

R E S O L U T I O N

WHEREAS, Osma M. Khalid is the owner of a 0.1837-acre parcel of land in the 2nd Election District of Prince George's County, Maryland, and being zoned R-55/I-D-O; and

WHEREAS, on July 14, 2004, Osma M. Khalid filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a Single-Family Dwelling, including a Variance from the 25-foot setback from all street fronts; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04015 for Highland Brentwood, Lot 11, Block G, including Variance Request VC-04015A, 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 20, 2005, 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 20, 2005, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Variance Application No. VC-04015A, and further APPROVED Conservation Plan CP-04015, Highland Brentwood, Lot 11, Block G.

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

1. **Site Description**

The subject property is located on the south of the intersection of Allison Street and 39th Place, within the Chesapeake Bay Critical Area associated with the Anacostia River. There are no streams or wetlands on the property. There is no floodplain on the property. Current aerial photos indicate that the site is vacant, undeveloped and not wooded. No historic or scenic roads are affected by this proposal. There are no significant nearby noise sources and the proposed use is not expected to be a noise generator. No species listed by the State of Maryland as rare, threatened or endangered are known to occur in the general region. A Stormwater Management Concept or Technical Plan is under review by the Department of Environmental Resources. The *Prince George's County Soils Survey* indicates that the principal soils on the site are in the Codorus soil series. The site is in the Developed Tier according to the General Plan.

2. **Findings**

The lot was recorded in 1904 and is shown on Record Plat Book A, Plat No. 9, in the Prince George's County Land Records. This site is not subject to the provisions of the Woodland Conservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area. The maximum amount of impervious surface permitted by Section 27-548.17 of the Zoning Ordinance for the property is 100 percent of the gross tract (8,000 square feet). The existing amount of impervious surfaces is zero square feet and the proposed amount of impervious surfaces is 1,734 acres or 21.68 percent. All other provisions of the Chesapeake Bay Critical Area regulations have been met on-site.

3. **Buildable Lot Analysis**

In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. The subject lot is grandfathered because it was recorded prior to December 1, 1985, and as such is considered a buildable lot.

4. **Variance Requests**

Variances requested: for **proposed construction**.

- (1) The existing side yard setback from Allison Street is less than the required 25 feet. The house is situated on a corner lot between Allison Street and 39th Place. Since the house along the rear property line adjoining this lot (Lot 10, block G) fronts Allison Road, a 25-foot setback is required. The proposed setback is 16 feet. A variance of 9 feet is required.

5. **Variance Analysis**

Section 27-230(b) permits that variances may be granted from the provisions of the Zoning Ordinance or the *Conservation Manual* for properties within the Chesapeake Bay Critical Area only where an applicant 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 conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section 27-230(a). The following is an analysis of the application's conformance with the Zoning Ordinance requirements related to the Chesapeake Bay Critical Area.

- (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;**

Comment: The variance being sought is not from provisions related to the Chesapeake Bay Critical Area regulations. The lot is peculiar in that it was platted in March 1904, long before the Chesapeake Bay Critical Area regulations were envisioned. The shape of the property, when combined with required setbacks, significantly reduces the legal building envelope.

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

Comment: Other properties nearby were similarly developed before and after the enactment of the Chesapeake Bay Critical Area Program.

- (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;**

Comment: The granting of the variance as requested does not establish a special treatment because the house, as proposed, is in keeping with the character of the existing neighborhood and this lot is unusually situated on a corner with essential two front-yard setback requirements.

- (4) **The variance requested 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 non conforming, on any neighboring property;**

Comment: The applicant has taken no action on this property to date, and the current request is not related to uses on adjacent properties.

- (5) **The granting of a variance would not adversely affect water quality or adversely impact fish, plant, or 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;**

Comment: The applicant will be required to meet the requirements of the Stormwater Management Ordinance, which will address issues of water quality for this site.

- (6) **The development plan would minimize adverse impacts on water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**

Comment: The applicant will be required to meet the requirements of the Stormwater Management Ordinance, which will address issues of water quality for this site.

- (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;**

Comment: The Chesapeake Bay Critical Area Plan includes an inventory that indicates that there are no fish, plant or wildlife habitats that could be adversely impacted by the proposed development.

- (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**

Comment: The use of a single-family residence is in complete conformance with the R-55 and I-D-O Zones.

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

Comment: No use of Growth Allocation is needed to proceed with the proposed development.

Section 27-230(a) of the Zoning Ordinance contains the findings required for all variances. The following is an analysis of the application=s conformance with these requirements.

- (1) **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

Comment: The subject property is an unusual shape in that it is a corner lot with essentially two front-yard setbacks. Furthermore, the extraordinary condition of this lot is that it was platted 100 years ago, long before the Zoning Ordinance was adopted and the Chesapeake Bay Critical Area requirements were envisioned. The house, as proposed, is in keeping with the character of the neighborhood.

- (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**

Comment: If the variance as requested for existing conditions is not approved, the lot could only be built with a house that is exceptionally small. The application at hand is only for a house of 1,102 square feet including the porch, so to reduce the house footprint by an additional 16 feet on one side would result in an extremely small house.

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

Comment: The use of the site for a single-family residence is in complete conformance with the General Plan and the Subregion II master plans.

6. **Summary**

On July 30, 2004, the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the R-R Zone, the I-D-O Zone and the *Conservation Manual*; however, the plan required numerous technical revisions. Revised plans were accepted for processing on November 18, 2004. The plan contains all of the information required for Chesapeake Bay Critical Area Conservation Plan.

The granting of the variance is appropriate to permit reasonable development of the site with a single-family residence that is similar in character to those in the neighborhood. Staff recommends approval of VC-04015A.

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 Harley, seconded by Commissioner Squire, with Commissioners Harley, Squire, Vaughns and Hewlett voting in favor of the motion, and with Commissioner Eley absent at its regular meeting held on Thursday, January 20, 2005, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 10th day of February 2005.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator