



The Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530

Note: Staff reports can be accessed at <http://mncppc.ig2.com/Citizens/Default.aspx>

Detailed Site Plan **DSP-86116-15**
Chesapeake Bay Critical Area Conservation Plan **CP-22002**
Waterside Subdivision - Hill Residence

REQUEST	STAFF RECOMMENDATION
<p>This case was continued from the Planning Board hearing date of March 23, 2023 to May 18, 2023.</p> <p>Construction of a new, two-story, single-family residence and boat pier in the Chesapeake Bay Critical Area, along with two variance requests.</p>	<p>With the conditions recommended herein:</p> <ul style="list-style-type: none"> • APPROVAL of Detailed Site Plan DSP-86116-15 • APPROVAL of Chesapeake Bay Critical Area Conservation Plan CP-22002 • APPROVAL of a Variance to Section 27-548.17(b) • APPROVAL of a Variance to Section 5B-114(e)(5)

Location: On the west side of Waterside Court, near the intersection of Waterside Court and Cagle Place.	
Gross Acreage:	0.58
Zone:	RR/LDO
Zone Prior:	R-R/L-D-O
Reviewed per Zoning Ordinance:	Section 27-1903(c)
Dwelling Units:	1
Gross Floor Area:	3,555 sq. ft.
Planning Area:	80
Council District:	08
Municipality:	N/A
Applicant/Address: Tenika Felder, AIA Redlef Group Architects, LLC 6902 Forbes Boulevard Lanham, MD 20706	
Staff Reviewer: Dominique Lockhart Phone Number: 301-952-3411 Email: Dominique.Lockhart@ppd.mncppc.org	



Planning Board Date:	05/18/2023
Planning Board Action Limit:	05/26/2023
Staff Report Date:	05/04/2023
Date Accepted:	12/12/2022
Informational Mailing:	07/19/2022
Acceptance Mailing:	12/01/2022
Sign Posting Deadline:	01/31/2023

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.

Table of Contents

EVALUATION CRITERIA.....	3
FINDINGS.....	4
1. Request.....	4
2. Development Data Summary.....	4
3. Location.....	4
4. Surrounding Uses.....	4
5. Previous Approvals.....	4
6. Design Features.....	6
COMPLIANCE WITH EVALUATION CRITERIA.....	7
7. Chesapeake Bay Critical Area Ordinance Conformance and Environmental Review.....	7
8. Prince George’s County Zoning Ordinance.....	21
9. Preliminary Plan of Subdivision 4-85186.....	21
10. 2010 Prince George’s County Landscape Manual.....	24
11. Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance.....	24
12. Prince George’s County Tree Canopy Coverage Ordinance.....	25
13. Referral Comments.....	25
RECOMMENDATION.....	26

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Detailed Site Plan DSP-86116-15
Chesapeake Bay Critical Area Conservation Plan CP-22002
Variance to Section 27-548.17(b)
Variance to Section 5B-114(e)(5)
Waterside Subdivision – Hill Residence

The Zoning staff has reviewed the detailed site plan, conservation plan, and variance requests for the subject property and presents the following evaluation and findings leading to a recommendation of APPROVAL, with conditions, as described in the Recommendation section of this technical staff report.

EVALUATION CRITERIA

The property is located within the Rural Residential (R-R) Zone and is also within the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone. This application is being reviewed and evaluated, in accordance with the prior Prince George's County Zoning Ordinance, as permitted by Section 27-1903(c) of the Zoning Ordinance, which allows for development proposals of any type to utilize the prior Zoning Ordinance for development of a property. The detailed site plan, conservation plan, and variance requests were reviewed and evaluated for conformance with the following criteria:

- a. The requirements of the Prince George's County Zoning Ordinance and Subtitle 5B of the Prince George's County Code for the development of property in the Chesapeake Bay Critical Area Limited Development Overlay (L-D-O) Zone; and;
- b. The requirements of the prior Prince George's County Zoning Ordinance for the Rural Residential (R-R) Zone;
- c. The requirements of Preliminary Plan of Subdivision 4-85186;
- d. The requirements of the 2010 *Prince George's County Landscape Manual*;
- e. The requirements of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance;
- f. The requirements of the Prince George's County Tree Canopy Coverage Ordinance; and
- g. Referral comments.

FINDINGS

Based upon the analysis of the subject application, the Zoning staff recommends the following findings:

1. **Request:** This detailed site plan (DSP) and companion conservation plan (CP) requests construction of a two-story, single-family residence and boat pier, along with two variance requests.

2. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	RR (Prior R-R)	RR (Prior R-R)
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 08. 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:

Case Number	Status	Nature of Revision
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 would overcome the exceptional physical conditions while requiring less clearing than the previously proposed 52 percent. The applicant has submitted revised plans demonstrating a reduced woodland clearing amount of 42 percent.

According to PGAtlas, some woodland clearing occurred 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 applicant is proposing 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).

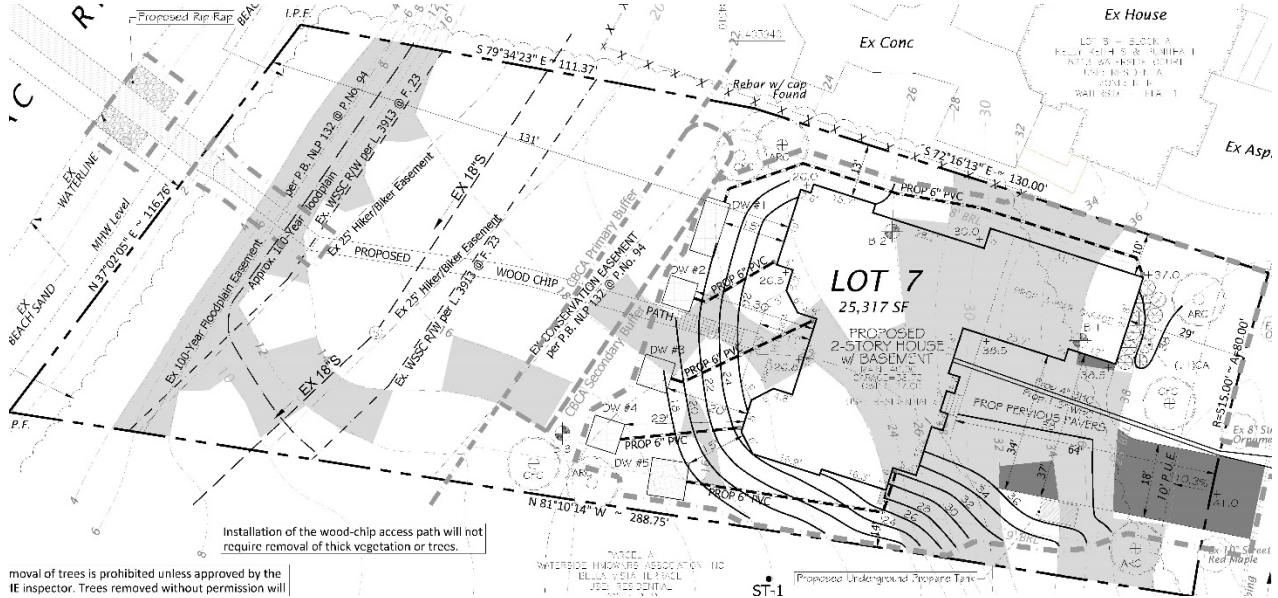


Figure 1: Site Plan

Architecture

The proposed 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.

