

R E S O L U T I O N

WHEREAS, AMSB International, Inc. is the owner of a 1.02-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned Residential Estate (R-E)/Limited Development Overlay (L-D-O); and

WHEREAS, on April 11, 2019, AMSB International Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a single-family detached dwelling within the Chesapeake Bay Critical Area.; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-06001-01 for Swan Creek Club Development, Lot 9C, including a Variance to Section 5B-114(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 September 19, 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 September 19, 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 DISAPPROVED a Variance to Section 5B-114(e), for clearing greater than 30 percent of the site, and further APPROVED Conservation Plan CP-06001-01, with the following condition:

1. Prior to certification of the conservation plan, the applicant shall:
 - a. Provide a design that demonstrates a reduction in clearing to no greater than 30 percent of the existing woodland on-site.
 - b. Revise all tables and calculations to reflect the reduction in clearing and mitigation.
 - c. Correct the Chesapeake Bay Critical Area Overlay Zone in Tables B and B-1 (Sheet 4 of 11) to the Chesapeake Bay Critical Area Limited Development Overlay Zone.
 - d. Revise the dimension plan to a larger scale, and only represent the outside dimensions of the proposed impervious surfaces.
 - e. Provide mitigation for the developed woodland requirement on-site, to the extent practicable. All remaining requirements shall be met off-site.

- f. Correct the area of developed woodland planting total in the CBCA Developed Woodland Calculations table to represent the planting required for the buffer clearing at a 3:1 ratio, and provide a buffer management plan in accordance with Section 5B-121 of the Prince George's County Code.
- g. 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 Department of Permitting, Inspections and Enforcement, and the liber/folio shall be shown above the site plan approval block in the following note: The Chesapeake Bay Conservation and Planting Agreement for this property is found in Liber ____ folio ____.
- h. Obtain approval of a conservation easement for all developed woodland that is approved to remain on-site (as preservation), as shown on Conservation Plan CP-06001-01, and record the easement among the Prince George's County Land Records. The easement document shall be reviewed by the County prior to recordation. The liber/folio shall be shown above the site plan approval block in the following note: The conservation easement for this property is found in Liber ____ folio ____.

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:** This proposal is for construction of a 5,900-square-foot, single-family detached dwelling with a garage, pool, and patio on a vacant and partially wooded property within the Limited Development Overlay (L-D-O) Zone of the Chesapeake Bay Critical Area (CBCA) Ordinance. In conjunction with this CP, Detailed Site Plan DSP-18052 (PGCPB Resolution No. 19-101), was approved on the same date by the Prince George's County Planning Board.
2. **Location:** This 1.02-acre waterfront property is located at 12311 Hatton Point Road, approximately 1,500 feet southwest of its intersection with Riverview Road, in Fort Washington, Maryland.

3. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	R-E/L-D-O	R-E/L-D-O
Use(s)	Vacant	Residential
Acreage	1.02	1.02
Total Gross Floor Area (GFA)	0	5,900 sq. ft.
Areas not included in GFA:		
Two-Car Garage	0	590 sq. ft.
Pool and patio	0	685 sq. ft.
Rear Deck (Uncovered)	0	180 sq. ft.
Side Decks (Uncovered)	0	248 sq. ft.

OTHER DEVELOPMENT DATA

	PERMITTED	APPROVED
Maximum Building Height	35 feet	31 feet
Maximum Lot Coverage (per R-E Zone)	15 percent	15 percent
Minimum Front Yard Setback*	180 feet	180 feet
Minimum Rear Yard Setback*	105 feet	105 feet
Minimum Side Yard Setbacks*	17 feet/18 feet	17 feet/18 feet

Note: *The setbacks for this property were established with the preliminary plan of subdivision and are shown on the approved record plat.

4. **Surrounding Uses:** The subject property is located within the Residential Estate (R-E) and L-D-O Zones within the CBCA, with other R-E and L-D-O zoned residentially developed properties to the north and south, and Rural-Residential zoned properties to the east, across Hatton Point Road. The Potomac River, a tidal tributary to the Chesapeake Bay, is located along the eastern boundary of the property.
5. **Previous Approvals:** This site was originally part of a single property, which comprised what was identified as part of Lot 5 and Lot 6 of the Swan Creek Club Development. On December 8, 1988, Conservation Plan CP-88017 was approved by the Prince George's County Planning Board for improvements to the existing dwelling on the site, and subsequently CP-88017-01 was approved on December 3, 1992, for a stone revetment project along the shoreline of the Potomac River. Preliminary Plan of Subdivision (PPS) 4-06095 was approved by the Planning Board on March 22, 2007 (PGCPB Resolution No. 07-68), to subdivide the site into two lots, with the existing dwelling retained on Lot 8 and a vacant Lot 9 for future residential development. On the same date, CP-06001 was approved by the Planning Board (PGCPB Resolution No. 07-67). This

conservation plan established a separation of the subject lot with the conservation plan for Lot 8, assigning CP-88017-02 for Lot 8 and CP-06001 for the subject Lot 9.

6. **Design Features:** The applicant proposes to construct a two-story, single-family detached dwelling with a walkout basement, a two-car garage attached by a breezeway, and a pool with a patio. The dwelling will contain approximately 5,900 square feet of interior space, with approximately 950 square feet for the garage. The dwelling will be a modern design with white stucco siding and large floor-to-ceiling windows, particularly on the rear, water-facing façade. Other notable features of the dwelling include a roof-top deck, a 130-square-foot atrium in the center, open decks on the side and rear of the dwelling, and a vegetated green roof over the garage. A pool and associated patio are proposed on the north side of the dwelling.

No regulated environmental features or buffers will be impacted for construction of the dwelling, with the exception of a 3-foot-wide walkway, and steps proposed from the north side of the dwelling and through the 100-foot primary buffer for access to a proposed pier on the Potomac River. Access to the water does not require a variance for buffer impacts.

COMPLIANCE WITH EVALUATION CRITERIA

7. **Chesapeake Bay Critical Area (CBCA) Ordinance:** The site is located within the L-D-O Zone, and is therefore, subject to the CBCA regulations. The purposes of the L-D-O Zone, as outlined in Section 27-548.14 of the Zoning Ordinance, 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 to 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.**

This proposal is infill development on the last vacant waterfront lot on Hatton Point

Road. All other lots have been developed with single-family detached dwellings. Developed woodlands cover approximately 55 percent of the site, including the majority of the area within the platted BRL. Clearing is required for development of this site; however, the Countywide Green Infrastructure Plan designates the Regulated Area in the primary buffer where minimal woodland clearing is necessary to establish access to the waterfront. The remainder of the primary buffer will be preserved, maintaining a protected wildlife corridor. Although the conservation plan does not specifically identify wildlife corridors, woodland preservation and reforestation areas are appropriately identified.

- (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, to protect the remaining woodland, and mitigate for losses. This application proposes the removal of 40 percent of the existing woodland on-site; thereby, requiring a variance in accordance with Section 5B-114(e)(5) below.

- (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.**

The Planning Board found that the developed woodlands are not being preserved and/or restored to the greatest extent practicable. Refer to the variance findings below.

- (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.**

This application requests clearing in excess of 30 percent of the existing developed woodlands. Refer to the variance findings below.

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

A variance for clearing 40 percent of the developed woodland was requested with this application. Section 5B-114(e) limits woodland clearing to no greater than 30 percent of the existing woodland on-site; however, Section 5B-114(e)(5) allows clearing in excess of 30 percent with the approval of a variance. The applicant requested a variance to Section 5B-114(e)(5) to clear approximately 40 percent of the existing woodland.

