



# THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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PGCPB No. 2023-56

File No. CP-22002

## R E S O L U T I O N

WHEREAS, Michael Hill is the owner of a 0.58-acre parcel of land in the 12th Election District of Prince George's County, Maryland, and being zoned in the Rural Residential (R-R) Zone and is also within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone; and

WHEREAS, on December 12, 2022, Tenika Felder, AIA filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of construction of a two-story, single-family residence and boat pier, along with two variance requests; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-22002 for Waterside Subdivision – Hill Residence, including a Variance to Section 27-548.17(b) and 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 May 18, 2023, for its review and action in accordance with Zoning Ordinance, Subtitle 27, Prince George's County Code; and

WHEREAS, a new Zoning Ordinance, Subtitle 27, Prince George's County Code went into effect on April 1, 2022; and

WHEREAS, the subject property is within the Rural Residential (R-R) Zone and is also within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone; and

WHEREAS, pursuant to Section 27-1903(C) of the Zoning Ordinance, development proposals or permit applications of any type for properties in all other zones of the County, may utilize the prior Zoning Ordinance or Subdivision Regulations for development of the subject property; and

WHEREAS, therefore, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed this application under the Zoning Ordinance in existence prior to April 1, 2022; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on May 18, 2023, 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 5B-113 and Section 27-548.11 of the Prince George's County Code, the Prince George's County Planning Board APPROVED Conservation Plan CP-22002, Waterside Subdivision – Hill Residence, for construction of a two-story, single-family residence and boat pier, with the following conditions:

1. Prior to certification, the conservation plan (CP) shall be revised, or additional information shall be provided, as follows:
  - a. Below the Waterside lot-by-lot impervious table, add the development restrictions for Lot 6 and Lot 14.  
  
Lot 6 - 23,399 square feet (15 percent Max. Impervious 3,510 square feet)  
  
Lot 14 - 47,857 square feet (15 percent Max. Impervious 7,179 square feet)
  - b. Update the revision blocks.
  - c. The proposed driveway shall use pervious pavers.
  - d. Provide a landscape plan conforming with Sections 4.1 and 4.9 of the 2010 *Prince George's County Landscape Manual*.
  - e. Provide an approved and stamped stormwater management concept plan from the Prince George's County Department of Permitting, Inspections and Enforcement.
2. Prior to certification of the conservation plan, the applicant shall work with the Prince George's County Department of Permitting, Inspections and Enforcement to minimize the woodland clearing, by reducing the distance of the drywells from the house while providing a reasonable area of disturbance. If the woodland clearing is reduced due to alterations in the drywell design, the plan view and developed woodland table shall be revised to reflect the reduction.
3. 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 Prince George's County 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 Plat No. L. \_\_\_\_\_ F. \_\_\_\_\_."
4. Prior to certification of the conservation plan, a conservation easement for the proposed mitigation plantings and the existing developed woodland preservation area shall be recorded in 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 Plat No. L. \_\_\_\_\_ F. \_\_\_\_\_."

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 conservation plan (CP) approves construction of a two-story, single-family residence and boat pier.

2. **Development Data Summary:**

|                              | <b>EXISTING</b>             | <b>PROPOSED</b>             |
|------------------------------|-----------------------------|-----------------------------|
| Zone(s)                      | RR/LDO<br>(Prior R-R/L-D-O) | RR/LDO<br>(Prior R-R/L-D-O) |
| Use(s)                       | Vacant                      | Residential                 |
| Total Gross Acreage          | 0.58                        | 0.58                        |
| Floodplain Acreage           | 0.07                        | 0.07                        |
| Net Acreage                  | 0.51                        | 0.51                        |
| Total Gross Floor Area (GFA) | 0 sq. ft.                   | 3,555 sq. ft.               |

3. **Location:** The subject property is located in Fort Washington, on the west side of Waterside Court, near the intersection of Waterside Court and Cagle Place. The site is part of Block A in the Waterside Subdivision, and is within Planning Area 80 and Council District 8. More specifically, the subject property is located at 8215 Waterside Court and consists of one lot, totaling 0.58 acre.
4. **Surrounding Uses:** The subject property is located within the prior Rural Residential (R-R) and Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zones. The site is currently vacant and vegetated. To the north of the site are single-family detached residences in the R-R and L-D-O Zones. The subject property abuts Waterside Court to the east. Across Waterside Court are single-family detached residences in the R-R and L-D-O Zones. To the south, the site abuts Outparcel A, which is currently vacant and vegetated. Outparcel A is owned by the Waterside Subdivision Homeowners Association (HOA) and will remain undeveloped. Beyond Outparcel A is a vacant lot and another single-family detached residence, located at the end of the cul-de-sac on Lot 5, all within the R-R and L-D-O Zones. The Potomac River runs along the west side of the subject property.
5. **Previous Approvals:** The subject property is located on Tax Map 113 in Grid C-1. The property consists of one lot, known as Lot 7, recorded in the Prince George's County Land Records in Plat Book NLP 132 page 94. The property consists of 0.58 acre and is located within the R-R and L-D-O Zones. The property is subject to Preliminary Plan of Subdivision (PPS) 4-85186, Waterside, which was approved by the Prince George's County Planning Board on December 18, 1985 (PGCPB Resolution No. 85-431). PPS 4-85186 approved 34 lots for development of 34 single-family detached dwellings. At the time of final plat, only 30 lots were platted for development. This was followed by DSP-86116, which laid out the subdivision as it currently exists. Since that time, numerous minor revisions to the DSP have been approved by the Planning Director, as the designee of the Planning Board. The following revisions have been filed and approved:

| <b>Case Number</b> | <b>Status</b>     | <b>Nature of Revision</b>                                                   |
|--------------------|-------------------|-----------------------------------------------------------------------------|
| DSP-86116-01       | Approved 06/19/90 | Revise house footprints for houses in Block C                               |
| DSP-86116-02       | Approved 08/15/90 | Add decks for houses in Block C                                             |
| DSP-86116-03       | Approved 10/24/90 | Revise front porches for houses in Block C                                  |
| DSP-86116-04       | Approved 08/25/95 | Revise house footprints, grading, and retaining walls for houses in Block C |
| DSP-86116-05       | Approved 08/11/95 | Revise grading and LOD for lots in Blocks A and B                           |
| DSP-86116-06       | Approved 03/21/02 | Swimming pool for Block C, Lot 5                                            |
| DSP-86116-07       | Approved 04/04/03 | Adjust house footprints in Block B                                          |
| DSP-86116-08       | Approved 11/06/03 | Two monumental entrance features in Block B                                 |
| DSP-86116-09       | Approved 07/15/04 | Deck for Block A, Lot 9                                                     |
| DSP-86116-11       | Approved 12/09/04 | House for Block A, Lot 7                                                    |
| DSP-86116-12       | Approved 11/22/04 | Rear deck and front porch for Block C, Lot 6                                |
| DSP-86116-13       | Approved 02/18/05 | Swimming pool for Block A, Lot 8                                            |
| DSP-86116-14       | Approved 02/7/08  | Boat pier for Block A, Lot 10                                               |

To date, 27 residences out of the 30 platted lots have been constructed. The remaining three vacant lots are within Block A.

Several code changes have occurred in the time between the last approved DSP in 2008, and today that affect the subject property. In 2010, Prince George's County Council Bill CB-75-2010 updated the Chesapeake Bay Critical Area Ordinance (Subtitle 5B), adding woodland clearing limits to lots within the Chesapeake Bay Critical Area (CBCA) L-D-O and Resource Conservation Overlay (R-C-O) Zones. In 2015, CB-36-2015 updated the County's erosion and sediment control regulations. This included requiring properties within the CBCA to provide stormwater management (SWM) facilities on their lots. In 2021, the County Council approved CB-016-2021, tightening the standards for granting a variance under the Prince George's County Zoning Ordinance.

The above list shows that DSP-86116-11 was approved by the Planning Director on December 9, 2004, for a single-family detached dwelling on the subject property, Lot 7; however, the dwelling was never constructed.

The disturbance permitted on Lot 7 was noted as 8,550 square feet. If the same square footage of disturbance were permitted for the subject application, the woodland clearing amount would be 40.5 percent. DSP-86116-11 is no longer valid and does not govern this application but serves as an example of a development proposal that overcomes the exceptional physical conditions while requiring less woodland clearing than the previously proposed 52 percent. The applicant submitted revised plans dated April 9, 2023, demonstrating a reduced woodland clearing amount of 42 percent.

According to PGAtlas, some woodland clearing occurred previously on this lot, as part of the Waterside Court construction, between 1993 and 1998. By 2005, the site began to revegetate. The lot is currently vacant and undisturbed.

6. **Design Features:** The application was approved to develop the currently vacant waterfront property with a 3,555-square-foot dwelling and associated site features (stairs, driveway, and patio), resulting in a total impervious area on the property of 5,564 square feet, or 22 percent of the total lot area. The majority of the rear yard of the lot, approximately 10,400 square feet, is within the CBCA 100-foot tidal buffer (primary buffer), which is defined as the area 100 feet from the mean high tide-water line of the river. The proposed pier will be reviewed and evaluated at a later stage by the Maryland Department of the Environment (MDE), the United States Army Corps of Engineers, and the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE).

#### **Architecture**

The approved dwelling will consist mainly of brick. The dwelling will also be approximately 34 feet high, from the tallest elevation, and will contain a shingled hipped roof.

## **COMPLIANCE WITH EVALUATION CRITERIA**

7. **Chesapeake Bay Critical Area Ordinance Conformance and Environmental Review:**

#### **Site Description**

This 0.58-acre property is in the prior R-R and L-D-O Zones and is located at 8215 Waterside Court. The current zoning for the property is Residential Rural (RR) and Limited Development Overlay (LDO). The site contains CBCA primary buffer, secondary buffer, Federal Emergency Management Agency 100-year floodplain, and steep slopes. The property is wooded with no existing structures present. The site contains developed woodlands throughout the property, both within and outside the primary buffer. The subject property has a natural shoreline, similar to other lots within the subdivision. No scenic or historic roads are affected by this application. The site is not located within a Sensitive Species Project Review Area, nor does it have state or federal rare, threatened, or endangered species within the boundary area. The subject lot contains both regulated and evaluation areas of the green infrastructure network. The web soil survey indicates that the site is comprised of the Evesboro-Downer complex soil type.

#### **Approved Activity**

The application was approved to develop the subject property by removing woodland for construction of a new single-family dwelling, driveway, yard space, and required SWM facilities. The new house design will not impact the primary and secondary buffers.

According to the previous and current Prince George's County Zoning Ordinance, the 0.58-acre (25,265-square-foot) lot is allowed a maximum lot coverage of 15 percent, or 3,790 square feet, within the L-D-O Zone. The application used Section 27-548.17(c)(4) of the prior Zoning Ordinance to increase the maximum allowable lot impervious area. This regulation states "For

subdivisions approved after December 1, 1985, the overall Critical Area lot coverage for the subdivision may not exceed 15 percent. Lot coverage on individual lots may exceed 15 percent as long as the overall percentage of Critical Area lot coverage does not exceed 15 percent.” PPS 4-85186 was approved by the Planning Board on December 18, 1985, and subsequently DSP-86116 was approved in 1986. These approvals established the overall layout for the Waterside Subdivision. The subject property is utilizing the maximum lot coverage for the underlying R-R Zone, which is 25 percent.

The CP contains an impervious surface table for the entire Waterside Subdivision, to account for the lot-by-lot and roadway impervious areas. Currently, the Waterside Subdivision contains 12.43 percent of impervious surface areas, with Lots 6, 7, and 14 currently undeveloped. After the subject property is developed, the overall critical area lot coverage for the subdivision will increase to 12.59 percent. As previously stated, the subdivision lot coverage cannot exceed 15 percent, which leaves approximately 2.41 percent (or 38,838 square feet) available for the remaining undeveloped lots.