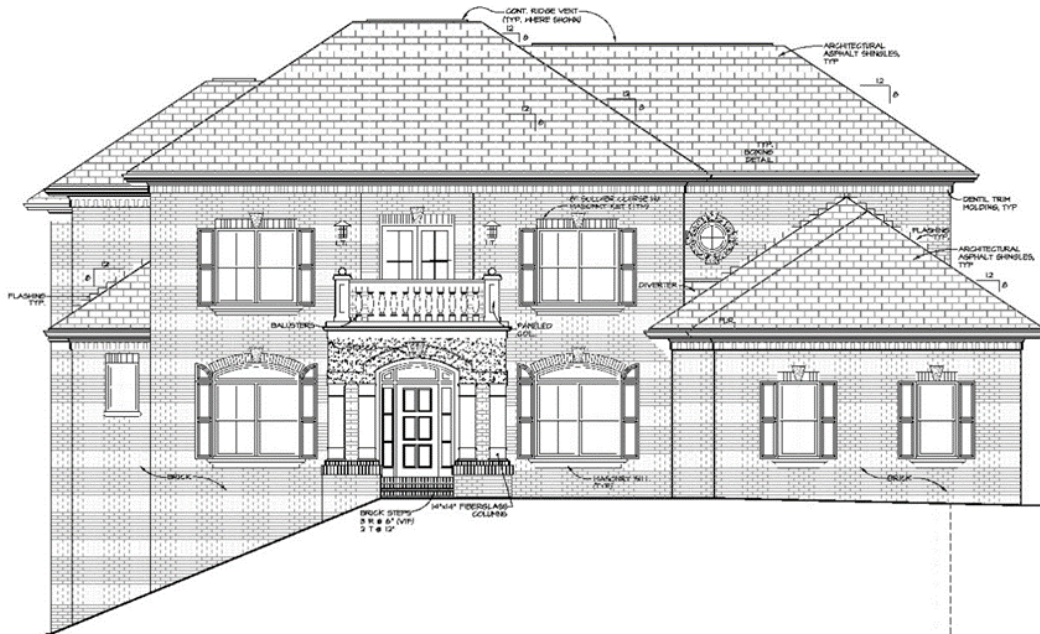


Figure 2: Front Elevation along Waterside Court

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). The site contains CBCA primary buffer, secondary buffer, Federal Emergency Management Agency 100-year floodplain, and steep slopes. The application area is wooded with no existing structures present on-site. 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.

Proposed Activity

The applicant proposes 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 applicant proposes to use 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 proposes to remove 8,868 square feet of the on-site developed woodlands (42 percent), which represents a reduction from the 52 percent clearing presented to the Planning Board at the hearing on March 23, 2023. 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 will be 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. 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 proposed driveway, house/garage location, and SWM structures, as required, as part of the overall review of the CP.

Since this lot is located adjacent to the tidal waters of the Potomac River, the environmental features are applicable.

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 submitted 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.

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 cannot be credited for CBCA plantings as a single row in the front yard because they will 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 proposed 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 should 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 in the Recommendation section of this staff report.

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.

Variance Requests

The applicant requests two variances 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, tightening 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 Request 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 staff’s analysis of the applicant’s variance request.

- (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 been developed.

The site contains 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, the extent of steep slopes on this lot is greater than most of the other lots within Block A of Waterside. Therefore, staff 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 applicant is proposing to develop the subject property and 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 proposed beyond the primary buffer, reducing any potential adverse impacts to the Potomac River or surrounding natural areas.

The proposed 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. Granting the variance would 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 proposed development that would necessitate impacting steep slopes. Similar to those properties, the proposed 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 variance request 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. This variance request is not due to self-inflicted impacts by the property owner.

Variance Request 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 staff's analysis of the applicant's revised variance request.

(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 a narrower lot 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 over 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.

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 result in the requirement 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 proposed with this application will use the proposed house structure as the retaining wall. Grading the site to tie into existing grades within the lot, and the installation of required SWM, results in 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 proposes to clear 0.20 acre (42 percent) of the existing woodland. The amount of woodland clearing permitted is 30 percent or 0.144 acre.

As demonstrated by PPS 4-85186, it was 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 was 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, 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 applicant requests to increase the size of the building footprint from what was shown on the 1985 approved plan. 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 the house design and the grading required to install SWM on the property.

The proposed dwelling is noted as 3,555 square feet, with the total amount of impervious surface area proposed as 5,542 square feet. Based on the existing approvals, additional reasonable measures are available to reduce the amount of proposed impervious surface on the lot, which would reduce the amount of woodland clearing needed. The subject property contains steep slopes throughout the developable area. The previously approved house design for the site provided a retaining wall to prevent erosion due to steep slopes. The applicant has reduced the limits of disturbance (LOD) and relocated the SWM facilities, to reduce their request from 52 percent to 42 percent woodland clearing. The L-shaped design of the house

remained to avoid the need for a retaining wall, which would lead to additional woodland clearing and more environmental impacts.

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. Granting the variance would 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 additional clearing requested by the applicant will 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 proposed 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, if this variance is granted.

- (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 requested woodland clearing for the proposed 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 development proposed by the applicant, 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 request was not granted. The previously approved plan showed a retaining wall in the rear yard without any SWM devices. Given these factors, the requested 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 requested 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 current design eliminates the need for a retaining wall by incorporating the proposed 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.

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 proposed development requires additional woodland clearing to prevent the need for a retaining wall due to the steep slopes. The requested 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 would 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 applicant proposes 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 proposed woodland clearing 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 proposed development will use five drywells located within the rear yard, between the proposed house 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.**

This proposal incorporates approved 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 proposed 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 would not create any adverse environmental impact. This proposal is for development of 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 is proposed 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 memo to the Environmental Planning Section dated January 26, 2023, in response to the initial application, which requested 52 percent clearing and was not in opposition to the variance request. The memo, which is 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 proposes 5,564 square feet (22 percent) of impervious area outside the primary and secondary buffers. This proposed development will clear 8,868 square feet (42 percent) of developed woodlands. No impacts are proposed to the primary and secondary buffers, other than for a wood chipped water access trail. The subject lot is fully wooded, other than the proposed development area, 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, CAC submitted a second letter dated March 20, 2023, addressing the variance for the clearing of natural or developed woodlands. This letter stated that 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 proposed clearing.

At the time of the writing of this referral, CAC has not provided a response pertaining to the April 11, 2023 and April 25, 2023 submissions.

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 proposed 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 April 11, 2023 CP 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 proposed 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 Environmental Planning Section 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 would have been 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 would have been 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 Environmental Planning Section 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, if approved.

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

This condition would have been 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 Historic Preservation Section, 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 development proposal for a new single-family detached home is subject to the 2010 *Prince George's County Landscape Manual* (Landscape Manual) because the application is for new construction. A condition has been included herein, 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**—In a memorandum dated December 14, 2022 (Berger, Stabler, Smith, and Chisholm to Lockhart), the Historic Preservation Section 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 proposed 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**—In a memorandum dated January 6, 2023 (Glascoe to Lockhart), the Permit Review Section noted site plan revisions that are needed, prior to certification of the subject application. These revisions have been added to the conditions of this staff report.
 - c. **Community Planning**—In a memorandum dated January 25, 2023 (Umeozulu to Lockhart), the Community Planning Division 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)**—In a memorandum dated January 26, 2023 (Harris to Schneider), CAC concluded that the Planning Board must consider whether the applicant can meet the standard of unwarranted hardship and whether the variances requested are the minimum necessary, to provide relief. If approved, then a buffer management plan must be submitted, in accordance with the County’s critical area program requirements.
 - e. **Environmental Planning**—In a revised memorandum dated May 1, 2023 (Schneider to Lockhart), the Environmental Planning Section provided an analysis of the subject application’s conformance with Subtitle 5B, as included in Finding 7 above.
 - f. **Subdivision**—In a memorandum dated January 31, 2023 (Heath to Lockhart), the Subdivision Section provided an analysis of the subject DSP’s conformance with the previously approved PPS, as included in Finding 9 above.
 - g. **Transportation Planning**—In a memorandum dated February 1, 2023 (Capers and Patrick to Lockhart), the Transportation Planning Section 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**—In a memorandum dated February 1, 2023 (Burke to Lockhart), the Urban Design Section 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 proposed 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 of the 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.

RECOMMENDATION

Based upon the foregoing evaluation and analysis, the Zoning Section recommends that the Planning Board adopt the findings of this report and APPROVE Detailed Site Plan DSP-86116-15, Conservation Plan CP-22002, a Variance to Section 27-548.17(b), and a Variance to Section 5B-114(e)(5), for Waterside Subdivision – Hill Residence, subject to the following conditions:

1. Prior to certification, the conservation plan (CP) shall be revised, or additional information shall be provided, as follows:
 - a. Add below the Waterside lot-by-lot impervious table 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.
 - f. Update the revision blocks.
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. _____.

