

R E S O L U T I O N

WHEREAS, James and Lily Collins are the owners of a 0.47-acre parcel of land in the 5th Election District of Prince George's County, Maryland, and being zoned Rural Residential (R-R)/Limited Development Overlay (L-D-O); and

WHEREAS, on June 5, 2017, James and Lily Collins filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a new 2,426-square-foot single-family detached dwelling unit on an existing residential lot and to remove two specimen trees; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-16001 for Tantallon on the Potomac, Lot 38, including a Variance from Section 5B-114(e)(5), 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 14, 2017, 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 14, 2017, 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 from Section 5B-114(e)(5), and further APPROVED Conservation Plan CP-16001, Tantallon on the Potomac, Lot 38 for construction of a new 2,426-square-foot single-family detached dwelling unit on an existing residential lot and for removal of two specimen trees with the following conditions:

1. Prior to certification of the conservation plan, the conservation plan shall be revised as follows:
 - a. Remove the March 29, 2017 information found in the revision block.
 - b. Remove the approval block and use the current approval block referenced on the plan.
 - c. Add to the plan view of the proposed house and driveway dimensions.
2. Prior to certification of the conservation plan, the applicant shall execute and record among the Land Records of Prince George's County a Chesapeake Bay Conservation and Planting Agreement. The agreement shall be reviewed by the Prince George's County Department of Permitting, Inspections and Enforcement prior to recordation. The applicant shall provide a copy

of the recorded agreement to The Maryland-National Capital Park and Planning Commission (M-NCPPC) and the liber/folio shall be shown on the conservation plan approval block.

3. Prior to certification of the conservation plan, a conservation easement for all developed woodland that is approved to remain on-site (as preservation) as shown on Chesapeake Bay Critical Area Conservation Plan CP-16001 shall be recorded among the Land Records of Prince George's County. The easement document shall be reviewed by DPIE prior to recordation. The liber/folio shall be shown on the conservation plan approval block.
4. Provide the correct side yard setback dimensions in Note 9 in the development table according to the dimensions shown on the site plan.
5. On the site plan drawing, provide the 70-foot-wide lot width at the front street line.
6. Provide a Section 4.9-1 planting schedule in the landscape detail sheet.

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

- A. **Nature of the Applicant's Request:** The subject application, known as 12509 Haxall Court (Lot 38), is in the Tantallon on the Potomac Subdivision. The applicant is proposing to construct a new 2,426-square-foot single-family detached dwelling unit on an existing residential lot and remove two specimen trees located within the Chesapeake Bay Critical Area (CBCA). This construction will not impact regulated environmental features or buffers at this location. The applicant is also requesting approval of a variance from Section 5B-114(e)(5) of the Chesapeake Bay Critical Area Ordinance for clearing in excess of 30 percent of a natural or developed woodland located in the Rural Residential (R-R)/Limited Development Overlay (L-D-O) Zone. The developed woodland table on the conservation plan states that the site contains 18,961 square feet of woodlands and the applicant proposes to clear 11,679 square feet of these woodlands. The total percentage of on-site woodlands proposed to be removed is 62 percent, which is prohibited without the approval of a variance. Therefore, a conservation plan with a variance was requested to be approved.

The Planning Board is the final approving authority for CBCA conservation plans and any companion variance. A Conservation Plan (CP-03011) for the subject property was approved by the Planning Board on January 5, 2004, with a validity period of three years. Since no activity occurred during these three years, the conservation plan expired. For this reason, a new CBCA conservation plan is required to be approved prior to issuance of any permit by Prince George's County.

- B. **Site Description:** This 0.47-acre property is in the R-R/L-D-O Zones and is located at 12509 Haxall Court, approximately 100 feet from the intersection of Monterey Circle. The site contains no Critical Area 100-foot primary buffer or secondary buffer areas, FEMA 100-year floodplain, streams, or wetlands. This property is over 93 percent wooded (18,961 square feet/

0.44 acre) and contains three specimen trees. The site has no regulated environmental features and no scenic or historic roads are affected by this approval. There are no significant nearby transportation-related noise sources, and the proposed improvements are not expected to be a noise generator. The site is not located within a Sensitive Species Protection Review Area nor does it have State or Federal rare, threatened, or endangered species within the boundary area. This site is located within regulated and evaluation areas of the green infrastructure network. The U.S. Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Web Soil Survey, indicates that the site is comprised of Christiana-Downer complex and Piccowaxen-Urban land complex soil types. The site is located within the growth boundary in an area generally designated as the Established Communities policy area, in the *Plan Prince George's 2035 Approved General Plan*.

