

PG 192-05 Tantalum on the Potomac  
VAR

LH  
Columbian  
Spades

MSA-S-1829-5087

Cosmo

Books

FAY (301)

292-9331

Blue

Stamps

(301) 952-3799

Robert L. Ehrlich, Jr.  
*Governor*



Michael S. Steele  
*Lt. Governor*

Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**  
1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

March 24, 2005

Mr. Jim Stasz  
Maryland National Capital Park and Planning Commission  
Natural Resources Division  
14741 Governor Oden Bowie Drive  
Upper Marlboro, Maryland 20772

Re: Conservation Plan CP-04021 - Tantallon on the Potomac

Dear Mr. Stasz:

Thank you for forwarding the conservation plan and site plan for the above-referenced project. It is our understanding the applicant seeks a variance to the County's impervious surface requirements, and has subsequently secured that variance from the Prince George's County Planning Board.

While we recognize the Board's Resolution indicates written approval is required from this office prior to final signature approval, we would like to clarify that this office does not issue approvals for variances. We typically review and provide written comments to local governments prior to the local government's final decision. In that regard, I have outlined our comments and recommendations below.

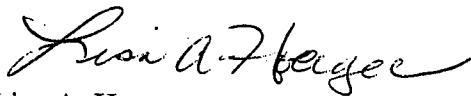
The applicant has requested an impervious surface variance to permit 4,328 square feet in lieu of the maximum permitted under Section 27-548.17 of the Subdivision Regulations. Since the lot is 23,974 square feet the Subdivision Regulations would permit 15% impervious cover or 3,596 square feet.

As you are aware, the State Law permits lots between 21,781 square feet and 36,300 square feet to have a maximum of 5,445 square feet of impervious cover; however, Prince George's County's current ordinance language does not permit this additional increase in impervious area for lots of this size. While it is unclear whether the County has purposely excluded this language, or intends to include it in the future, the staff report indicates support of the application. This office concurs and also does not oppose the requested variance.

Mr. Stasz  
March 24, 2005  
Page Two

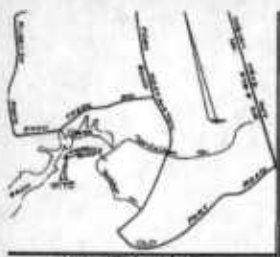
Thank you for the opportunity to comment. Please include this letter in your variance file. If you have any questions, please telephone me at (410) 260-3478.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Hoerger".

Lisa A. Hoerger  
Natural Resources Planner

cc: PG 192-05



**VICINITY MAP**  
 The property lies within the Chesapeake Bay Critical Area, MDC/MPC Chesapeake Bay Critical Area Limited Development Overlay Zone—Potomac River May 7, 1997.



**DRAINAGE AREA MAP**  
 SCALE: 1" = 200' 2" by M. H. H. H. H.



**PROPOSED MATERIALS AND FINISHES**

1. Driveway	Asph/Flt
2. Parking	Asph/Flt
3. Landscaping	Asph/Flt

**NOTES**

1. Driveway shall be 12' wide.
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- Chesapeake Bay Critical Area**
1. This property lies within the Chesapeake Bay Critical Area, MDC/MPC Chesapeake Bay Critical Area Limited Development Overlay Zone—Potomac River May 7, 1997.
  2. There are no wetlands on this site.
  3. There are no special habitat areas within 100' of this site.
  4. Projections with topography were used.
  5. Total forest (including non-forest vegetation) is 21,000 sq ft.
  6. Total forest (including non-forest vegetation) is 21,000 sq ft.
  7. Points of existing forest (including non-forest vegetation) are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
  8. There are no wetlands on this site.
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Category	Area (sq ft)	Volume (cu yd)
Excavation	10,000	100
Fill	10,000	100
Grading	10,000	100
Landscaping	10,000	100
Driveway	10,000	100
Parking	10,000	100
Other	10,000	100
<b>Total</b>	<b>60,000</b>	<b>600</b>

**DESCRIPTION OF PROPOSED WORK**  
 THE CLEARING, GRADING AND GRADING OF THE LOT FOR THE CONSTRUCTION OF A 2-STORY HOUSE WITH CAR GARAGE.  
 THE INSTALLATION OF DRIVEWAY AND LIMITED, THE CONSTRUCTION, LANDSCAPING STABILIZATION SMALL DISTURBED AREAS.