WATERSIDE SUBDIVISION, HILL RESIDENCE

Detailed Site Plan
Conservation Plan

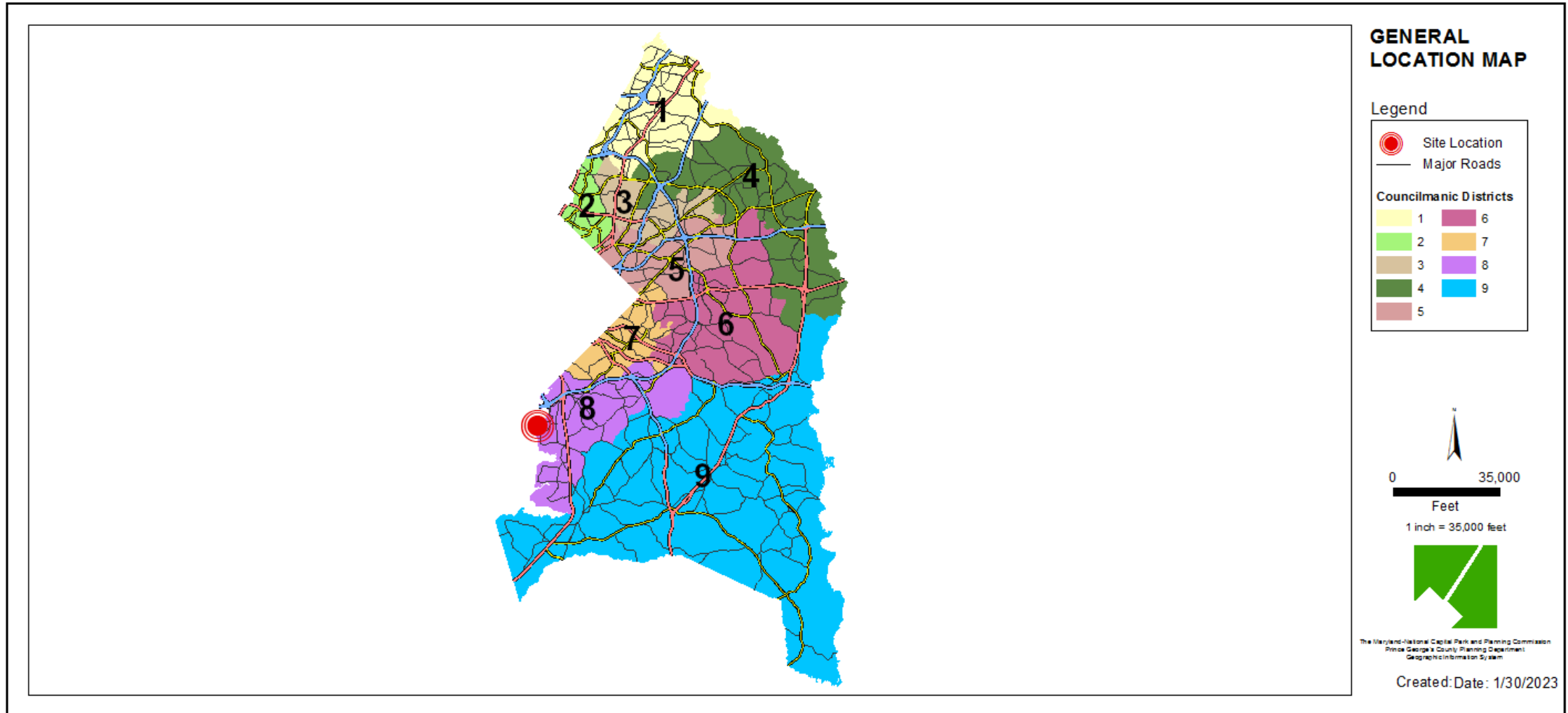
Staff Recommendation: APPROVAL with conditions.



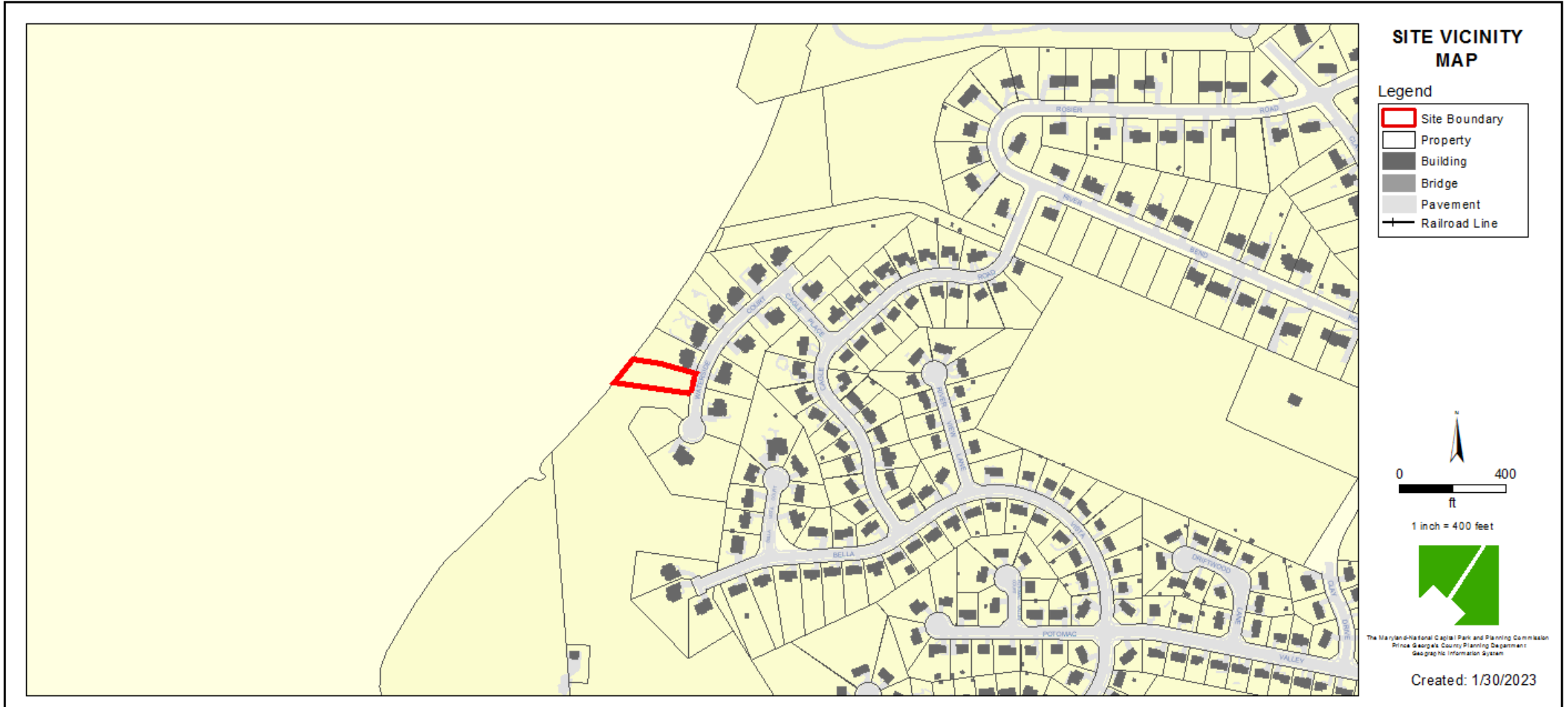
GENERAL LOCATION MAP

Council District: 08

Planning Area: 80



SITE VICINITY MAP

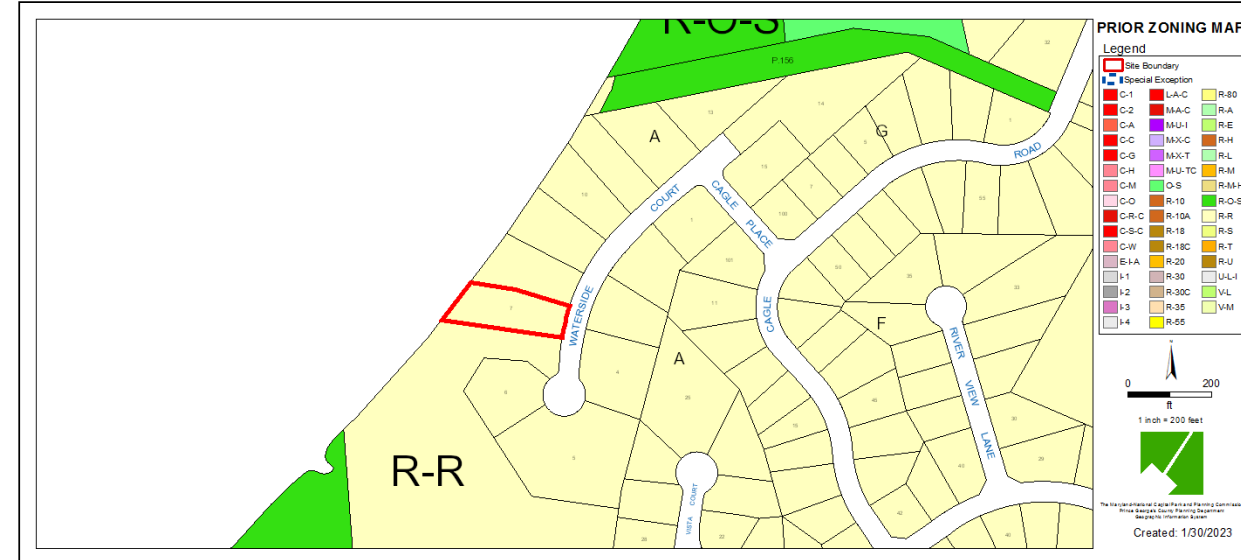
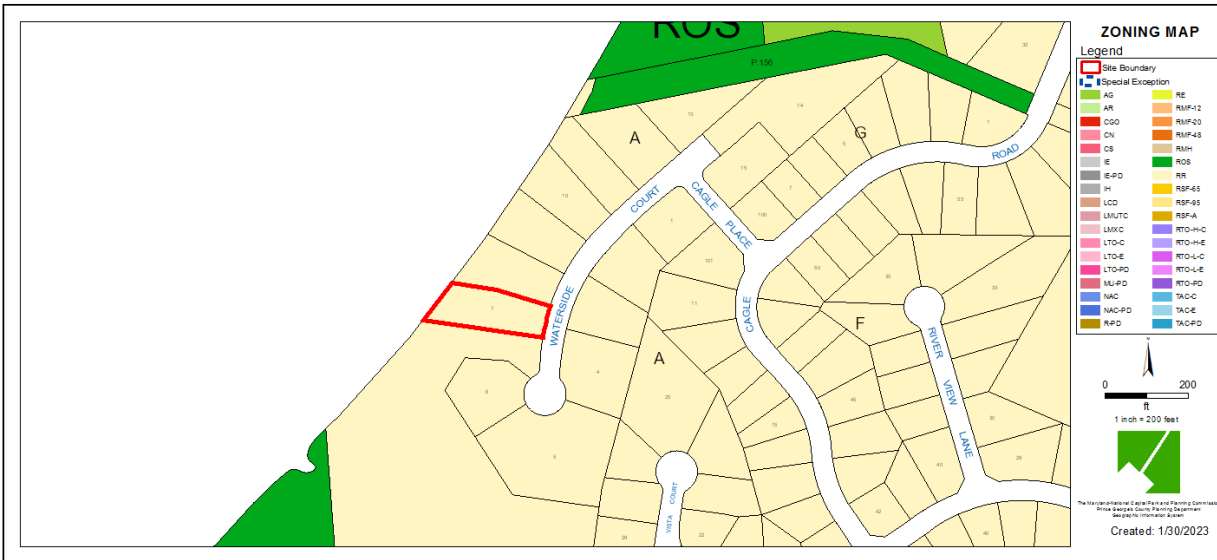


ZONING MAP (CURRENT & PRIOR)

Property Zone: RR
 Prior Property Zone: R-R

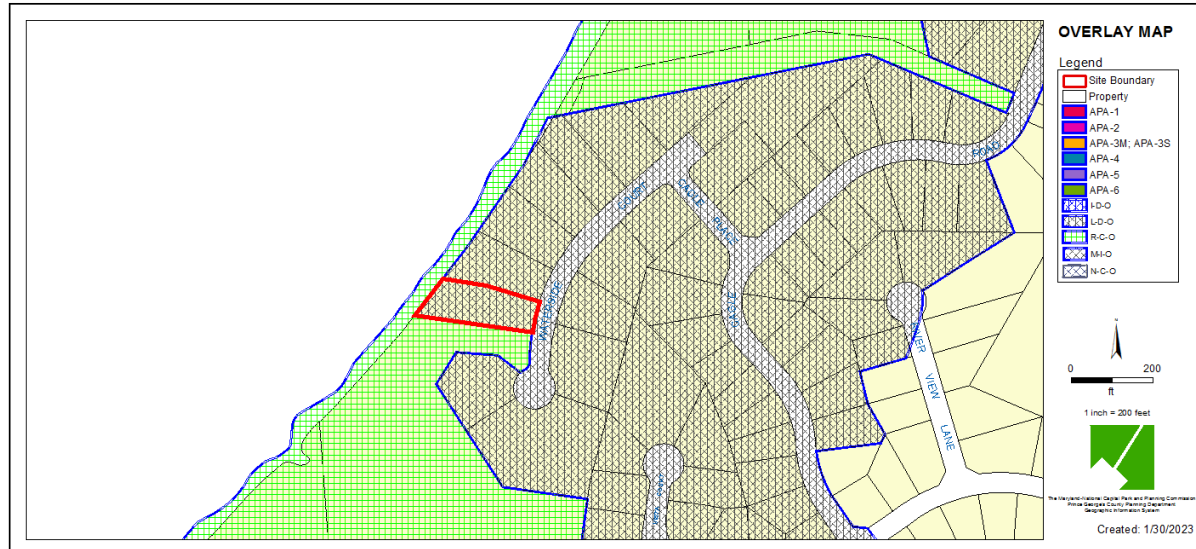
CURRENT ZONING MAP

PRIOR ZONING MAP

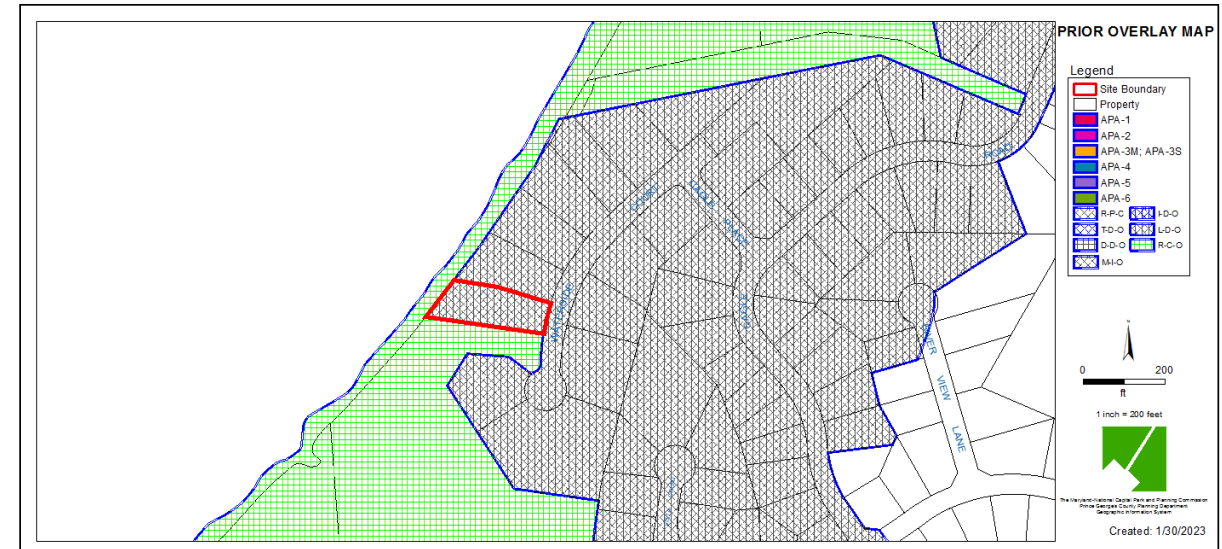


OVERLAY MAP (CURRENT & PRIOR)