The site contains 0.48 acre (21,090 square feet) of developed woodlands. The current plan will remove 8,868 square feet of the on-site developed woodlands (42 percent), which represents a reduction from the 52 percent woodland clearing presented at the March 23, 2023 Planning Board hearing. Per Section 5B-114(e)(5) of the Prince George’s County Code, “Clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance.” Therefore, a variance was required to permit the excess woodland clearing.

#### **Natural Resources Inventory Plan**

Neither a natural resources inventory plan (NRI) nor forest stand delineation was required as part of the 1985 review of the overall subdivision. Natural Resources Inventory NRI-010-2022 was completed and approved on May 11, 2022, to establish all on-site environmental features (woodland limits, the Potomac River water line, floodplain limits, primary buffer, secondary buffer (expanded primary buffer), and steep slopes); and was included with the application package. Since this lot is located adjacent to the tidal waters of the Potomac River, the environmental features are applicable.

The NRI shows that the site contains 0.48 acre of developed woodlands and 5 acres of woodland area located within the 100-year floodplain. The CP correctly shows the site features and buffers in alignment with the NRI.

#### **Chesapeake Bay Critical Area Conservation Plan**

The plan, labeled as a “Chesapeake Bay Critical Conservation Plan – Lot 7- Block A 8215 Waterside Court – Waterside -PLAT 1,” in the Waterside Subdivision shows the approved driveway, house/garage location, and SWM structures, as required, as part of the overall review of the CP.

According to PGAtlas supplemental imagery around 1988–1989, the Waterside Subdivision was wooded, and construction of infrastructure (woodland clearing and grading) had started. Current aerials reflect that the on-site woodland clearing associated with Waterside Court, and approved

with the PPS 4-85186 development, was completed. Since no development has occurred on this lot, natural regeneration has occurred, and the open area was reforested. During the 1988–1989 infrastructure activity for the overall subdivision, no woodland clearing took place within the primary buffer on Lot 7. As shown on the previously approved plans and the plat, the on-site primary buffer area contains an existing Washington Sanitary Sewer Commission (WSSC) sanitary sewer easement (existing 18-inch pipeline). Within this WSSC easement is the Fort Foote Trail (a 25-foot hiker/biker) easement. All Waterside Subdivision waterfront lots contain these sewer and trail easements. The hiker/biker trail is owned by the United States National Park Service (NPS). No parts of this trail have been constructed within the Waterside Subdivision.

The approved CP shows the required plan view information and tables. Revisions are required to the lot-by-lot table of impervious surfaces for the entire Waterside Subdivision, the developed woodland table, and the buffer management plan, prior to certification of the CP.

Before the CP is certified, all remaining developed woodlands on the subject lot shall be placed in a conservation easement. The applicant's previously submitted CP dated January 9, 2023, proposed to meet a portion of the developed woodland requirement with on-site plantings. These on-site plantings could not be credited for CBCA plantings as a single row in the front yard because they did not provide a substantial area to regulate in a conservation easement. The current CP, dated April 9, 2023, shows four individual native landscape tree species within the approved on-site retention area. Since these four plantings are located within the on-site preservation area, they cannot be credited toward meeting the on-site requirement. The application's planting requirement cannot be met on-site and required plantings will have to be located off-site.

The applicant proposes a natural, surface water access walkway through the primary and secondary buffers to the shoreline of the Potomac River, providing access to a proposed pier structure. No clearing will be permitted for this access. The walkway shown on the CP is preliminary in nature, and the final access walkway will use the pathway with minimal disturbance and no tree clearing. As previously mentioned, the Fort Foote Trail easement is located within the primary buffer area. Before the water access walkway permit is submitted, NPS shall be contacted for comment.

Any woodland clearing associated with the proposed pier clearing will be regulated when a pier permit is requested from MDE. The Critical Area Commission will comment on this pier installation during the permit process with MDE. The Maryland-National Capital Park and Planning Commission (M-NCPPC) is not part of the pier permit process.

Technical revisions to the CP are required prior to certification, and have been included as conditions herein.

#### **Chesapeake Bay Conservation and Planting Agreement**

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

### **Chesapeake Bay Conservation Easement**

A conservation easement will be required for this site. A metes and bounds description must accompany the easement. The review of the easement falls under the purview of DPIE.

### **Variances Approved**

Two variances were approved to the following sections of the County Code:

- Section 27-548.17, that prohibits “development on slopes greater than 15 percent: in the L-D-O Zone, and
- Section 5B-114(e)(5), that prohibits “clearing in excess of 30 percent of a natural or developed woodland: in the L-D-O Zone.

The original 1986 DSP and the revised 2004 DSP design for the subject lot was approved with impacts to the steep slopes outside the primary and secondary buffers, and with a disturbance of 8,550 square feet for a house and yard. There was no on-lot SWM requirement, at the time, but is now required to control on-site stormwater runoff. The development proposal will increase the amount of on-site woodland clearing and the amount of development on slopes greater than 15 percent from what was previously approved. This additional woodland clearing and steep slopes development is a result of the increased building footprint and impervious surface area, required SWM, and usable rear yard. The revised development proposal will be reviewed by DPIE, for SWM, and is subject to current regulations.

On September 28, 2021, the County Council approved CB-016-2021, amending the standards for granting a variance under the Zoning Ordinance, including additional findings requiring that a variance: be the minimum reasonably necessary to overcome the exceptional physical conditions; not substantially impair the use and enjoyment of adjacent properties, and not be granted if the practical difficulty is self-inflicted by the owner of the property.

### **Variance No. 1: Disturbance to Steep Slopes**

Section 27-230 of the prior Zoning Ordinance contains required findings [text in **bold**] to be made before a variance can be granted. The plain text is Planning Board findings.

- (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 is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);**

As described above, the subject property is an existing undeveloped wooded residential lot. This lot is part of a subdivision that was approved with PPS 4-85186 in 1985. The Waterside Subdivision is located wholly within the CBCA and was one of the earliest subdivisions approved after adoption of the CBCA regulations. The subject lot is one of three lots within the subdivision that has not yet been developed.

The applicant identified the property as containing steep slopes, defined as slopes with a 15 percent or greater incline, throughout the property. The CP shows the location of the steep slopes, which takes up approximately 8,032 square feet (or 32 percent) of the entire lot. The steep slopes also take up approximately 4,240 square feet (or 46 percent) of the buildable area, located between the secondary buffer and the building setback limits. According to the applicant's statement of justification, the extent of steep slopes on this lot is greater than most of the other lots within Block A of the Waterside Subdivision. Therefore, the Planning Board finds that the lot has exceptional topographic conditions that causes it to be unique and unusual in a manner different from surrounding properties.

- (2) **The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;**

The application will impact areas of 15 percent and greater slope outside of the primary and secondary buffers. The steep slopes take up approximately 46 percent of the buildable area, the area between the secondary buffer and the building setback limits. Steep slopes are also located throughout the entire lot, taking up 32 percent of the site. Due to the extent of the steep slopes on this lot, the zoning prohibition against development in areas 15 percent or greater in slope imposes a disproportionate impact on the lot because it would prohibit almost all potential residential development resulting in an undue hardship for the owner of the property.

- (3) **Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;**

The developable area of this property is encumbered by steep slopes. Any development within this area requires a variance to impact steep slopes; thus, approval of this variance is the minimum reasonably necessary.

- (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and**

The 2017 *Countywide Green Infrastructure Plan* of the *Approved Prince George's County Resource Conservation Plan: A Countywide Functional Master Plan* (Green Infrastructure Plan) places the Potomac River shoreline in a special conservation area. The Green Infrastructure Plan and the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment* (Henson Creek-South Potomac Master Plan and SMA) states that this area should focus on water quality, as well as preservation of the natural environment and the river's scenic character. Forest fragmentation should be minimized and ecological connections between existing natural areas should be maintained and/or enhanced when development occurs. There are slopes greater than 15 percent located within the area between the primary buffer and Waterside Court. No development is approved beyond the primary buffer, reducing any potential adverse impacts to the Potomac River or surrounding natural areas.

The approved use as a single-family residence conforms to the low-density land use recommendation of the Henson Creek-South Potomac Master Plan and SMA. In addition, the site is an infill lot within an existing subdivision. The variance approval does not impair the intent, purpose, or integrity of applicable general and master plans.

- (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.**

The original approved DSP development showed the adjacent properties with developments that would necessitate impacting steep slopes. Similar to those properties, the approved impacts to steep slopes for this development will be confined to this property, with appropriate sediment control and SWM required at the time of permit.

The subject CP incorporates SWM controls to address adverse impacts on water quality from pollutants discharged from the site onto adjacent properties. In addition, the site abuts Outparcel A, which is currently vacant and vegetated. Outparcel A is owned by the Waterside Subdivision HOA and will remain undeveloped. The approved variance to develop on steep slopes will not substantially impair the use and enjoyment of adjacent properties.

- (6) **Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.**

The steep slopes that create a practical difficulty for the owner are a natural topographic condition. Any development within this area requires a variance to impact steep slopes. The approved variance was not due to self-inflicted impacts by the property owner.

**Variance No. 2: Clearing Developed Woodland Greater than 30 Percent**

According to Subtitle 5B, developed woodlands are defined as “Those areas of vegetation that do not meet the definition of woodlands, but which contain trees and other natural vegetation, and which also include residential, commercial, or industrial structures and uses.” Section 27-230 contains required findings [text in **bold**] to be made before a variance can be granted. Variances from the requirements of Subtitle 5B must satisfy the required findings in Section 27-230(a) and (b). The plain text is Planning Board findings.

- (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 is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);**

The subject property is similar in size to surrounding properties that are also located within the Waterside Subdivision. The subdivision is located entirely within the CBCA and was one of the early subdivisions approved after adoption of the CBCA regulations. As described previously, the subject lot contains exceptional topographic conditions and is also generally narrower, compared to surrounding lots within the subdivision. The lot width of the subject property is 80 feet. The surrounding lots within Block A of the Waterside Subdivision range from 60 feet to 142 feet.

The topography on the lot outside of the primary and secondary buffers contains steep slopes requiring more than 30 percent woodlands to be cleared, to effectively develop the residence. The topography of the lot drops by approximately 38 feet from the front right corner to the rear left corner of the property. The exceptional narrowness also limits the development envelope as depicted in prior approvals for the site.

An analysis provided by JAS LLC, dated April 20, 2023, determined that providing a 40.5 percent clearing similar to the prior DSP-86116-11 approval would require construction of a retaining wall that would be 54 feet in length and contain sections 10 feet in height. Developing the site with this type of retaining wall would disrupt more of the natural topography, restricting the free flow of wildlife, and present safety concerns for the residents.

The revised development approved with this application will use the house structure for retention purposes, and no wall will need to be constructed. Grading the site to tie into existing grades within the lot, and the installation of required SWM, requires woodland clearing over the 30 percent threshold.

- (2) **The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;**

The vacant parcel is 0.58 acre in size, of which 0.48 acre exists of natural and developed woodland. The applicant is approved to clear 0.20 acre (42 percent) of the existing woodland. The amount of woodland clearing permitted by Code is 30 percent or 0.144 acre.

As demonstrated by PPS 4-85186, it was previously possible to develop this property without clearing more than 30 percent by limiting woodland clearing to the buildable envelope, in accordance with Subtitle 5B. However, no SWM facilities were required on the individual lots at that time, and the design showed a 54-foot-long retaining wall due to steep slopes, resulting in clearing approximately 40.5 percent of the existing on-site woodland. The plan also showed clearing on the adjacent HOA property to address the narrowness of the lot, in order to properly grade the site and install the retaining wall. The site was entirely wooded (0.58 acre) at that time, and now the site is 0.48 acre wooded, with a 0.10-acre open area off of Waterside Court, in the northeast corner of the site. Current regulations require SWM on individual lots for environmental site design.