**CP-04021**  
 CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN, SEDIMENT CONTROL PLAN, STORMWATER CONCEPT PLAN, TOPOGRAPHIC SURVEY AND SITE GRADING PLAN

**LOT 21, PLAT NO. SECTION 12 TANTALLON ON THE POTOMAC**  
 PLAT BOOK WYVW520 PLAT 80

**APPLICANT/OWNER/DEVELOPER**  
 Emerge Homes, Inc.  
 Attn: Craig Smith  
 828 Connecticut Ave. Suite 1000  
 Washington DC 20006  
 202-498-0884

**DATE: 07/06/2004 SCALE: 1" = 20'**

**M.L. MOORE, INC.**  
 301 736-5367/5368/715  
 FAX: 301-736-5368  
 M.L. Moore, Land Surveyor  
 Md 02194 - Va - 570



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive  
Upper Marlboro, Maryland 20772  
TTY: (301) 952-3796

March 15, 2005

Emerge Homes Incorporated  
1025 Connecticut Avenue, NW  
Suite 1021  
Washington, DC 20036

Re: Notification of Planning Board Action on  
**Conservation Plan CP-04021**  
**Tantallon on the Potomac**

Dear Applicant:

This is to advise you that on **March 10, 2005** the above-referenced Conservation Plan was acted upon by the Prince George's County Planning Board in accordance with the attached Resolution.

Pursuant to Title 7, Chapter 200 of the Maryland Rules of Court, an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) calendar days after the date of the final notice **March 15, 2005**.

Very truly yours,  
Cecilia A. Lammers  
Environmental Planning  
Countywide Planning Division

By:   
Reviewer

c: Persons of Record

PGCPB No. 05-53

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**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

14741 Governor Oden Bowie Drive  
Upper Marlboro, Maryland 20772  
TTY: [301] 952-3796

PGCPB No. 05-53

File No. CP-04021

RESOLUTION

WHEREAS, Emerge Homes, Inc. is the owner of a 0.55-acre parcel of land in the 8th Election District of Prince George's County, Maryland, and being zoned R-R/L-D-O; and

WHEREAS, on November 18, 2004, Emerge Homes, Inc. filed an application for approval of a Chesapeake Bay Critical Area Conservation Plan for the purpose of constructing a single-family residence in the Chesapeake Bay Critical Area; and

WHEREAS, the application for approval of the aforesaid Chesapeake Bay Critical Area Conservation Plan, also known as Conservation Plan CP-04021 for Tantallon on the Potomac 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 February 17, 2005, for its review and action in accordance with Zoning Ordinance, Subtitle 27, Prince George's County Code; and

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

WHEREAS, on February 17, 2005, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Conservation Plan CP-04021, Tantallon on the Potomac Lot 21 with the following condition:

1. Prior to signature approval, written approval from the Chesapeake Bay Critical Area Commission shall be obtained for the variance that involves CBCA regulations. If approval is not obtained, the Conservation Plan shall be considered null and void.

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

1. **Site Description**

The 0.55 acre property in the R-R/L-D-O zones is on the north and east sides of Monterey Circle by the cul-de-sac and is located within the Chesapeake Bay Critical Area. The 100 foot-wide Critical Area Primary Buffer and expanded buffer do not occur on the property. There are no streams, wetlands, 100-year floodplain or steep slopes on the site. The site is mostly wooded. No Historic or Scenic roads are affected by this proposal. There are no significant nearby noise sources and the proposed use is not expected to be a noise generator. No species listed by the State of Maryland as rare, threatened or endangered are known to occur in the general region. A Stormwater Design Plan has been approved by DER. The *Prince George's County Soils Survey*

indicates that the principal soils on the site are in the Keyport series. The site is in the Developing Tier according to the *General Plan*.

2. **Background**

The Final Plat of Subdivision was approved on July 13, 1974 as shown on Record Plat WWW 89-29 in the Prince George's County Land Records. Lot 21 has a gross tract area of 23,974 square feet. There is no 100-year floodplain on the property, so the net tract area is also 23,974 square feet.