CURRENT OVERLAY MAP



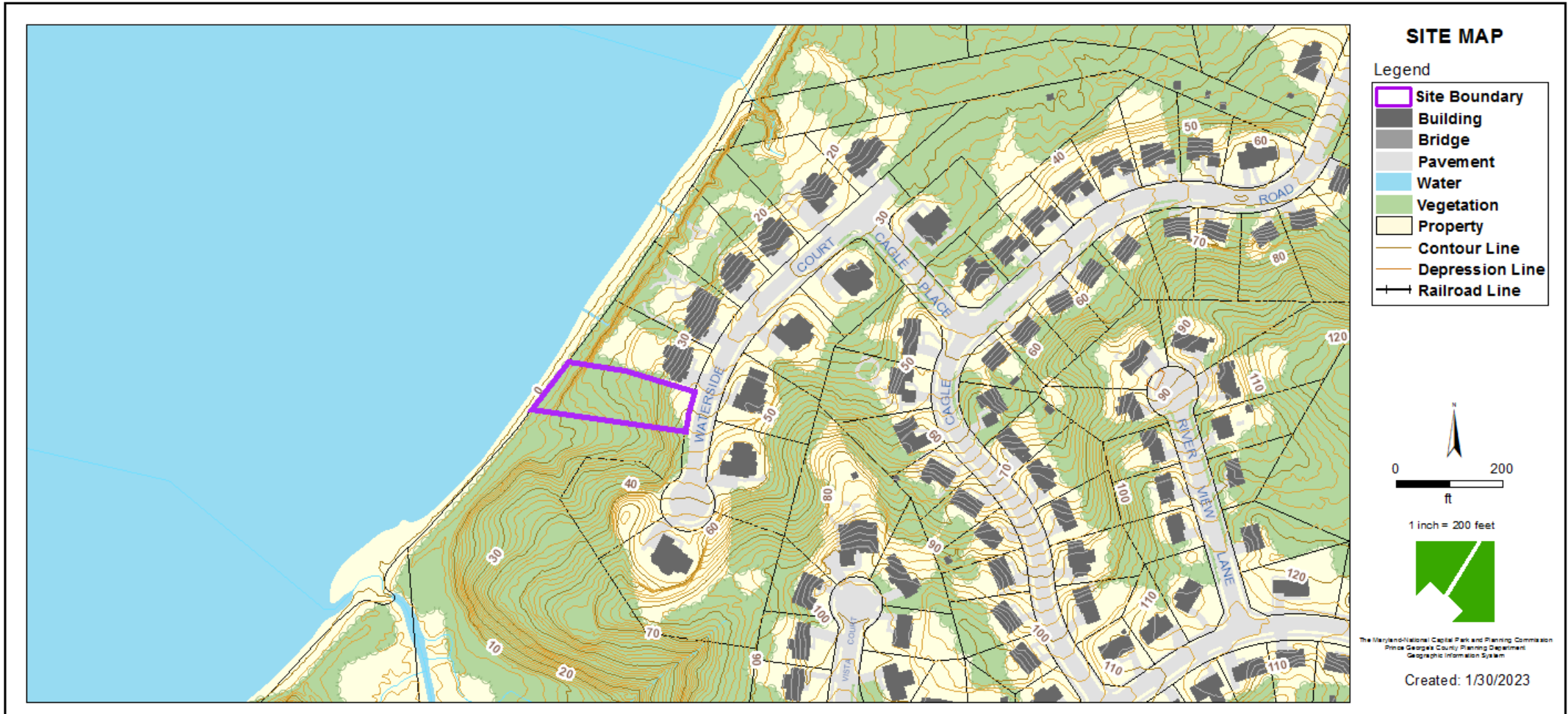
PRIOR OVERLAY MAP



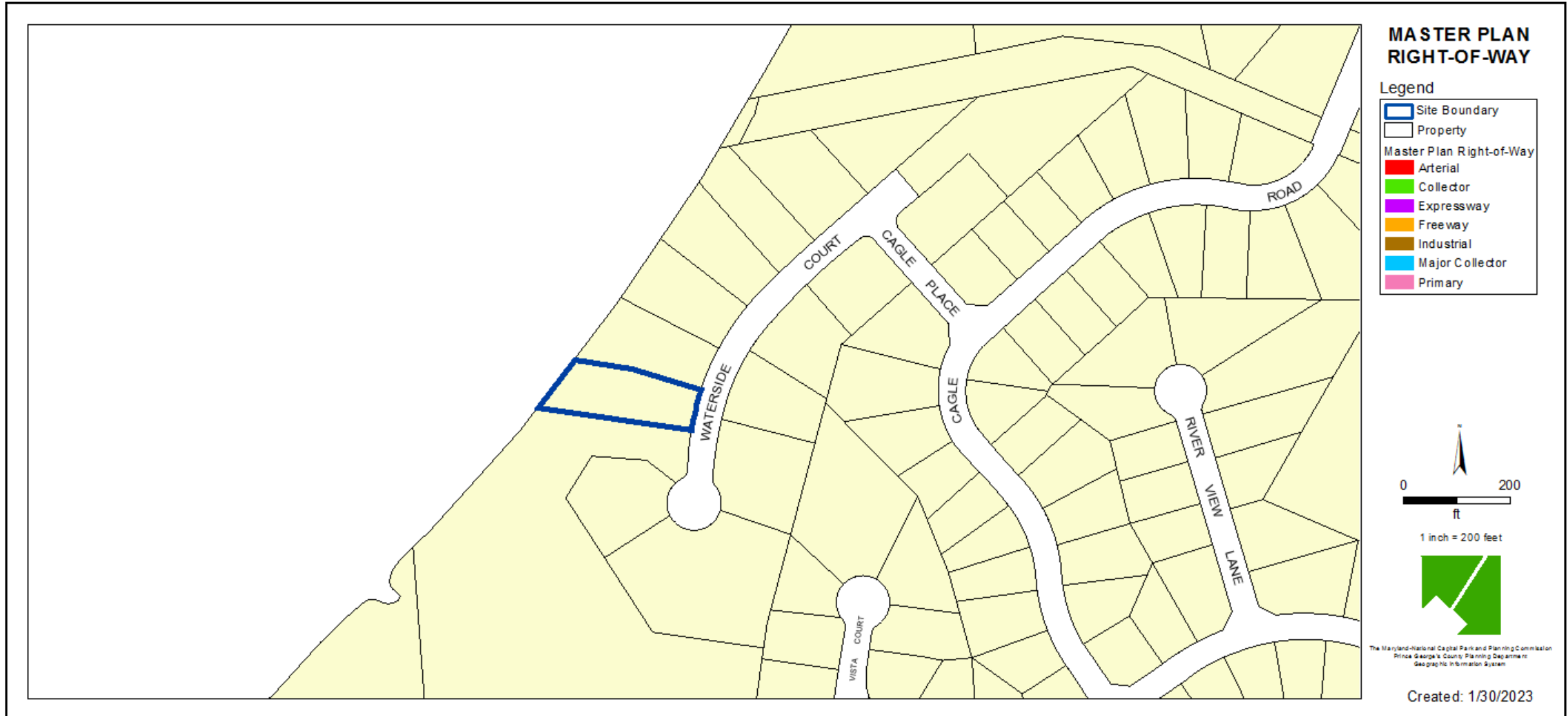
AERIAL MAP



SITE MAP



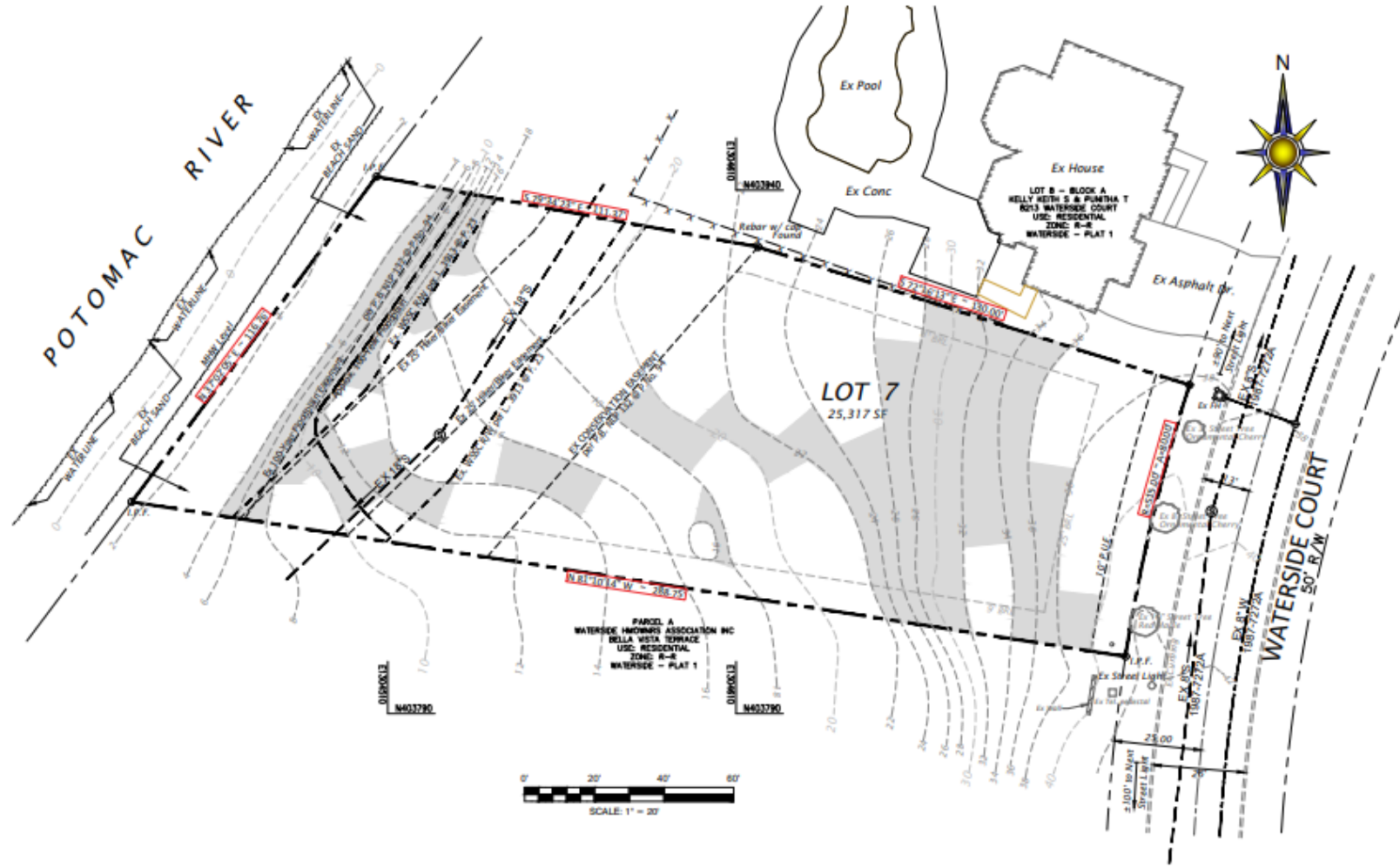
MASTER PLAN RIGHT-OF-WAY MAP



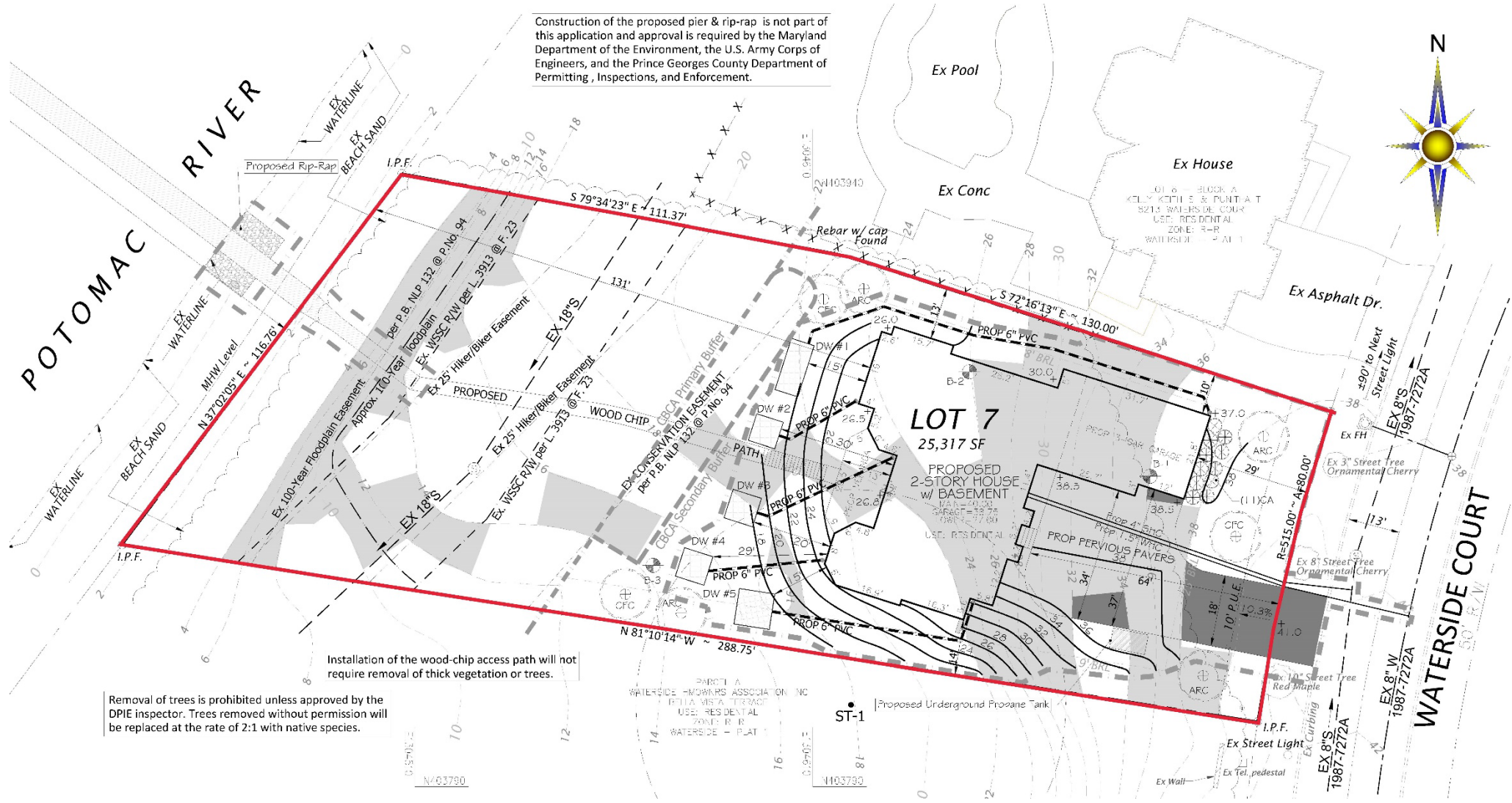
BIRD'S-EYE VIEW WITH APPROXIMATE SITE BOUNDARY OUTLINED



EXISTING CONDITIONS PLAN