Situating the residence, so a retaining wall is not required, and treating stormwater on-site requires an increase in on-site woodland clearing over the 30 percent threshold. In addition, the CP shows an increase in the size of the building footprint from what was shown on the 1985 approved DSP. This increase in building footprint is a result of the L-shaped design of the house, which allows grading on the existing steep slopes

along the southern portion of the lot. The design of the house is being used to effectively retain the steep slopes without the need for a separate 54-foot-long, 10-foot-high retaining wall. Thus, the strict application of the law would create an undue hardship for the owner of the property.

**(3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;**

As noted above, the amount of woodland clearing proposed (8,868 square feet, or 42 percent) is based on steep slopes and narrow footprint and is significantly smaller than the applicant's original proposal to clear in excess of 50 percent.

The approved dwelling is 3,555 square feet, similar to the size of surrounding homes, with the total amount of impervious surface area at 5,542 square feet. Based on the previous approvals, additional reasonable measures were used, to reduce the amount of impervious surface on the lot from the original application, which reduces the amount of woodland clearing needed. The proposed project also eliminates the necessity for the retaining wall to prevent erosion due to steep slopes. The applicant reduced the limits of disturbance from the original application and relocated the SWM facilities to reduce the request from 52 percent to 42 percent woodland clearing. The L-shaped design of the house also addresses retention improvements, avoiding additional woodland clearing and reducing environmental impacts. The Planning Board finds that the revised design is the minimum reasonably necessary to overcome the exceptional physical conditions.

SWM is also now required on the subject lot. For the adjacent lots, it was not required at the time they were developed. These two conditions contribute to the woodland clearing necessary for safely and effectively developing the site.

**(4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and**

Single-family use of the subject property is consistent with the Green Infrastructure Plan and the Henson Creek-South Potomac Master Plan and SMA. Development of this property with a single-family residence is possible, while adhering to the majority of the standards of Subtitle 5B and while preserving natural features. This lot is part of an existing 30-lot subdivision which, with the exception of 3 undeveloped lots, is otherwise fully developed. The waterfront and adjacent developed lots

maintain various percentages of on-site woodlands. The approved variance does not impair the intent, purpose, or integrity of applicable general and master plans.

**(5) Such variance will not substantially impair the use and enjoyment of adjacent properties.**

The approved woodland clearing amount does not substantially impair the use and enjoyment of adjacent properties. The lot to the north of the subject property is currently developed with a residence, which will be approximately 23 feet away from the approved residence. The lot to the south, Outparcel A, is owned by the Waterside Subdivision HOA and will remain undeveloped. The adjacent properties will retain their current views and tree canopy.

**(6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.**

The approved woodland clearing amount for the development of 42 percent is the result of needed grading due to the natural steep slopes and the current SWM requirements.

**(b) Variances from the requirements of Subtitle 5B of this Code for property located within the Chesapeake Bay Critical Area Overlay Zones shall only be approved by the Planning Board 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 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 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" (Code of Maryland Regulations 27.01.12.01).

While developments on adjacent lots are comparable to the approved development, the adjacent lots were developed before SWM regulations and therefore, were not required to contain on-site SWM structures. Current SWM regulations require each individual lot to have on-site

SWM structures. The existence of steep slopes and the narrowness of the lot are special conditions or circumstances peculiar to the property.

Additional clearing is needed to safely develop the site, without requiring additional retaining walls, and provide required SWM. A hazardous 54-foot-long, 10-foot-high retaining wall would be required if this variance was not granted. The previously approved DSP showed a retaining wall in the rear yard without any SWM devices. Given these factors, the approved clearing of 42 percent will allow for the necessary grading to develop the site and implement the required SWM facilities.

**(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.**

Lot 7 is an infill lot within an existing developed subdivision. All waterfront lots have been developed, except the subject lot. Changes to the originally approved 1986 DSP allowed several of the adjacent waterfront owners to increase the impervious surface area and woodland clearing permitted within the lot.

Adjacent Lot 8 was the last lot within the subdivision to ask for a modification from the approved original DSP. In 2003, DSP-86116-07, was approved for new house footprints within the existing LOD on Lots 1–5, 8–13, and 15 of Block A. The disturbance permitted on Lot 8 was noted as 8,550 square feet. This represented 37 percent of the total lot area of 23,215 square feet, with 14,665 square feet remaining undisturbed. In 2005, DSP-86116-13, was approved for construction of a swimming pool on Lot 8.

Based on aerial photographs, Lot 8 was cleared of most of its vegetation between 2000–2005, while Lot 7 remained undeveloped and vegetated. The available M-NCPPC aerials show Lot 8 as wooded in 2000, and in 2005, Lot 8 is shown as cleared. Although Lot 8 was approved for additional disturbance, no woodland calculations were shown on the DSP. The DSP application file for Lot 8 (DSP-86116-13) does not show or note the amount of woodland that was cleared for the lot or for the subdivision as a whole.

In addition, the language in Section 5B-116(e)(5) was added per Council Bill CB-75-2010. Thus, the woodland clearing limit of 30 percent was not applicable to the other lots within the Waterside Subdivision that were processed and permitted prior to 2010. It is unclear what the woodland clearing requirements were prior to 2010 for lots within the CBCA.

However, despite the existence of comparable developments on neighboring properties, the laws requiring the applicant to seek a variance were adopted after the date those previous developments were approved. In other words, if those properties were developed today, they would all be subject to the same laws as the applicant.

The previously approved PPS and DSP for this property demonstrate that the lot can be developed with a single-family residence like other properties in similar areas within the CBCA without the approved variance; however, this would require a 54-foot-long, 10-foot-high retaining wall due to the existing topography. A wall of this scale would create a dangerous condition for the applicant, require maintenance, result in more clearing, and disrupt the flow of wildlife. The approved design eliminates the need for a retaining wall by incorporating the house foundation into the natural grades, effectively acting as a retaining wall. This is a safer design, but results in an increase of woodland clearing.

In addition, unlike the other adjacent lots within the CBCA, SWM is now required, further increasing the woodland clearing amount.

A literal interpretation of Subtitle 5B would, therefore, deprive the applicant of rights commonly enjoyed by the 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.**

Within the CBCA L-D-O and Resource Conservation Overlay (R-C-O) Zones, clearing natural or developed woodlands in excess of 30 percent is prohibited without a variance.

This property contains steep slopes throughout the developable area of the property. The approved development requires additional woodland clearing to prevent the need for a retaining wall due to the steep slopes. The approved 42 percent woodland clearing is due to the required SWM facilities and the size, location, and siting of the residence to minimize the grading needed. Therefore, the granting of this variance does not create a special privilege for the applicant.

**(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.**

Lot 7 is currently undeveloped and contains 21,090 square feet of existing woodlands. The application is approved to clear 0.20 acre (42 percent) of the existing natural and developed woodland on-site to newly construct a residential dwelling, a driveway, and install SWM.

This lot is dominated by natural steep slopes in the developable area. To grade and develop the site without a significant retaining wall, the approved woodland clearing amount of 42 percent is necessary to tie into the existing grades and construct a house into the natural grades.

- (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.**

To develop this site with a dwelling, developed woodland clearing is required. This site proposes woodland clearing up to 42 percent, and environmental site design for SWM must be implemented to the maximum extent practicable. DPIE has approved dry wells with a design that minimizes forest clearing and preserves valuable wildlife habitat within the primary and secondary buffers. The approved development will use five drywells located within the rear yard, between the dwelling and the Potomac River. In granting the variance, this application will be in harmony with the general spirit and intent of the applicable laws within 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 approved development incorporates stormwater devices to manage water quality from pollutants discharged from structures, conveyances, or runoff entering this property from Waterside Court.

- (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.**

The developed woodland within the primary and secondary buffers will not be impacted by this application. Woodlands from the primary and secondary buffer limits to Waterside Court is approved to be removed. The remaining on-site woodland will be preserved and recorded in a conservation easement for protection. This natural buffer of developed

woodland will continue to provide important wildlife and habitat value and contribute to stormwater attenuation and pollutant reduction of any runoff not captured in the stormwater devices.

- (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 does not create any adverse environmental impact. The approved development is for a new single-family dwelling in an existing residentially zoned established community.

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

No growth allocation was approved for this property.

- (c) For properties in the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where the applicant proposes development of multifamily dwellings and also proposes that the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George's County Code, the Board of Appeals may consider this increase over the required number of accessible units in making its required findings.**

The subject property is not located within the R-30, R-30C, R-18C, R-10A, R-10, or R-H Zones.

- (d) Notwithstanding (a) above, a variance is not required for a reduction of up to ten (10) percent to the building setback and lot coverage requirements if the subject property is within a County designated Historic District and the variance is needed to be consistent with Historic District Design Guidelines.**

The subject property is not located within a County designated historic district.

#### **Chesapeake Bay Critical Area Commission (CBCA) Review**

The Critical Area Commission (CAC) provided a memorandum to the Planning Board, dated January 26, 2023, in response to the initial application, which requested 52 percent clearing and was not in opposition to the variance as previously requested. The memorandum, included herein, provides the following comments:

“In this case, the Board must consider whether the applicant can meet the standard of unwarranted hardship and whether the variance request is the minimum necessary to provide relief. Specifically, the Board must determine whether the applicant has the opportunity to develop the site in a manner that minimizes the amount of clearing of natural and developed woodland given the amount of existing forested area, and whether the proposed lot coverage on a parcel comprising 0.48 acre is also minimized. Finally, the Board must determine whether the applicant has the opportunity to minimize the amount of disturbance to steep slopes in excess of 15 percent given the site design, including the amount of stormwater runoff generated by the proposed lot coverage on a lot comprising 0.48 acre, and other site constraints.

“If the Board does approve this request, then a Buffer Management Plan must be submitted and approved by the County in accordance with the County’s Critical Area program requirements. Mitigation is required at a 3:1 for the square footage of clearing of natural and developed woodland and for the disturbance to steep slopes 15 percent or greater. Furthermore, if clearing occurs in the Primary and/or Secondary Buffers to accommodate the riparian accessway, mitigation at a rate of 2:1 ratio for the square footage of disturbance to the Primary and Secondary Buffers and shall be included in the Buffer Management Plan. Finally, we request that the Board confirm that M-NCPPC staff will ensure that the lot coverage table associated with this subdivision is properly updated to outline the lot coverage limits for each lot and to ensure that the 15 percent lot coverage limit is met for the entire subdivision; it is our understanding that M-NCPPC is in the process of completing this update.”

The new construction of a homesite is approved for 5,564 square feet (22 percent) of impervious area outside the primary and secondary buffers. This approved development will clear 8,868 square feet (42 percent) of developed woodlands. No impacts were approved to the primary and secondary buffers, other than for a wood chipped water access trail. The subject lot is fully wooded, and all required mitigation efforts must be located at an approved off-site location. The applicant is required to add additional information pertaining to the buffer management plan.

Prior to the March 24, 2023 Planning Board hearing, the CAC submitted a second letter dated March 20, 2023, addressing the variance for the clearing of natural or developed woodlands. This letter stated that the CAC agrees with M-NCPPC staff in interpreting that the applicable sections of Subtitle 5B of the Prince George’s County Code and Code of Maryland Regulations Title 27 require the applicant to obtain a variance for clearing 30 percent or more of the developed woodland on-site, as well as CP approval for the clearing.

At the time of the writing of this resolution, the CAC has not provided a response pertaining to the April 11, 2023 and April 25, 2023 applicant resubmissions requesting a reduced woodland clearing of 42 percent.

**Prince George’s County Department of Permitting, Inspections and Enforcement Review**  
Copies of the previously approved SWM Concept Plan (19892-2021-00) and letter, which is valid until October 12, 2025, were submitted with the subject application. The SWM concept plan

proposes stormwater to be directed to five dry wells to treat stormwater on-site. These dry wells are in the rear of the approved residential dwelling structure, before the primary and secondary buffers. As part of the approval, the applicant is required to pay a SWM fee of \$250.00, in lieu of providing on-site attenuation/quality control measures. The CP is consistent with the SWM concept plan.

The revised CP dated April 09, 2023, has not been reviewed by DPIE for stormwater conformance since changes occurred to the dry well locations and grading. Prior to certification of the CP, the applicant must work with DPIE to minimize woodland clearing by reducing the drywell distance from the house and LOD. A condition has been included herein, to obtain an approved SWM concept plan for the current development configuration.

8. **Prince George's County Zoning Ordinance:** The subject application is in general conformance with the requirements of Section 27-442 of the prior Zoning Ordinance, which governs uses in residential zones. The approved single-family detached residence is a permitted use in the R-R Zone. The lot size, lot coverage, and setbacks for this property and the entire Waterside Subdivision was established with PPS 4-85186, and is reflected on the approved record plat.
9. **Preliminary Plan of Subdivision 4-85186:** PPS 4-85186 was approved by the Planning Board on December 18, 1985 (PGCPB Resolution No. 85-431), subject to 12 conditions. The conditions applicable to the review of this application are, as follows:
  3. **The applicant obtain approval from the Planning Board of a site plan for the development of the property prior to the final plat to assure that required grading is minimized. On Lots 5, 6, and 7, Block A, this may require the use of:**
    - a. **Custom architecture.**
    - b. **Walk out basements in the front, side, or rear of unit (down-hill side);**
    - c. **The combination of retaining walls and terracing;**
    - d. **Depressed driveways, and/or;**
    - e. **The grading of the site to incorporate shallow slopes (through terracing of steeper areas) to serve as permanent sediment control features in private yard areas;**
    - f. **A soils report by a qualified engineer to address potential foundation stability problems.**

The application provided by the applicant provides custom architecture, a walkout basement on the downhill side of the property, and a retaining wall. The applicant also submitted a copy of the sediment control plan.

**4. Conceptual grading plans shall be approved by DER and Natural Resources prior to final plat.**

Final Plat 5-87108 was approved by the Planning Board, on May 7, 1987, for the subject property. Therefore, this condition would have been satisfied, prior to final plat approval. The applicant has, however, submitted a copy of the SWM Concept Plan (19892-2021-00) and letter, approved by DPIE. A condition has been included herein, to obtain an approved SWM concept plan for the current development configuration.

**5. A 100-foot buffer measured from mean high tide must be maintained, and covenants provided to ensure the inviolability of the buffer.**

The site plan depicts the mean high tide-water level and the CBCA primary buffer line.

**6. The applicant shall contact Natural Resources and DER for assistance in the design of stormwater management facilities suitable for the site including those stormwater management facilities in the public right-of-way, such as grass swales.**

Conformance to this condition was reviewed by the Planning Board and the condition was met, prior to approval of the final plat.

**8. The applicant shall comply with Parks and Recreation memorandum of November 14, 1985.**

The Prince George's County Department of Parks and Recreation memorandum, dated November 14, 1985, contained two recommendations, as follows:

- “1) In accordance with Section 24-135 of the Subdivision Regulations of the Prince George's County Code, the Planning, Design and Research Division recommends to the Prince George's County Planning Board that the following stipulation be required of the applicant, his successors and/or assigns as a condition for approval.
  - a. Provide a 25-foot trail easement.”

The 25-foot-wide trail easement is delineated on the site plan, in accordance with the record plat.

- “2) In accordance with Section 24-135(a) of the Subdivision Regulations of the Prince George's County Code, the Planning, Design and Research Division recommends that the Prince George's County Planning Board require fee-in-lieu of dedication as applicable from the subject preliminary plan because the land available for dedication is unsuitable or impractical due to size, topography, drainage, physical

characteristics, or similar reasons, or if adequate open space has been acquired and is available to serve the subdivision.”

The reasons noted, in the memorandum, for requiring a fee in-lieu of dedication were location, topography, and configuration. This condition was previously addressed at the time of the final plat approval in 1987.

- 9. Prior to final plats, the applicant shall submit the following for review and approval to the (Planning Board):**
- a. A conceptual grading plan for the entire site which specifically delineates those areas which are to remain undisturbed, and which shows existing and proposed grades for all road and utility construction at two-foot contour intervals.**
  - b. A storm water concept plan with infiltration controls, demonstrating both runoff quality and quantity controls approved by DER. Although a stormwater management pond might be determined the best method for water quality control, ponds will not be required if only for quantity control.**
  - c. A sediment control concept study approved by the Soil Conservation District.**
  - d. Site plans for individual lots or groups of lots consistent with the above studies. The site plans should show the footprint of the proposed structures, driveways and other impervious surfaces, areas to remain undisturbed, existing and proposed grades at two-foot contour intervals, and on-site stormwater management and/or sediment control features as appropriate.**
  - e. The applicant assure maximum retention/replacement of vegetative cover by incorporating into the grading minimization efforts of condition 3 above, a plan for using tree wells to minimize loss of trees and a plan for revegetating with a specific plant species that will maximize retention of soil cover.**
  - f. The applicant will provide a planting plan, to be approved by the Prince George’s County Planning Board, that will assure that infiltration and evapotranspiration is encouraged by using plants that slow down overland flow of water, increase surface infiltrability of soil cover, and provide a high level of surface area of leaves for transpiration particularly during the wet season.**
  - g. Covenants shall be recorded in the land records of Prince George’s County to protect preserved slopes and vegetation and to assure maintenance of all erosion control features and planting areas referenced in these conditions.**

Final Plat 5-87108 was approved by the Planning Board, on May 7, 1987, for the subject property. Therefore, this condition was satisfied prior to final plat approval. With this application, the applicant also submitted a grading plan, a sediment control plan, a SWM concept plan, and a landscape plan for review. Covenants, in conformance with Condition 9g, were recorded in Liber 6627 folio 319, prior to final plat approval. Conformance to Conditions 9a through 9f were further reviewed by the Planning Board and was met, prior to approval of the final plat.