Variance Analysis

Per Section 27-230(a) of the Zoning Ordinance, a variance may only be granted when the Planning Board finds that:

- (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 has a relatively narrow frontage along the Potomac River (approximately 73 feet) and widens as it reaches Hatton Point Road. The lot size, width, and shape are not exceptional for residentially zoned properties along the Potomac River and its tributaries, nor does the lot exhibit exceptional topographic conditions. The imposition of a 180-foot front yard setback from Hatton Point Road by PPS 4-06095, in addition to the location of the critical area buffer, do constrain the buildable area on the subject property. However, CP-06001

demonstrated the feasibility of developing the subject property with a single-family home without violating either the critical area buffer, or the front yard setback. While the clearing of woodlands is necessary to develop the subject property, CP-06001 demonstrates that such clearing can be limited to the building envelope, and to less than 30 percent of the woodland. Accordingly, the subject property does not exhibit other extraordinary situations or conditions necessitating a variance.

(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

As demonstrated by CP-06001, it is possible to develop the subject property without clearing more than 30 percent of the existing woodland by limiting woodland clearing to the buildable envelope, in accordance with the CBCA Ordinance. Thus, strict application of the law will not result in peculiar and unusual practical difficulties for the owner of the property.

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

According to the 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area, which is the governing master plan for the subject site and its vicinity, the Potomac River shoreline is in a special conservation area. In addition, the Approved Countywide Green Infrastructure Plan states that this area should focus on water quality and preservation of the natural environment and the river's scenic character, and that forest fragmentation should be minimized and ecological connections between existing natural areas should be maintained and/or enhanced when development occurs. The proposed single-family detached residential use of the subject property is consistent with applicable general and master plans. However, development of the subject property with a single-family residence is possible, while adhering to the standards of the CBCA Ordinance, and preserving natural features on the subject site. Granting the variance would therefore, substantially impair the intent, purpose, or integrity of applicable general and master plans.

(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 interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship.**

State law (COMAR 27.01.12.01) defines “unwarranted hardship” to mean “that without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” As described above, the subject property does not exhibit special conditions or circumstances that would warrant the granting of the requested variance, and a literal interpretation of the CBCA Ordinance would not prevent the applicant from developing the subject property with a single-family residence. Thus, literal interpretation of the applicable provisions of the CBCA Ordinance would not result in an unwarranted hardship to the applicant.

- 2. A literal interpretation of the Subtitle would deprive the applicant of the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area.**

CP-06001 demonstrates that the subject property can be developed with a single-family residence like other properties in similar areas within the CBCA, without the requested variance. A literal interpretation of the CBCA Ordinance would therefore, not deprive the applicant of rights commonly enjoyed by owners of other properties in similar areas.

- 3. The granting of a variance would not confer upon an applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area.**

The previously approved CP-06001 has established that development within the woodland clearing limit can occur on Lot 9 without 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 conditions relating to land or building use, either permitted or non-conforming, on any neighboring property.

The subject property is currently undeveloped and is in conformance with the CBCA Ordinance, and the variance request is not based upon conditions or circumstances which are the result of the applicant's actions. The variance request also does not arise from any conditions relating to land or building use, either permitted or nonconforming, on any neighboring property.

5. **The granting of the variance would not adversely affect water quality or adversely impact fish, plant, wildlife habitat within the Chesapeake Bay Critical Area, and that granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area.**

The applicant has an approved stormwater management (SWM) concept plan by the Department of Permitting, Inspections and Enforcement (DPIE). This SWM plan has been reviewed to ensure that no on-site sediment or stormwater leaves the site or enters the adjacent Potomac River. To develop the subject site, developed woodland clearing is required to take place, but clearing up to 40 percent of the subject property could have a long-term adverse effect on water quality within the CBCA. Minimization of forest clearing reduces the need for artificial SWM and preserves valuable wildlife habitat. In addition, because the variance is not necessary to permit development of the subject property, granting the variance would not be in harmony with the general spirit and intent of the applicable laws governing the CBCA.