- C. **History:** The Tantallon on the Potomac Subdivision was recorded among the Land Records of Prince George's County on April 4, 1979 in Plat Book NLP 103-1. The Planning Board previously approved Conservation Plan CP-03011 in 2004, and because no activity occurred within three years of approval, the conservation plan expired. The subject site has an approved Natural Resources Inventory Plan (NRI-209-16), dated December 12, 2016. The site is not subject to the 2010 Woodland and Wildlife Habitat Conservation Ordinance and the Environmental Technical Manual because it is located within the CBCA.
- D. **2010 Prince George's County Landscape Manual:** The development proposal for a new single-family detached home is subject to the 2010 *Prince George's County Landscape Manual* (Landscape Manual) because the application is for new construction. The site is subject to Section 4.1, Residential Requirements; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements.

Section 4.1–Residential Requirements

The plan provides the schedule and plantings showing the requirements of Section 4.1 being met for lots between 20,000 and 39,999 square feet through the planting of shade trees and ornamental trees.

Section 4.7–Buffering incompatible Uses

The submitted plans indicate that the properties surrounding the subject lot are used for single-family homes and are compatible with the subject development. Therefore, it would not require a buffer per Section 4.7 of the Landscape Manual.

Section 4.9–Sustainable Landscaping Requirements

The site plan did not provide a Section 4.9 landscaping schedule. However, according to the landscape planting list, it appears that the plants provided on the site are 100 percent native. A schedule for Section 4.9-1 should be provided.

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) of the County Code. A note on the site plan is provided indicating that the site is exempt from the tree canopy coverage requirements.

- E. **Environmental:** The Chesapeake Bay Critical Area Conservation Plan (CP-16001) and the associated variance request were reviewed and approved in accordance with the following findings:

Chesapeake Bay Critical Area Commission (CAC) Review

At the time of the Planning Board hearing, no comments had been received from CAC staff concerning this case.

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

A copy of an approved Stormwater Management Concept Plan and Letter (64198-2016-00) dated February 27, 2017 were submitted with the subject application. The concept plan shows stormwater to be directed to four rain barrels and a small micro-bioretenion pond, which drains to an adjacent off-site ephemeral channel. The stormwater is then conveyed to the tidal waters of Swan Creek. According to the approval letter, the site will be required to pay a stormwater management fee of \$250.00 in lieu of providing on-site attenuation/quality control measures. The conservation plan is consistent with the stormwater concept plan.

No additional information is required with regard to stormwater management.

United States Department of Agriculture (USDA) Review

At the time of the Planning Board hearing, no comments had been received from the USDA concerning this case.

Chesapeake Bay Critical Area Conservation Plan

The plan labeled as a “Tantallon On the Potomac – Chesapeake Bay Critical Area Conservation Plan – 12509 Haxall Court” contains information such as existing conditions, proposed driveway and house location, and stormwater management because this information is needed as part of the overall conservation plan for this site.

The maximum CBCA lot coverage for the subject lot is 25 percent and the proposed development proposes 17.9 percent. The overall on-site woodlands is 18,961 square feet and contains three specimen trees. This development proposes to clear 11,679 square feet and remove two of the three identified specimen trees. Over 62 percent of the on-site woodlands is proposed to be cleared, which is over the allowed 30 percent. A variance request has been submitted to support this additional woodland clearing. No on-site plantings are proposed and the site will meet the planting requirement of 17,519 square feet by paying \$26,277.75 into the County’s CBCA fee-in-lieu fund.

A single revision to information contained in the revision block is the only technical revision to the conservation plan that is required.

Natural Resources Inventory Plan

The subject site has an approved Natural Resources Inventory Plan (NRI-209-16) dated December 12, 2016, which was included with the application package. The site is 93 percent wooded with no regulated environmental features. The existing conditions of the site are correctly shown on the conservation plan.

No additional information is required with regard to the existing conditions of the site.

Chesapeake Bay Conservation and Planting Agreement

A Chesapeake Bay Conservation and Planting Agreement will be required to be executed and recorded among the Land Records of Prince George's County prior to certification approval for development of the site.

Chesapeake Bay Conservation Easement

A conservation easement will be required for the natural woodland that is to remain undisturbed on-site per Section 5B-114(e)(6)(E) of the County Code. This conservation easement is only 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).

F. Planning Board Findings

1. The site consists of Lot 38 in the Tantallon on the Potomac Subdivision (Plat Book NLP 103-1), and was recorded among the Land Records of Prince George's County on August 12, 2015 at Liber 37316, Folio 220. The site contains 20,464 square feet or 0.47 acre.
2. This project is not subject to the 2010 Woodland and Wildlife Habitat Conservation Ordinance and the Environmental Technical Manual because the entire site is within the CBCA.
3. The minimum net lot area required by Section 27-442, Table I, of the Zoning Ordinance is 20,000 square feet. The gross lot area of the property is 20,464 square feet. No 100-year floodplain or wetlands exists on the site. The net tract area is 20,464 square feet.
4. The maximum amount of impervious surfaces permitted per the CBCA regulations (Section 27-548.17 of the Zoning Ordinance) is 25 percent of the gross lot area or 5,116 square feet. The plan proposes impervious surfaces of 3,671 square feet, or 17.90 percent, well within the 25-percent maximum.

5. The maximum percentage of lot coverage permitted by the Zoning Ordinance (Section 27-442, Table II) is 25 percent of the contiguous net tract area or 5,116 square feet. The proposed percentage of lot coverage, which includes the house footprint and driveway, is 3,671 square feet or 17.90 percent.
 6. The minimum lot width at the front street line permitted by Section 27-442, Table III, Footnote 3, of the Zoning Ordinance is 70 feet. Note 5 of the development standards indicates that the lot width at the front street line is 70 feet. The dimension of the lot width at the front street line shall also be shown on the site plan drawing.
 7. The minimum lot width at the front building line permitted by Section 27-442, Table III, Footnote 2 of the Zoning Ordinance is 80 feet. The lot width at the building line is 88.2 feet.
 8. The minimum front yard setback permitted by Section 27-442, Table IV, of the Zoning Ordinance is 25 feet. The front yard setback is 77.7 feet.
 9. The minimum rear yard required by Section 27-442, Table IV, of the Zoning Ordinance is 20 feet. The site plan provides a 51-foot rear yard setback.
 10. The minimum side yards permitted by Section 27-442, Table IV, of the Zoning Ordinance are a total of 17 feet, with a minimum of 8 feet at one side. The site plan provided a setback of 27.8 feet, with a minimum side yard setback of 12.8 feet. Note 9 in the development table shall be revised to provide the correct side yard setback dimensions consistent with the site plan.
 11. The maximum height permitted by Section 27-442, Table V, of the Zoning Ordinance is 35 feet. The height is 34.3 feet for the proposed single-family residence.
 12. A Variance request from Section 5B-114(e)(5) of the CBCA Ordinance was received to allow clearing of existing natural woodland in excess of 30 percent, which is prohibited without a variance. Because the Planning Board is the final approving authority for CBCA conservation plans, it is also the approving authority for the requested variance.
- G. **Variance Findings:** The proposed application requires a CBCA variance from Subtitle 5B, the Chesapeake Bay Critical Area Ordinance. Subtitle 5B of the County Code Chesapeake Bay Critical Area Ordinance states in the Limited Development Overlay (L-D-O) Zone and general policies chapter in Section 5B-114(e)(5) that “Clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance.” The total percentage of on-site woodlands proposed to be removed is 62 percent. Therefore, a variance application in accordance with Subtitle 5B, a statement of justification in support of a variance, and a conservation plan were analyzed.

Section 27-230 of the Zoning Ordinance contains required findings [**text in bold**] to be made before a variance can be granted. The plain text is the Planning Board's findings of the request. The following is an analysis of the application's conformance with these requirements.

(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 property is irregularly-shaped and is narrow along Haxall Court and widens out towards the rear of the property. This property has road frontage on Haxall Court. The topography is flat along Haxall Court and slopes downward towards the north rear corner of the site. The site is mostly wooded within a developed subdivision. Due to the shape of the property, the front yard setback has been pushed back further on the lot to establish a building line, which will result in more woodland clearing.

(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 subject site is a small platted lot created in 1974, well before CBCA was instituted. The existing lot is 93 percent wooded. In order to comply with the 80-foot building setback at front street line, a minimum 17-foot side yard setback, and to comply with on-site stormwater management requirements, there is no alternative but to allow clearing in excess of 30 percent of a natural woodland. These are the undue hardships the owner faces, which other adjacent lot owners in the subdivision did not face when developing their lots.