3. **Findings**

- a. This site is not subject to the provisions of the Woodland Conservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area.
- b. The plan correctly indicates there are no threatened or endangered species, no colonial waterbird nesting sites, no forests with interior dwelling bird species, no Natural Heritage Areas, no waterfowl staging areas, no anadromous fish spawning streams, no wetlands, no tributary streams and no Critical Area buffers on the site.
- c. The gross tract is 23,974 square feet and the net tract is 23,974 square feet. The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. The proposed amount of impervious surfaces is 4,328 square feet or 18.1%. The proposed impervious surface areas are more than the maximum permitted within the L-D-O zone. A variance to the impervious surface area maximum has been submitted.
- d. The maximum Percentage of Lot Coverage permitted by the Zoning Ordinance for Lot 21, per Section 27-442 Table II of the Zoning Ordinance, is 25% of the contiguous net tract area or 5,993.5 square feet. The proposed Percentage of Lot Coverage is 5,430 square feet or 22.6%. The proposed net lot coverage is less than the maximum permitted in the R-R zone. ?
- e. The plan proposes the clearing of 18,930 square feet of the existing 21,090 square feet of forest. Because the clearing is more than 30%, a 3:1 replacement (56,790 square feet) is required. The plan proposes to meet part of the afforestation requirement by providing 7,930 square feet of on-site planting. A fee-in-lieu for the remaining 48,860 square feet (\$19,544) is required. ? no variance for this?
- f. Architectural plans were reviewed in detail. The garage nearest to Monterey Circle is clearly attached and meets the required setback from the front lot line. The plans show that the height of the house is 35 feet and conforms to the maximum set by the Zoning Ordinance.



#### 4. **Buildable Lot Analysis**

In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. Because it was recognized that some otherwise buildable existing properties could be adversely impacted with the enactment of the new regulations, Section 27-548.10 (c) of the Zoning Ordinance was created to provide grandfathering.

The following is an analysis of Section 27-548.10 (c) of the Zoning Ordinance. If conformance with the grandfathering provisions can be found, the proposal can move forward.

**“All buildable lots (except outlots) within subdivisions recorded prior to December 1, 1985, shall remain buildable lots, regardless of lot size, provided:**

- (1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;...”**

Comment: The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George’s County Department of Environmental Resources and minimizes adverse impacts on water quality.

- “...(2) The applicant has identified fish, plant, and wildlife habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of affected species to sustain themselves; and...”**

Comment: The Chesapeake Bay Critical Area Plan submitted states that there are no fish, plant, or wildlife habitats, as defined by the Chesapeake Bay Critical Area Program, that could be adversely impacted by the proposed development.

- “...(3) The lot size, frontage, and vehicular access are in accordance with the requirements of the underlying zone. Development of these lots shall not count towards the growth allocation of the applicable Overlay Zone.”**

Comment: Tantallon on the Potomac, Section 12, Lot 21 was created prior to the enactment of the Chesapeake Bay Critical Area regulations. The lot size, frontage, and vehicular access are in accordance with the requirements of the R-R zone, and the application submitted requires no use of Growth Allocation.

The subject property, Tantallon on the Potomac, Section 12, Lot 21, was recorded prior to December 1, 1985 and at that time was a "legally buildable lot" with a gross tract of 23,974 square feet, a net tract area of 23,974 square feet and when it was recorded the Chesapeake Bay Critical Area regulations were not in effect.

5. **Variance Analysis – Maximum Impervious Surface Area: Variance A**

A variance is requested to the maximum limit of 15% of the gross tract area for impervious surface areas required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*. Because the variance is from the *Chesapeake Bay Critical Area Conservation Manual*, both the general criteria of Section 27-230(a) and the supplemental criteria of Section 27-230(b) apply. Thus, the applicant must ultimately demonstrate that denial of the requested variance would cause both practical difficulties and an unwarranted hardship.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* for properties within the Chesapeake Bay Critical Area only where an applicant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance and where the Prince George's County Planning Board (or its authorized representative) has found conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section 27-230(a).

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

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

Comment: The property is roughly triangular in shape with 381.26 feet of frontage on Monterey Circle, 200 feet along the east boundary and 146.35 feet along the north boundary. The property has no steep slopes and is essentially flat with a maximum elevation of approximately 28 feet and a minimum elevation of approximately 21 feet.

As demonstrated by Applicant's Exhibit #1, this lot is the only lot within Section 12 of Tantallon on the Potomac that is triangular in shape and has no rear yard and, therefore, has exceptional shape.

- (2) **The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and**

Comment: Because the lot is 23,974 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. If the lot were only 21,870 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance would allow 25% of the gross tract area or 5,445 square feet, thus allowing the larger house to be built on a smaller lot.

Testimony established that the proposed structure is in keeping with the existing community with regard to size and appearance and that requiring a smaller structure to meet the current impervious surface limit would result in reducing the size to less than that permitted on neighboring lots that have smaller net tract areas. This is a peculiar and unusual difficulty because if the lot were smaller, the same size house could be built as proposed.

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

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

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area (text in bold). The following is an analysis of the application's conformance with these requirements.

- (1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship;**

Comment: Of the 51 lots shown on the Record Plats for Section 12 of Tantallon on the Potomac, WWW 89-29 and NLP 103-01, 31 lots have smaller gross tract areas. Twenty six of these lots are less than one-half acre and are allowed by the Zoning Ordinance to have impervious surfaces equal to 25% of their area. This is a special circumstance that is peculiar to this lot because the lot is only slightly larger than one-half acre and the large reduction to the maximum permitted impervious surface area results in an unwarranted hardship. It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one-acre in size are treated substantially differently than lots that are larger or smaller.

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

Comment: The property could be developed with a slightly smaller single-family residential structure and have the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area. The Letter of Justification states: "Since

this lot was zoned and recorded in 1974, houses of similar sizes and shapes have been built on lots of similar and smaller size in the same section of the same subdivision." Staff agrees that this is a true statement and notes that none of these lots have requested or received a variance to the requirement for minimizing impervious surfaces because they have been under one-half acre in size or they have been substantially larger in size and had higher permitted impervious surfaces areas.

Testimony provided in this case included statements that houses of similar sizes have been built throughout the neighborhood, and that denying this applicant the ability to construct a similarly sized home would deprive the applicant of rights commonly enjoyed by other property owners within the Critical Area and within the subject community.

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

Comment: To date no application for a variance for an increase in the amount of impervious surfaces has been requested or approved for any Chesapeake Bay Critical Area Plan submitted for review. Limiting impervious surface areas is a cornerstone of the Chesapeake Bay Critical Area Program because of its direct correlation with runoff and water pollution. Houses on smaller lots within the subdivision have been legally built with larger impervious surface areas.

The Planning Board found that the granting of this particular variance, for the subject property, would not confer on the applicant any special privilege because of the peculiar language of the Zoning Ordinance that disproportionately reduces the amount of impervious surfaces allowed on lots between one-half acre and one acre in size.

- (4) The variance requests are not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property;**

Comment: The property owner purchased the land in its current state and has taken no action on this property to date with regard to the variance request, and the current request is not related to uses on adjacent properties.

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

Comment: The Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat. The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and generally minimizes adverse impacts on water quality. The stormwater concept was approved by the Prince George's County Department of Environmental Resources.

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

Comment: The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and minimizes adverse impacts on water quality.

- (7) **All fish, wildlife, and plant habitat in the designated Critical Areas would be protected by the development and implementation of either on-site or off-site programs;**

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

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

Comment: The use of the property as a single-family residence is in complete conformance with land use policies and the requirements of the R-R and L-D-O zones.

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

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

### 3. Summary

On December 3, 2004 the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the L-D-O Zone and the *Conservation Manual*; however, the plan showed that area of proposed impervious surfaces permitted by the Zoning Ordinance for Lot 21, per Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*, was exceeded. Revised plans were

accepted for processing on January 21, 2005. A variance application was accepted for processing on December 23, 2004.

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 Squire, seconded by Commissioner Harley, with Commissioners Squire, Harley and Hewlett voting in favor of the motion, and with Commissioner Eley opposing the motion and with Commissioner Vaughns absent at its regular meeting held on Thursday, February 17, 2005, in Upper Marlboro, Maryland.

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

Trudye Morgan Johnson  
Executive Director

*Frances J. Guertin*  
By Frances J. Guertin  
Planning Board Administrator

TMJ:FJG:JS:rmk

APPROVED BY LEGAL SUFFICIENCY.

*Mac*  
M-NCPPC Legal Department

Date

*3-2-05*



PG 192-05

The Maryland-National Capital Park and Planning Commission  
 Prince George's County Planning Department  
 Countywide Planning Division  
 301-952-3650



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

## CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN CP-04021 & VC04021A

Application	General Data
<b>Project Name:</b> Tantallon on the Potomac Section 12, Lot 21  <b>Location:</b> North side of Monterey Circle abutting the cul-de-sac  <b>Applicant/Address:</b> Emerge Homes, Inc. 1025 Connecticut Avenue N.W. #1012 Washington, DC 20036	Date Accepted: 11/18/04
	Planning Board Action Limit: N/A
	Plan Acreage: 0.55
	Zone: R-R/L-D-O
	Dwelling Units: 1
	Proposed Dwelling Square Footage: 4,328
	Planning Area: 80
	Council District: 8
	Municipality: N/A
	200-Scale Base Map: 216SW01

Purpose of Application	Notice Dates
This Chesapeake Bay Critical Area Conservation Plan requires Planning Board approval prior to the issuance of a Building Permit. This application is for the construction of a single-family residence in the Chesapeake Bay Critical Area. A variance is requested to exceed the maximum impervious surface area.	Adjoining Property Owners: (CB-15-1998) N/A
	Previous Parties of Record: (CB-13-1997) N/A
	Sign(s) Posted on Site: 01/18/05
	Variance(s): Adjoining Property Owners: N/A

Staff Recommendation		Staff Reviewer: Jim Stasz	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		



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CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Chesapeake Bay Critical Area  
Conservation Plan CP-04021 and Variance VC04021A  
Tantallon on the Potomac, Lot 9

Council District: 8      Planning Area: 80      Municipality: none

OVERVIEW: The proposal is for the construction of a single-family detached dwelling on a lot within the Chesapeake Bay Critical Area. A Chesapeake Bay Critical Area Conservation Plan is required prior to the issuance of any permit by the Prince George's County Department of Environmental Resources. The Planning Board is the final approving authority for Chesapeake Bay Critical Area Conservation Plans.

One variance is requested with this application. The Planning Board is the final approval authority for Conservation Plans, and as such is the approval authority for the requested variances. A variance is requested from the Zoning Ordinance and the *Chesapeake Bay Critical Area Conservation Manual* to allow the amount of impervious surfaces to exceed the maximum of 15% of the gross tract as required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*.

When the Chesapeake Bay Critical Area Program was adopted in Prince George's County, CB-72-1987 amended the Zoning Ordinance and created Section 27-548.17 to establish limits on the amount impervious surfaces permitted under certain circumstances in the Chesapeake Bay Critical Area of Prince George's County.

House Bill 1060, passed by the Maryland General Assembly, required local Chesapeake Bay Critical Area Programs to be amended by December 31, 1990, to meet certain provisions of the bill. The bill relaxed the impervious surface limitation in the Chesapeake Bay Critical Area Limited Development Overlay Zone and Resource Conservation Overlay Zone, under certain conditions. In compliance with that HB 1060, CB-8-1991 and CB-101-1992 amended Section 27.548.17 to allow the increase in maximum impervious surface areas for some lots within the L-D-O zone to 25% of the gross tract area.

Senate Bill 657, passed by the Maryland General Assembly, required local Chesapeake Bay Critical Area Programs to be amended by December 31, 1996, to meet certain provisions of the bill. The mandatory provisions of the bill were already included in the Zoning Ordinance at the time of adoption by the state. Also included were changes to impervious surface limitations that individual counties could adopt if desired, but these provisions are not mandatory.

In summary, the regulations in the Zoning Ordinance that apply to the subject property today are, as noted in Table 1 in 27-548.17(b): the maximum impervious surface ratio is

15% in the L-D-O zone with footnote 4 that reads:

“Section 27-548.17(b) footnote 4.

**Impervious areas may be increased to twenty-five percent (25%) of the site if any one of the following applies:**

- (A) The parcel or lot is one-half (1/2) acre or less in size and either:**
  - (i) Existed in its present configuration and was in residential use on or before December 1, 1985, and continues to be in the same residential use; or**
  - (ii) Existed in its present configuration and was in a Residential Zone on or before December 1, 1985; is currently in a Residential Zone; and is being developed with a one-family detached dwelling, or additions or accessory structures thereto;**
- (B) The parcel or lot is one-quarter (1/4) acre or less in size and was in nonresidential use on or before December 1, 1985; or**
- (C) The lot is one (1) acre or less in size and is part of a preliminary plat of subdivision approved after December 1, 1985. The impervious area of the entire subdivision shall not exceed fifteen percent (15%). (CB-8-1991; CB-101-1991)”**

Subparagraphs A and B do not apply because the subject property is greater than one-half acre in size. Subparagraph C would apply if the lot was part of a preliminary plat approved after December 1, 1985, but the lot was platted in 1974. With none of the allowable increases in impervious surface amounts to 25% being applicable to the subject property, if the applicant wants to exceed this limitation, a variance is required.

The applicant has requested a variance to the above referenced section of the Zoning Ordinance, in a letter received with the variance application, and with a revised letter received February 9, 2005. One of the justifications stated is the reference made in SB 657 that local jurisdictions are required to amend their programs on or before December 31, 1996 to address certain provisions of the bill. As of that date the Zoning Ordinance contained the mandatory portions of the bill and did not contain the optional portions of the bill. The optional portions of the bill contain the language that would allow for the amount of impervious surfaces requested by the applicant. The Annotated Code of Maryland clearly states:

- “(f) A local jurisdiction **may** allow a property owner to exceed the impervious surface limits provided in subsection (d)(2) and (3) of this section if the following conditions exist:
- (1) New impervious surfaces on the property have been minimized
  - (2) For a lot or parcel one-half acre or less in size, total impervious surfaces do not exceed impervious surface limits in subsection (d)(2) of this section by more than 25% or 500 square feet, whichever is greater;
  - (3) For a lot or parcel greater than one-half acre and less than one acre in size, total impervious surfaces do not exceed impervious surface limits in subsection (d)(3) of this section or 5,445 square feet, whichever is greater...” [emphasis added]

To date this optional portion of the Annotated Code of Maryland has not been adopted by the County Council and incorporated into the Zoning Ordinance.

In 2001, an interagency team was formed to prepare a comprehensive update to the Chesapeake Bay Critical Area Program and the Conservation Manual. This effort, lead by the Department of Environmental Resources, resulted in CB-32-2002 which was not adopted. This Council Bill contained the optional provisions of the state law.

It is important to note that since its initial adoption in 1987, no applications for any CBCA Plan has ever found the need to exceed the impervious surface regulations set by the Zoning Ordinance.

1. **Site Description**

LDA

The 0.55 acre property in the R-R/L-D-O zones is on the north and east sides of Monterey Circle by the cul-de-sac and is located within the Chesapeake Bay Critical Area. The 100 foot-wide Critical Area Primary Buffer and expanded buffer do not occur on the property. There are no streams, wetlands, 100-year floodplain or steep slopes on the site. The site is mostly wooded. No Historic or Scenic roads are affected by this proposal. There are no significant nearby noise sources and the proposed use is not expected to be a noise generator. No species listed by the State of Maryland as rare, threatened or endangered are known to occur in the general region. A Stormwater Design Plan has been approved by DER. The *Prince George's County Soils Survey* indicates that the principal soils on the site are in the Keyport series. The site is in the Developing Tier according to the *General Plan*.

2. **Background**

The Final Plat of Subdivision was approved on July 13, 1974 as shown on Record Plat WWW 89-29 in the Prince George's County Land Records. Lot 21 has a gross tract area of 23,974 square feet. There is no 100-year floodplain on the property, so the net tract area is also 23,974 square feet.

3. **Findings**

1. This site is not subject to the provisions of the Woodland Conservation Ordinance, because the entire site is within the Chesapeake Bay Critical Area.
2. The plan correctly indicates there are no threatened or endangered species, no colonial waterbird nesting sites, no forests with interior dwelling bird species, no Natural Heritage Areas, no waterfowl staging areas, no anadromous fish spawning streams, no wetlands, no tributary streams and no Critical Area buffers on the site.
3. The gross tract is 23,974 square feet and the net tract is 23,972 square feet. The maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. The proposed amount of impervious surfaces is 4,328 square feet or 18.1%. The proposed impervious surface areas are more than the maximum permitted within the L-D-O zone. A variance to the impervious surface area maximum has been submitted.
4. The maximum Percentage of Lot Coverage permitted by the Zoning Ordinance for Lot 21, per Section 27-442 Table II of the Zoning Ordinance, is 25% of the contiguous net tract area or 5,993.5 square feet. The proposed Percentage of Lot Coverage is 5,430 square feet or 22.6%. The proposed net lot coverage is less than the maximum permitted in the R-R zone.

5. The plan proposes the clearing of 18,930 square feet of the existing 21,090 square feet of forest. Because the clearing is more than 30%, a 3:1 replacement (56,790 square feet) is required. The plan proposes to meet part of the afforestation requirement by providing 7,930 square feet of on-site planting. A fee-in-lieu for the remaining 48,860 square feet (\$19,544) is required.
6. Architectural plans were reviewed in detail. The garage nearest to Monterey Circle is clearly attached and meets the required setback from the front lot line. The plans show that the height of the house is 35 feet and conforms to the maximum set by the Zoning Ordinance.

#### 4. **Buildable Lot Analysis**

In general, the development of a parcel should not be permitted if it would require a variance from the requirements of the Chesapeake Bay Critical Area Program to develop the site; however, grandfathering provisions were added to the regulations to allow for previously buildable lots to remain buildable lots. Because it was recognized that some otherwise buildable existing properties could be adversely impacted with the enactment of the new regulations, Section 27-548.10 (c) of the Zoning Ordinance was created to provide grandfathering.

The following is an analysis of Section 27-548.10 (c) of the Zoning Ordinance. If conformance with the grandfathering provisions can be found, the proposal can move forward.

**“All buildable lots (except outlots) within subdivisions recorded prior to December 1, 1985, shall remain buildable lots, regardless of lot size, provided:**

**(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;...”**

Comment: The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George’s County Department of Environmental Resources and minimizes adverse impacts on water quality.

**“...(2) The applicant has identified fish, plant, and wildlife habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of affected species to sustain themselves; and...”**

Comment: The Chesapeake Bay Critical Area Plan submitted states that there are no fish, plant, or wildlife habitats, as defined by the Chesapeake Bay Critical Area Program, that could be adversely impacted by the proposed development.

**“...(3) The lot size, frontage, and vehicular access are in accordance with the requirements of the underlying zone. Development of these lots shall not count towards the growth allocation of the applicable Overlay Zone.”**

Comment: Tantallon on the Potomac, Section 12, Lot 21 was created prior to the enactment of the Chesapeake Bay Critical Area regulations. The lot size, frontage, and vehicular access are in accordance with the requirements of the R-R zone, and the application submitted requires no use of Growth Allocation.

*The subject property, Tantallon on the Potomac, Section 12, Lot 21, was recorded prior to December 1, 1985 and at that time was a "legally buildable lot" with a gross tract of 23,972 square feet, a net tract area of 23,972 square feet and when it was recorded the Chesapeake Bay Critical Area regulations were not in effect.*

5. **Variance Analysis – Maximum Impervious Surface Area: Variance A**

A variance is requested to the maximum limit of 15% of the gross tract area for impervious surface areas required by Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*. Because the variance is from the *Chesapeake Bay Critical Area Conservation Manual*, both the general criteria of Section 27-230(a) and the supplemental criteria of Section 27-230(b) apply. Thus, the applicant must ultimately demonstrate that denial of the requested variance would cause both practical difficulties and an unwarranted hardship.

Section 27-230(b) of the Zoning Ordinance permits that variances may be granted from the provisions of the Zoning Ordinance or the *Chesapeake Bay Critical Area Conservation Manual* for properties within the Chesapeake Bay Critical Area only where an applicant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance and where the Prince George's County Planning Board (or its authorized representative) has found conformance with subparagraphs 1 through 9, in addition to the findings set forth in Section 27-230(a).

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

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

Comment: The property is roughly triangular in shape with 381.26 feet of frontage on Monterey Circle, 200 feet along the east boundary and 146.35 feet along the north boundary. The property has no steep slopes and is essentially flat with a maximum elevation of approximately 28 feet and a minimum elevation of approximately 21 feet.

As demonstrated by Applicant's Exhibit #1, this lot is the only lot within Section 12 of Tantallon on the Potomac that is triangular in shape and has no rear yard and, therefore, has exceptional shape.

**(2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and**

Comment: The because the lot is 23,974 square feet, the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance is 15% of the gross tract area or 3,596 square feet. If the lot was only 21,870 square feet,

the maximum amount of impervious surfaces permitted per Section 27-548.17, footnote 4 A(ii) of the Zoning Ordinance would be 25% of the gross tract area or 5,445 square feet, thus allowing the larger house to be built on a smaller lot.

Testimony established that the proposed structure is in keeping with the existing community with regard to size and appearance and that requiring a smaller structure to meet the current impervious surface limit would result in reducing the size to less than that permitted on neighboring lots that have smaller net tract areas. This is a peculiar and unusual difficulty because if the lot were smaller, the same size house could be built as proposed.

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

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

Section 27-230(b) of the Zoning Ordinance contains the findings required for all variances within the Chesapeake Bay Critical Area (text in bold). The following is an analysis of the application's conformance with these requirements.

**(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal interpretation of provisions within the Chesapeake Bay Critical Area would result in unwarranted hardship;**

Comment: Of the 51 lots shown on the Record Plats for Section 12 of Tantallon on the Potomac, WWW 89-29 and NLP 103-01, 31 lots have smaller gross tract areas. Twenty six of these lots are less than one-half acre and are allowed by the Zoning Ordinance to have impervious surfaces equal to 25% of their area. This is a special circumstance that is peculiar to this lot because the lot is only slightly larger than one-half acre and the large reduction to the maximum permitted impervious surface area results in an unwarranted hardship. It is a peculiarity of the Zoning Ordinance that lots between one-half acre and one-acre in size are treated substantially differently than lots that are larger or smaller.

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

Comment: The property could be developed with a slightly smaller single-family residential structure and have the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area. The Letter of Justification states: "Since this lot was zoned and recorded in 1974, houses of similar sizes and shapes have been built on lots of similar and smaller size in the same section of the same subdivision." Staff agrees that this is a true statement and notes that none of these lots have requested or received a variance to the requirement for minimizing impervious surfaces because they have been under one-half acre in size or they have been substantially larger in size and had higher permitted impervious surfaces areas.

Testimony provided in this case included statements that houses of similar sizes have

been built throughout the neighborhood, and that denying this applicant the ability to construct a similarly sized home would deprive the applicant of rights commonly enjoyed by other property owners within the Critical Area and within the subject community.

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

Comment: To date no application for a variance for an increase in the amount of impervious surfaces has been requested or approved for any Chesapeake Bay Critical Area Plan submitted for review. Limiting impervious surface areas is a cornerstone of the Chesapeake Bay Critical Area Program because of their direct correlation with runoff and water pollution. Smaller lots within the subdivision have been legally built with larger impervious surface areas. If the optional provisions of Maryland Senate Bill 657 are adopted by the District Council, then the proposed development would conform to the impervious surface limitations and not require a variance.

The Planning Board found that the granting of this particular variance, for the subject property, would not confer on the applicant any special privilege because of the peculiar language of the Zoning Ordinance that disproportionately reduces the amount of impervious surfaces allowed on lots between one-half acre and one acre in size.

**(4) The variance requests are not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property;**

Comment: The property owner purchased the land in its current state and has taken no action on this property to date with regard to the variance request, and the current request is not related to uses on adjacent properties.

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

Comment: The Chesapeake Bay Critical Area Plan submitted incorporates stormwater management controls to minimize adverse impacts on water and does not significantly impact fish, plant, or wildlife habitat. The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George's County Department of Environmental Resources and generally minimizes adverse impacts on water quality. The stormwater concept was approved by the Prince George's County Department of Environmental Resources.

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

Comment: The proposed Chesapeake Bay Critical Area Plan submitted meets the stormwater management requirements of the Prince George's County Department of

Environmental Resources and minimizes adverse impacts on water quality.

**(7) All fish, wildlife, and plant habitat in the designated Critical Areas would be protected by the development and implementation of either on-site or off-site programs;**

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

**(8) The number of persons, their movements and activities, specified in the development plan, are in conformity to established land use policies and would not create any adverse environmental impact; and**

Comment: The use of the property as a single-family residence is in complete conformance with land use policies and the requirements of the R-R and L-D-O zones.

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

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

### 3. Summary

On December 3, 2004 the Subdivision Review Committee determined that the Conservation Plan was in general conformance with the requirements of the L-D-O Zone and the *Conservation Manual*; however, the plan showed that area of proposed impervious surfaces permitted by the Zoning Ordinance for Lot 21, per Section 27-548.17 of the Zoning Ordinance and Section 5.3(a) of the *Chesapeake Bay Critical Area Conservation Manual*, was exceeded. Revised plans were accepted for processing on January 21, 2005. A variance application was accepted for processing on December 23, 2004.

#### RECOMMENDATION:

APPROVAL of VC04021

APPROVAL of CP-04021 subject to the following condition:

1. Prior to signature approval, written approval from the Chesapeake Bay Critical Area Commission shall be obtained for the variance that involves CBCA regulations. If approval is not obtained, the Conservation Plan shall be considered null and void.

JLS:jls



**Hoerger, Lisa**

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**From:** Stasz, Jim [Jim.Stasz@ppd.mncppc.org]  
**Sent:** Thursday, March 17, 2005 12:25 PM  
**To:** Hoerger, Lisa



CP-04021-REVISED  
FOR RESOLUTIO...