CHESAPEAKE BAY CRITICAL AREA CONSERVATION PLAN

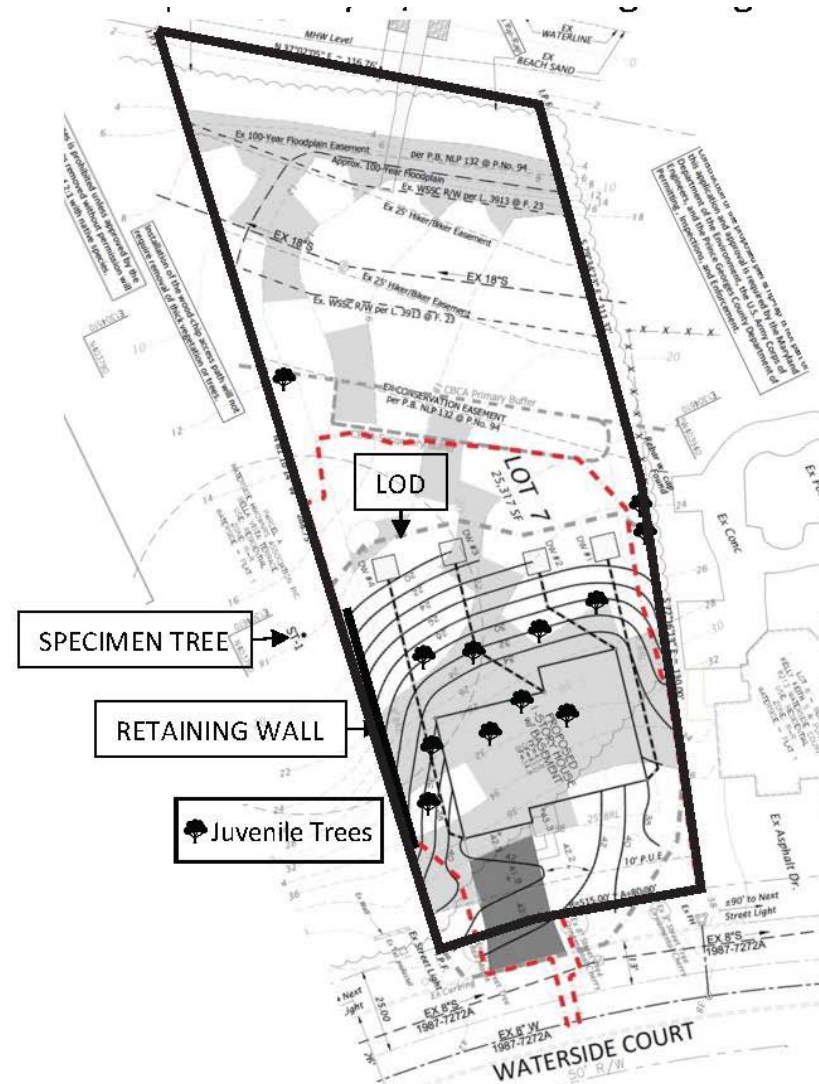
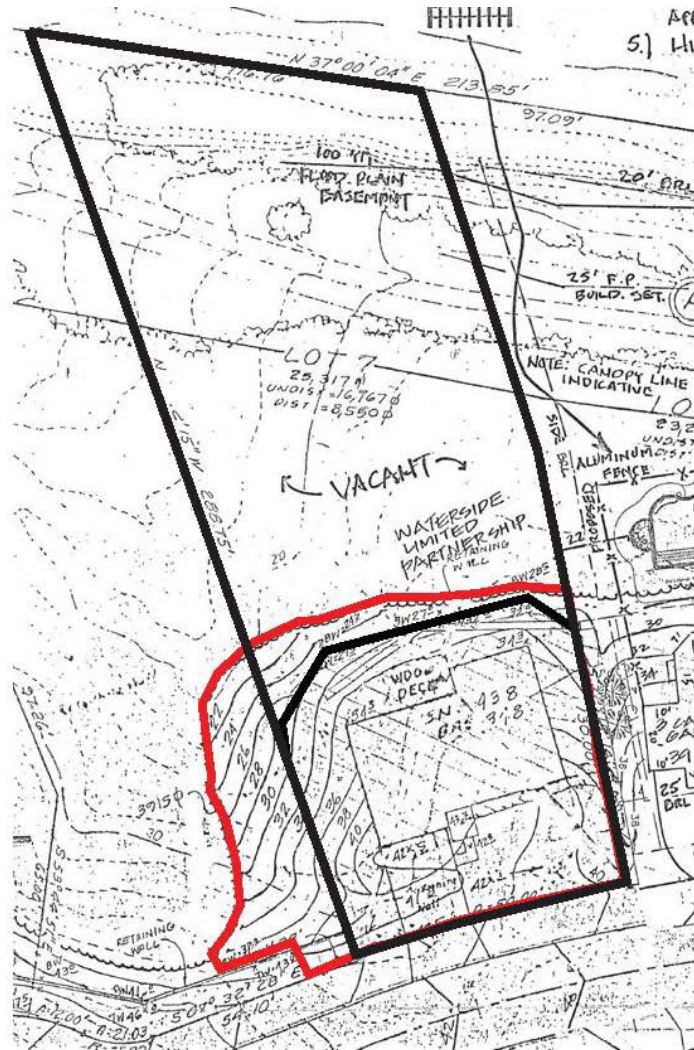


Construction of the proposed pier & rip-rap is not part of this application and approval is required by the Maryland Department of the Environment, the U.S. Army Corps of Engineers, and the Prince Georges County Department of Permitting, Inspections, and Enforcement.