(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 the General Plan or master plan. The site is consistent with the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Planning Area* and with the Plan Prince George's 2035 Approved General Plan policies for properties within the Established Community policy area. The vision of the Established Communities is to develop context-sensitive infill and low-medium-density development. The use of the site for single-family detached residential development is in complete conformance with the recommendations of the General Plan and the master plan.

Furthermore, Section 27-230(b) permits a variance to be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* for properties within the CBCA only where an applicant demonstrates that provisions have been made to minimize any adverse environmental impacts 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.

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

The property is irregularly-shaped and is narrow along Haxall Court and widens out towards the rear of the property. This property has road frontage on Haxall Court. The topography is flat along Haxall Court and slopes downward towards the north rear corner of the site. The site is mostly wooded within a developed subdivision. Due to the shape of the property, the front yard setback has been pushed back further on the lots to establish a building line, which will result in more woodland clearing.

- (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.**

This lot was platted in 1974, before December 5, 1985, and well before the CBCA was instituted. The lot is one of the few undeveloped wooded lots within the Tantallon on the Potomac Subdivision outside the 100-foot tidal waters buffer. During the initial building of the adjacent Tantallon on the Potomac lots, stormwater management was not required on each lot, as it is currently. This lot is narrow adjacent Haxall Court and widens out towards the rear yard. The site is 93 percent wooded with only a small open area located adjacent to the existing Haxall Court. Additional clearing is required to get to the front building setback limit and construct a similar single-family house with stormwater management structures.

- (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 granting of this variance neither creates a need for another variance nor constitutes a special privilege. As mentioned before, the subject lot is 93 percent wooded, it is irregularly shaped and is one of the few lots in the neighborhood that has a smaller road frontage. To meet the minimum 80-foot lot width at front building line and align the proposed house with other houses in keeping with the character of the existing neighborhood, granting this variance became necessary. Therefore, there is no special privilege awarded to this property owner by approval of the 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 nonconforming, on any neighboring property.**

The variance request is not a result of any actions by the applicant. This is a wooded and undeveloped lot that was created in 1974, prior to Critical Area Law in an almost totally-developed waterfront community. The disturbance of woodlands is needed to build the dwelling and required on-site stormwater management.

- (5) The granting of the waiver 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 granting of this waiver will not impact water quality or fish habitat. The development will impact on-site plant and wildlife habitat within an almost totally wooded lot. The CBCA conservation plan incorporates stormwater management controls to minimize adverse impacts on water quality and it is the construction of these controls, in addition to the building envelope, that necessitates clearing over 30 percent of the on-site woodlands.

- (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 CBCA conservation plan incorporates stormwater management controls to minimize adverse impacts on 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.**

All fish, wildlife, and plant habitat in the designated critical areas would be protected by the remaining on-site and the off-site woodlands of the Tantallon of the Potomac development.

- (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 use of a single-family residence is in conformance with the R-R and L-D-O Zones.

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

No growth allocation is proposed for this property.

Summary of the Developed Woodlands Clearing Greater than 30 Percent Variance Request

A request was made for the construction of a single-family dwelling, construction of a required stormwater management structure, and to clear woodlands greater than 30 percent of the overall on-site woodlands. The subject lot is 20,464 square feet in size. It is a small, irregularly-shaped platted lot that was subdivided in 1974, which was well before the CBCA was instituted. It is currently a 93 percent or 18,916-square-foot wooded area. Without exceeding the 30 percent developed woodland clearing, the applicant will not only be unable to construct a comparable-sized house to others in the neighborhood, but will not be able meet all the required setbacks per the Prince Georges County Zoning Ordinance. To meet the 80-foot lot width at the front building line and the side yard setbacks, as well as to construct stormwater management devices on the property to minimize adverse impacts on water quality, the applicant must clear over 60 percent of the existing woods. The proposed variance is well justified and necessary. Therefore, the variance, which otherwise would deprive the applicant of the rights to commonly enjoyed by other properties within the neighborhood and CBCA, is approved.

The required findings of Section 5B 114(e)(5) of the County Code that “[c]learing in excess of 30 percent of a natural or developed woodland is prohibited without a variance” have been met to allow the developed woodland clearing of greater than 30 percent for the construction of a single-family structure and required stormwater management structures.

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.

* * * * *

PGCPB No. 17-125
File No. CP-16001
Page 11

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 Doerner, seconded by Commissioner Bailey, with Commissioners Doerner, Bailey, Geraldo, and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, September 14, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of October 2017.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:TA:rpg