- 10. A site plan shall be approved by the Planning Board for Lots 5, 6, and 7, Block A, prior to the issuance of any permit for that use.**

Lot 7 is the subject of this site plan application, which will conform to this condition, as approved.

- 11. Approval of the 100-year floodplain by the Department of Public Works prior to final plat approval.**

This condition was satisfied prior to final plat approval. The SWM concept approval letter indicates that the 100-year floodplain was reviewed by DPIE under FPS 860148, and a new floodplain easement is required during fine grading review, prior to issuance of permits for this property.

- 12. Prior to the approval of any site plan for any lot in the subdivision, an inventory shall be made of historic artifacts on the site. Site plans shall address the issue of the disposition of these artifacts.**

Conformance to this condition was reviewed by the Planning Board prior to approval of the final plat. Archeological investigations at Waterside Subdivision identified 12 features associated with the Notley Hall Amusement Park (Archeology Site 18PR311), including the remains of some of the park rides, a wooden water tower, a generator building, the power plant, and a pier. Several of these features were preserved in an open space area, within the Waterside Subdivision, and an interpretive sign was installed in the development.

- 10. 2010 Prince George's County Landscape Manual:** The approved development for a new single-family detached home was subject to the 2010 *Prince George's County Landscape Manual* (Landscape Manual) because the application is for new construction. A condition has been included herein, requiring the applicant to provide a revised landscape plan demonstrating conformance to the following sections of the Landscape Manual which are applicable to this property:

- Section 4.1, Residential Requirements
- Section 4.9, Sustainable Landscaping Requirements

11. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:** The project site is not subject to the Woodland and Wildlife Habitat Conservation Ordinance, due to the entire site being within the CBCA, in accordance with Section 25-119(b)(4)(c).
12. **Prince George's County Tree Canopy Coverage Ordinance:** The property is located within the CBCA and is, therefore, exempt from the requirements of the Tree Canopy Coverage Ordinance, in accordance with Section 25-127(b)(1)(E).
13. **Referral Comments:** The subject application was referred to the concerned agencies and divisions. The referral comments are summarized as follows, and incorporated herein by reference:
  - a. **Historic Preservation**—The Planning Board has reviewed and adopts the memorandum dated December 14, 2022 (Berger, Stabler, Smith, and Chisholm to Lockhart), which concluded that the subject property is located in the Waterside Subdivision, to the north of the Notley Hall Amusement Park site and to the west of the Admirathoria/Notley Hall historic site. The site where the approved house is to be located was previously graded c. 1998. Therefore, Phase I archeological investigations are not recommended, due to this previous ground disturbance.
  - b. **Permit Review**—The Planning Board has reviewed and adopts the memorandum dated January 6, 2023 (Glascoe to Lockhart), which noted site plan revisions that are needed, prior to certification of the subject application. These revisions have been added to the conditions of this resolution.
  - c. **Community Planning**—The Planning Board has reviewed and adopts the memorandum dated January 25, 2023 (Umeozulu to Lockhart), which provided that, pursuant to Division 2 of Subtitle 5B, master plan conformance is not required for this application. However, it does conform to the residential, low-density land use recommendation of the Henson Creek-South Potomac Master Plan and SMA.
  - d. **Critical Area Commission (CAC)**—The Planning Board has reviewed and adopts the memorandum dated January 26, 2023 (Harris to Schneider), which concluded that the Planning Board must consider whether the applicant can meet the standard of unwarranted hardship and whether the variances are the minimum necessary, to provide relief. As approved, a buffer management plan must be submitted, in accordance with the County's critical area program requirements.
  - e. **Environmental Planning**—The Planning Board has reviewed and adopts the revised memorandum dated May 1, 2023 (Schneider to Lockhart), which provided an analysis of the subject application's conformance with Subtitle 5B, as included in Finding 7 above.
  - f. **Subdivision**—The Planning Board has reviewed and adopts the memorandum dated January 31, 2023 (Heath to Lockhart), which provided an analysis of the subject DSP's conformance with the previously approved PPS, as included in Finding 9 above.

- g. **Transportation Planning**—The Planning Board has reviewed and adopts the memorandum dated February 1, 2023 (Capers and Patrick to Lockhart), which offered an analysis of the prior approvals and the MPOT. There are no applicable prior conditions of approval or master plan recommendations, and the hiker/biker easement is accurately shown on the plans.
  - h. **Urban Design**—The Planning Board has reviewed and adopts the memorandum dated February 1, 2023 (Burke to Lockhart), which concluded that the subject property is in conformance with the prior approvals, the Landscape Manual, and the Tree Canopy Coverage Ordinance.
14. As required by Section 27-285(b) of the prior Zoning Ordinance, the DSP represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the County Code, without requiring unreasonable cost and without detracting substantially from the utility of the approved development for its intended use.
15. Per Section 27-285(b)(4) of the prior Zoning Ordinance, which became effective on September 1, 2010, a required finding for approval of a DSP is, as follows:
- (4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).**

Per Section 24-130(b)(5) of the prior Subdivision Regulations, only property outside of the CBCA overlay zones must conform to this requirement. An NRI was completed to establish all on-site environmental features (woodland limits, Potomac River water line, floodplain limits, primary buffer, secondary buffer (expanded primary buffer), and steep slopes). The regulated environmental features on the subject property have been preserved and/or restored, to the fullest extent possible, based on the LOD shown on the CP and DSP.

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

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Doerner and Shapiro voting in favor of the motion and with Commissioner Geraldo recused at its regular meeting held on Thursday, May 18, 2023, in Upper Marlboro, Maryland.

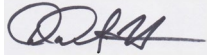
Adopted by the Prince George's County Planning Board this 22nd day of June 2023.

Peter A. Shapiro  
Chairman

By   
Jessica Jones  
Planning Board Administrator

PAS:JJ:DL:jah

APPROVED AS TO LEGAL SUFFICIENCY



David S. Warner  
M-NCPPC Legal Department  
Date: June 12, 2023