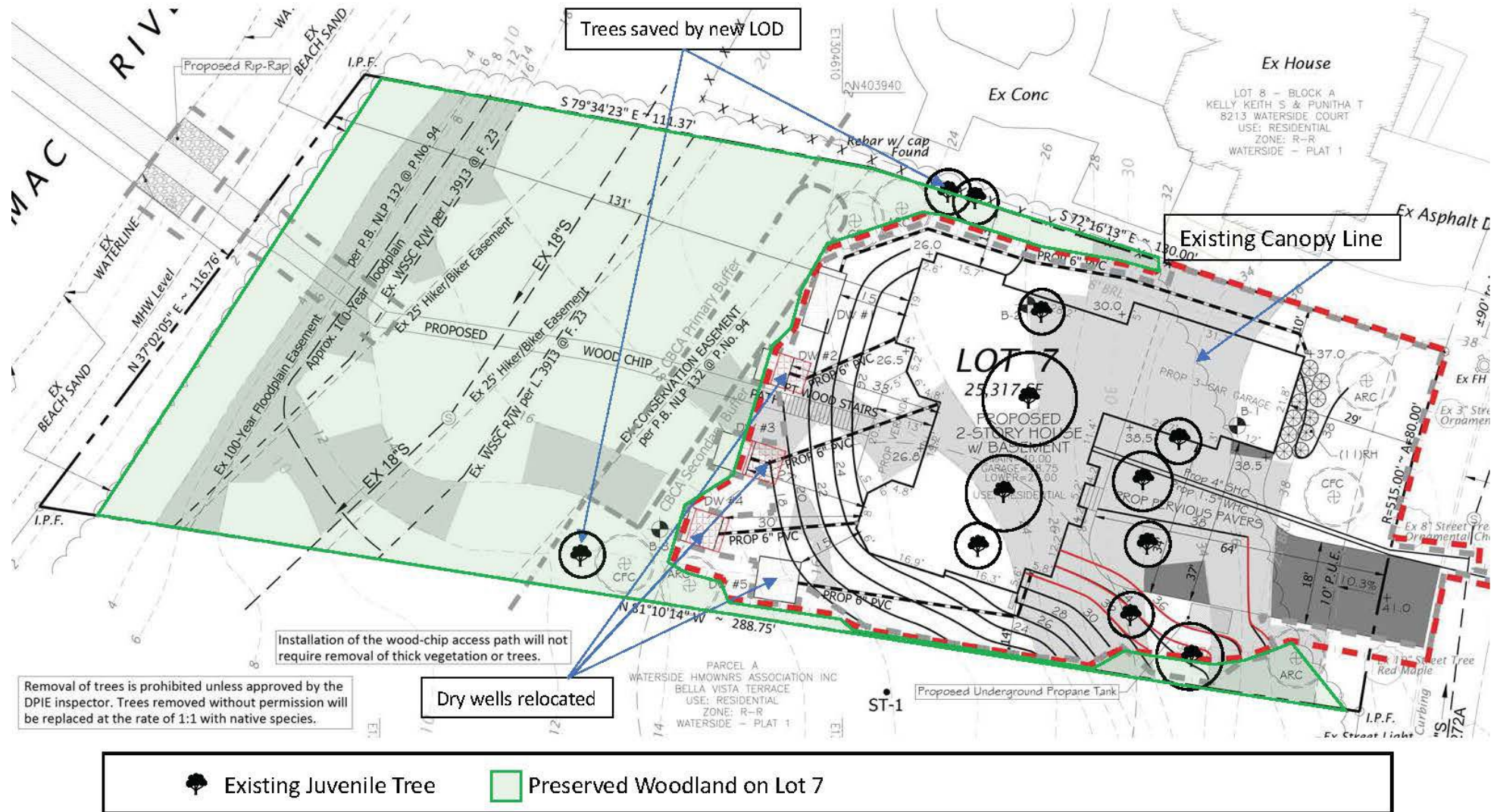
Installation of the wood-chip access path will not require removal of thick vegetation or trees.

Removal of trees is prohibited unless approved by the DPEI inspector. Trees removed without permission will be replaced at the rate of 2:1 with native species.

