board	Pending		

Site Description

This 0.17-acre (7,500 square feet) property is located at 4709 40th Avenue, Hyattsville, is in the R-55 Zone, and entirely within the CBCA I-D-O Zone. Also, this site is located within the Hyattsville Historic District. The property is currently vacant with several trees and shrubs present. There was a single-family structure present on the site and this structure was razed in 2015. There are no streams, wetlands, 100-year floodplain, or their associated buffers located on-site. The site is not located within a sensitive species protection review area. No scenic or historic roads are affected by this development. According to the approved 2017 *Countywide Green Infrastructure Plan* of the *Approved Prince George’s County Resource Conservation Plan: A Countywide Functional Master Plan*, the property is not within a network area. The site is located within the Established Communities area of the Growth Policy Map and Environmental Strategy Area 4 of the Regulated Environmental Protection Areas Map, as designated by the *Plan Prince George’s 2035 Approved General Plan* (Plan 2035).

Chesapeake Bay Critical Area (CBCA) Commission Review

Comments were received from the CBCA Commission on November 26, 2018. The Commission's only comment was that the 10 percent reduction in annual phosphorus load must be addressed prior to permit approval. Additional discussion regarding the 10 percent pollutant reduction requirement is provided under the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) finding.

Variations

This application does not require a CBCA variance for the development, but a zoning variance is required for the lot coverage. The site is identified within the I-D-O area and there is no maximum lot coverage threshold for this designation. The maximum R-55 zoning lot coverage threshold is 30 percent, and the submitted plan shows 32.1 percent lot coverage. The lot coverage tables on the plan were reviewed with this application. The lot coverage shown on the plan includes the sidewalk, stairs, and window well, which are required for CBCA lot coverage pursuant to Subtitle 5B of the Prince George's County Code, but not for zoning lot coverage. The zoning lot coverage is required to include areas covered by buildings, including covered porches, and areas for vehicular access and parking. The zoning lot coverage is 32.1 percent, which is still above the 30 percent allowable lot coverage in the R-55 Zone.

Environmental Review

Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Review

A copy of the approved Stormwater Management (SWM) Concept Plan and Letter (20178-2018-00), dated July 11, 2018, were submitted with the subject application. The project involves infill redevelopment and is required to meet 75 percent of water quality volume for the disturbed area and 100 percent for any new impervious area. The concept plan shows the use of two rain gardens. A SWM fee of \$250.00 for on-site attenuation/quality control measures is required.

The 10 percent pollutant reduction calculations demonstrating that the post-development impervious area of the site will result in at least a 10 percent reduction in pollutant runoff from the site is required for projects in the I-D-O Zone. As part of the SWM approval process, two rain gardens were approved; however, the SWM concept approval does not specifically address the 10 percent pollutant reduction requirement.

Chesapeake Bay Critical Area (CBCA) Conservation Plan

The plan set is appropriately labeled as a "Proposed Conditions, Landscape, Stormwater, and CBCA Conservation Plan", "Landscape and Conservation Plan", and "Existing Conditions Plan" and contains all required information such as existing and proposed conditions, lot coverage calculations, and landscape planting information.

The former dwelling was razed by the City of Hyattsville in 2015. The previous impervious surface impacts are not known, but the approved impacts will result in 2,675 square feet of impervious surfaces (dwelling, parking area, walkways, steps, and window wells). There is no lot coverage cap in the I-D-O Zone, however, the overall CBCA lot coverage is 35.7 percent for this application.

Natural Resources Inventory Plan

The subject site has an approved Natural Resources Inventory (NRI-075-2018), dated May 3, 2018, which was included with the application package. The existing conditions of the site are correctly shown on the conservation plan. No additional information is required regarding the existing conditions of the site.

Soils

According to the U.S. Department of Agriculture, Natural Resource Conservation Service, Web Soil Survey, the site contains the soil type Russett-Christiana-Urban land complex. According to available information, Marlboro clay is not found to occur on this property, but a Christiana complex soil type is present. The County may require a soils report, in conformance with Prince George's County Council Bill CB-94-2004, during the building permit review process.

Chesapeake Bay Conservation and Planting Agreement

A Chesapeake Bay Conservation and Planting Agreement will be required to be executed and recorded prior to certification approval for development of the site.

Chesapeake Bay Conservation Easement

A conservation easement will not be required for this site. The site does not contain any woodland that is to remain.