6. **The development plan would minimize adverse impacts on the water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands.**

The conservation plan incorporates SWM controls to address adverse impacts on water quality from pollutants discharged from structures, conveyances, or runoff from surrounding lands. However, the additional clearing requested by the applicant would increase adverse impacts to water quality.

7. **All fish, wildlife and plant habitat in the designated**

Critical Area would be protected by the development and implementation of either on-site or off-site programs.

Clearing of forest and developed woodland on the site is necessary for site development; however, clearing in excess of 30 percent of the existing woodland on the subject property could have long-term adverse effects on fish and wildlife. Forests and developed woodland provide important wildlife and habitat value and contribute to stormwater attenuation and pollutant reduction.

- 8. The number of persons, their movements and activities, specified in the development plan, and in conformity to establish land use policies and would not create any adverse environmental impact.**

The number of persons, their movements and activities, specified in the development plan are in conformance with existing land use policies and would not create any adverse environmental impact. This proposal is for a single-family detached dwelling in an established low-density residential community.

- 9. The growth allocation for Overlay Zones within the County would not be exceeded by the granting of the variance.**

No growth allocation exists for the area where the proposed single-family detached house is located.

In conclusion, pursuant to the foregoing findings, the Planning Board disapproves the variance request to Section 5B-114(e), for clearing greater than 30 percent of the site. A condition has been incorporated in this resolution, requiring a reduction in the amount of proposed clearing.

- (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 conservation easement will be required for the natural woodland that is to remain undisturbed on-site, per Section 5B-114(e)(3)(B). 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. A condition requiring the easement has been included in this resolution.

The applicant is proposing 3:1 mitigation on-site for the majority of the clearing and providing off-site mitigation for the remaining area. Prior to certification of the conservation plan, the applicant shall execute and record a Chesapeake Bay Conservation and Planting Agreement. A condition requiring this has been included in this resolution.

- (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.**

Development on slopes greater than 15 percent is not proposed, with the exception of minimal disturbance to install 3-foot-wide steps and a walkway to the waterfront. The steps and walkway have been designed to minimize woodland clearing and disturbance to the primary buffer, and still provide safe access to the waterfront. Due to the proposed clearing, a buffer management plan will be required and incorporated into the conservation plan. A condition has been included in this resolution, requiring that the removal of developed woodland within the primary buffer must be replaced at a ratio of 3:1.

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

A review of the plan and Tables B and B-1 (CBCA Lot Coverage) demonstrate that the development proposes 6,653 square feet of lot coverage, which is 15 percent of the site, and therefore, meets this requirement. It should be noted that the applicant has maximized the allowable critical area lot coverage with this proposal. Any further development of the site will require a variance to the 15 percent limit and may not be approved by the Planning Board.

- (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 above provision does not apply to the subject proposal. Modification of road standards is not proposed.

- 8. **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. **Critical Area Commission (CAC)**—The Planning Board adopted, herein by reference, a memorandum dated August 22, 2019 (Harris to Burke), which states that the CAC was unable to support the proposed variance for clearing greater than 30 percent of the existing established woodland, indicating that the proposal did not meet the standard for unwarranted hardship, does not minimize adverse impacts, and is not in harmony with the general spirit and intent of the CBCA Ordinance. This finding was made on the basis that

the 2009 subdivision plat and related conservation plan demonstrated that the property could be developed in compliance with all critical area requirements, including clearing limits, and that granting the variance request would confer upon the applicant a special privilege that is denied to others.

- b. **Environmental Planning**—The Planning Board adopted, herein by reference, a memorandum dated August 28, 2019 (Schneider to Burke), which states that they were unable to support the proposed variance for clearing greater than 30 percent of the existing established woodland. The findings and conditions of approval are included in this resolution.

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 Geraldo, seconded by Commissioner Bailey, with Commissioners Geraldo, Bailey, Doerner, and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, September 19, 2019, in Upper Marlboro, Maryland.

Adopted by the Prince George’s County Planning Board this 10th day of October 2019.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:TB:gh