Chesapeake Bay Critical Area (CBCA) Ordinance

The site is located within the I-D-O Zone; therefore, the site is subject to CBCA regulations. The purposes of the I-D-O Zone, as outlined in Section 27-548.13 of the Zoning Ordinance are to accommodate existing residential, commercial, or industrial land uses within the CBCA; to promote new residential, commercial, and industrial land uses in accordance with development intensity limits designated for the I-D-O Zone; to conserve and enhance fish, wildlife, and plant habitats; and improve the quality of runoff that enters the tributary streams of the Chesapeake Bay from developed areas. The regulations concerning the impervious surface ratio, density, slopes, and other provisions for new development in the I-D-O Zone are contained in Subtitle 5B of the County Code, as follows:

Section 5B-113. – Intensely Development Overlay (I-D-O) Zones.

(e) Development standards. The following development standards must be demonstrated within the I-D-O Zone:

(1) For redevelopment plans, opportunities to reduce impacts on water quality generated by existing development shall be analyzed;

Although the subject property is defined as a redevelopment plan, the property is not currently improved, having been razed in 2015.

(2) Urban (BMPs) for stormwater treatment shall be considered and, where appropriate, implemented as part of all plans for development and redevelopment;

Three urban best management practices (BMPs) are identified on the plans, including two rain gardens, a window well, and pervious pavers, satisfying the requirements of this finding.

(3) Stormwater shall be addressed in accordance with the following provisions:

(A) Development or redevelopment projects shall use technologies as required by applicable ordinances in order to minimize adverse impacts to water quality caused by stormwater;

(B) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the Critical Area 10% Rule Guidance Manual - Fall 2003 and as may be subsequently amended

(C) In the case of new development, offsets shall be used if they reduce pollutant loadings by at least 10 percent of the pre-development levels. Guidance for compliance with this requirement is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance - Fall 2003 and as may be subsequently amended.

(D) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation

measures. Guidance regarding offsets is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance - Fall 2003

As part of the SWM approval process, two rain gardens were approved; however, the SWM concept approval does not specifically address the 10 percent pollutant reduction requirement. A condition has been included requiring the applicant to demonstrate conformance with the 10 percent pollutant reduction requirement by submitting written approval from DPIE to The Maryland-National Capital Park and Planning Commission.

- (4) **There is no Critical Area lot coverage maximum in the I-D-O, however, where practicable, permeable areas shall be established in vegetation, and whenever possible, redevelopment shall reduce existing levels of pollution**

The subject development includes 35.7 percent CBCA lot coverage. The site plan shows a parking pad made of permeable paving, which contains sustainable materials that allow the movement of stormwater through the surface. In addition to reducing runoff, the permeable paving is designed to effectively trap suspended solids and filters pollutants from the water.

- (5) **Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within the I-D-O.**

The subject application does not include areas of public access to the shoreline such as foot paths, scenic drives, and other public recreational facilities.

8. **Prince George's County Zoning Ordinance:** The application conforms to the requirements of the R-55 Zone, including Section 27-441, Permitted Uses; and Section 27-442, Regulations, of the Zoning Ordinance, as follows:

- a. **The proposed single-family detached residence is a permitted use and meets the setback, lot size, but not lot coverage requirements, as follows:**

- (1) **Required net lot area for the subject lot is 5,000 square feet. The provided net lot area is 7,500 square feet, which meets this requirement.**
- (2) **Maximum permitted zoning lot coverage is 30 percent. The proposed lot coverage, 32.1 percent, exceed this threshold. The applicant requested a variance as part of this application which is discussed further.**

- (3) **The required front yard setback of 25 feet is provided.**
- (4) **The provided side yard setbacks exceed the minimum requirement of eight feet from the property line to the building, and the total of both side yards requirement of a minimum of 17 feet. The side yard setbacks proposed are an individual minimum of nine feet and a total of 18 feet for the side yards which is demonstrated on the site plan.**
- (5) **The required rear-yard setback is 20 feet. The provided rear-yard setback of 30 feet exceeds this requirement and is delineated on the plan.**
- (6) **The maximum building height permitted is 35 feet. The site plan indicates that the proposed building is 27 feet in height, which meets this requirement.**
- (7) **No accessory buildings are indicated on the site plan.**
- (8) **Footnote 2 on page 144 of the Gateway Arts District Sector Plan states that properties in the TRN Character Area within the City of Hyattsville, such as this property, are exempt from the development district standards and will abide by the requirements of the R-55 Zone. Therefore, the property is subject to the requirements of the R-55 Zone in the Zoning Ordinance, including Section 27-441, Permitted Uses, and Section 27-442, Regulations. The proposed one-family detached dwelling is a permitted use in the R-55 Zone and the site plan indicates that it meets applicable regulations, except for lot coverage for which a variance is requested.**

Based on this analysis of the Zoning Ordinance requirements, a variance to the zoning lot coverage requirements was required.

9. **Variance Analysis:** Section 27-230(a) of the Zoning Ordinance contains findings required for all variances, as follows:
 - (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, which is slated for infill development, is 7,500 square feet with a limited developable area when current zoning regulations are applied. The applicant's statement of justification (SOJ) states that the dwelling has been designed to look identical to and compatible with the other historic bungalows on the street, and to improve the environment and aesthetics of the street and

neighborhood. To implement a bungalow-style dwelling, the dwelling is severely limited in square footage on the second story, unlike other styles of single-family dwellings with more modular footprints. Additionally, the width of the home is limited to 33 feet wide, in respect to the side setbacks and overall width of the 50-foot-wide lot. Because of this, parking could not be added to the front of the single-family dwelling. Without relief from the strict application of the Zoning Ordinance, the applicant would not be able to develop the property.

- (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**

If the variance was not approved, the applicant would have been required to propose a new design, which may contrast with the 1920s bungalow-style homes that are prevalent in the neighborhood. Therefore, the requested variance was necessary in order to stay in keeping with the character of the existing neighborhood. The strict application of the Zoning Ordinance would result in a practical difficulty upon the owner of the property.

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

The variance will not substantially impair the integrity of Plan 2035 or the Gateway Arts District Sector Plan. Plan 2035 designates the area in the Established Communities Growth Policy area. The vision for the Established Communities area is context-sensitive infill and low- to medium-density development. The subject application is for infill development for a single-family detached residential dwelling, which is in conformance with the recommendations of Plan 2035. The development also conforms to the goals of the Gateway Arts District Sector Plan, which are to preserve the single-family residential neighborhood character in the TRN/R-55 Zone.

Section 27-230(b) permits that a variance may be granted from the provisions of the Zoning Ordinance for properties within the CBCA, as follows:

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

The subject property is a vacant lot slated for infill development within an established neighborhood. The development seeks to mimic the existing character of adjacent dwellings. The development does not include a covered porch, which is a common design among abutting dwellings, in order to minimize lot coverage. Without the granting of a variance, the applicant

would have been required to revise the design of the dwelling, further deviating from the existing character of the neighborhood. The granting of this variance will not confer upon the applicant any special privilege that would be denied by the Critical Area Program to other lands or structures in the CBCA and is not the result of actions by the applicant. Additionally, granting of the variance will not cause adverse environmental impacts, as the development demonstrates compliance with all applicable CBCA criteria. Lastly, the growth allocations for overlay zones within the County will not be exceeded by the granting of the variance. Therefore, the variance to allow a 2.1 percent increase over the 30 percent permissible lot coverage allowed by the Zoning Ordinance is approved, pursuant to the findings above.

10. **2010 Prince George's County Landscape Manual:** The development of a new single-family detached home is subject to the 2010 *Prince George's County Landscape Manual* because the application is for new construction. The Landscape Manual applies as follows:

Section 4.1, Residential Requirements: The plan provides the schedule and plantings showing the requirements of Section 4.1 being met for lots less than 9,500 square feet by planting two shade trees and two ornamental trees.

Section 4.7, Buffering Incompatible Uses: The submitted plans note that the surrounding properties are single-family detached homes in the R-55 Zone, which are compatible uses and would not require a buffer per Section 4.7. However, notes should be provided on the plans indicating that there is no requirement.

Section 4.9, Sustainable Landscaping Requirements: The correct schedule and notes were provided on the plan showing conformance to the requirements of Section 4.9 for native species.

11. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO):** The project is not subject to the WCO because the entire site is within the CBCA.
12. **Prince George's County Tree Canopy Coverage Ordinance:** The entire subject property is located within the CBCA and is exempt from the requirements of the Tree Canopy Coverage Ordinance, in accordance with Section 25-127(b)(1)(E). A note should be provided on the plan indicating the exemption.
13. **Further Planning Board Findings and Comments from Other Entities:** The following referrals were received and are incorporated herein by reference; all the comments are addressed on the site plan, or as part of this approval:
 - a. Environmental Planning Section dated November 17, 2018 (Schneider to Cannady II)
 - b. Permit Review Section dated November 16, 2018 (Glascoe to Cannady II)
 - c. Critical Area Commission dated November 26, 2018 (Harris to Cannady II)

- d. Transportation Planning Section dated November 8, 2018 (Masog to Cannady II)
- e. Prince George's County Department of Permitting, Inspections and Enforcement dated November 19, 2018 (Giles to Cannady II)
- f. Urban Design Section dated December 5, 2018 (Bishop to Cannady II)
- g. Historic Preservation Section dated November 13, 2018 (Stabler to Cannady II)
- h. Prince George's County Department of Parks and Recreation dated November 8, 2018 (Asan to Cannady II)

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

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Doerner, Geraldo, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, January 17, 2019, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 24th day of January 2019.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:RTC:rpg