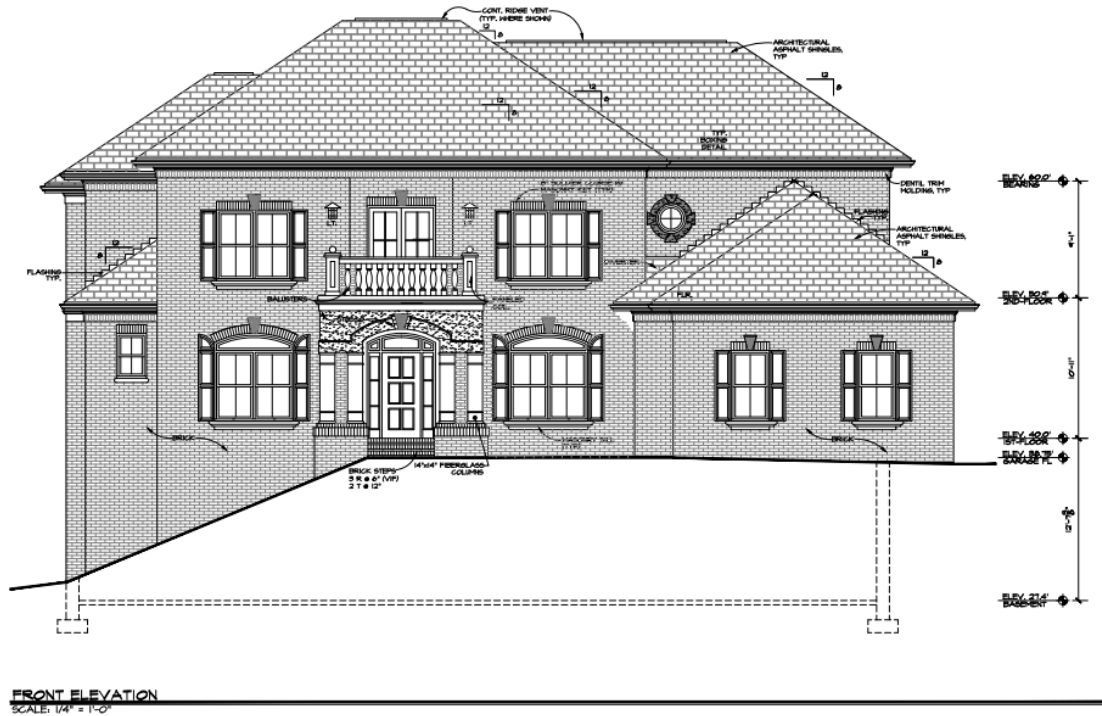
40.5% WOODLAND CLEARING EXHIBIT #1



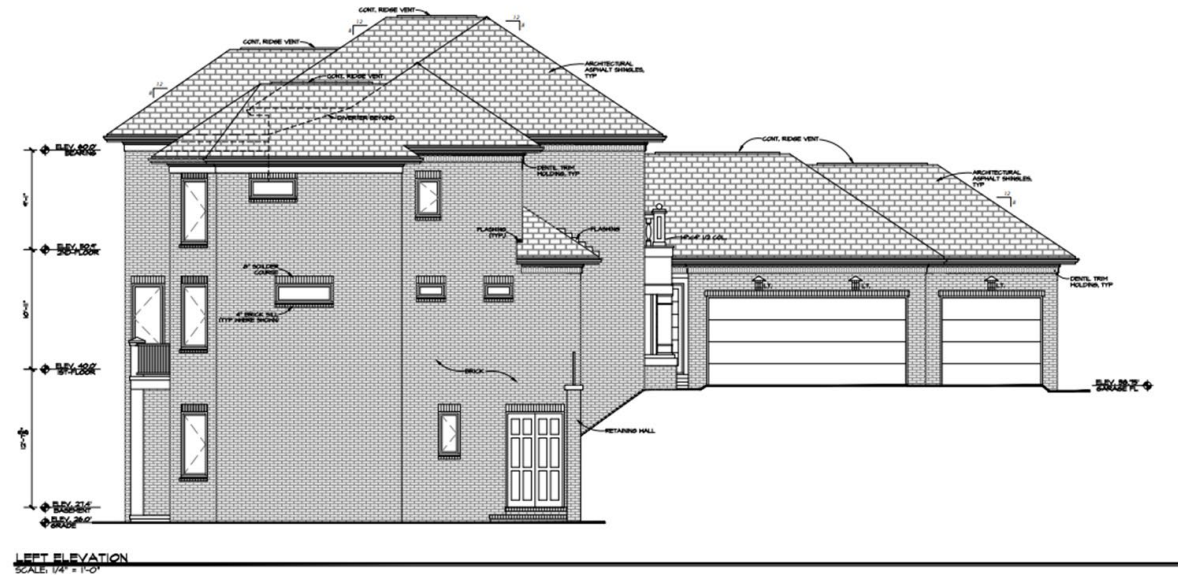
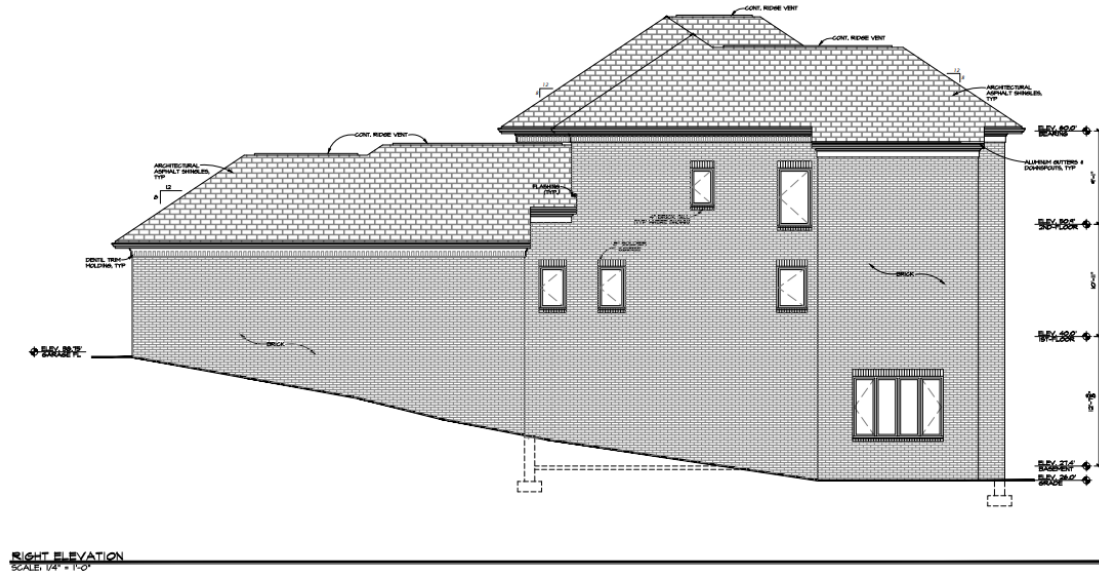
42% WOODLAND CLEARING EXHIBIT #2



FRONT & REAR ELEVATIONS



RIGHT & LEFT ELEVATIONS



STAFF RECOMMENDATION

APPROVAL with conditions

- DSP-86116-15
- CP-22002
- Variance to Section 27-548.17(b)
- Variance to Section 5B-114(e)(5)

Major Issues:

- None

Applicant Required Mailings:

- Informational Mailing: 07/19/2022
- Acceptance Mailing: 12/01/2022

**ADDENDUM TO STATEMENT OF JUSTIFICATION FOR VARIANCE
FROM SECTION 5B-114 (e)(5) OF THE PRINCE GEORGE'S COUNTY CODE**

DSP-86116-15; CP-22002

Waterside Subdivision, Lot 7

At the Planning Board hearing on this matter held on March 7, 2023, there was extensive discussion regarding the Applicant's request for a variance from Section 5B-114 (e)(5) of the Prince George's County Code ("Code"), which states as follows: "Clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance." The applicant had proposed a plan that included clearing of approximately 52% of the lot, and thus a variance of 22% was requested. At the conclusion of that hearing, the applicant requested a continuance to explore an alternative design that would reduce the amount of clearing of the subject lot to the extent reasonably possible. The request for a continuance was granted, and that hearing is now scheduled for May 18, 2023.

While the original detailed site plan as submitted required a clearing of 52% of the subject property, the applicant heard the concerns of the Planning Board at the previous hearing on this matter, and redesigned the site plan to significantly reduce the amount of required clearing to 40.5%, the amount previously approved in Revision 11 of DSP-86116. That amount of clearing for Revision 11, however, included clearing on a portion of the adjacent Parcel A. The revised plan now included only Lot 7 and not any portion of Parcel A, and still resulted in a clearing of 40.5%, far less than the original plan submitted with this application. Given the existing topography of the property and the required stormwater management facilities for the proposed construction on the property, however, the limits of disturbance ("LOD") in this scenario were extremely close to the construction area, not allowing enough space for construction and construction equipment that would be able to realistically and safely stay within the LOD.

Based on this concern, and with input from the M-NCPPC Planning Staff, the applicant's engineer proposed an alternative plan that would result in a relatively minor amount of additional clearing, just 1.5% for a total of 42%, none of which would result in the loss of any additional trees. Under this revised plan, the limit of disturbance would be somewhat further away from the house, allowing for a safer and more realistic LOD. It should be recalled that this entire issue results from the natural topography of this lot, which, unlike others in this subdivision, drops precipitously from 38 feet in front right corner of the lot to 12 feet in the rear left corner – a drop of 26 feet for a quarter-acre building envelope. A retaining wall of 100 feet at a height of 10 feet would have been required in the original Revision 11 plan, and a retaining wall would also be required for a design that would require clearing of less than 40.5%, but a retaining wall is not required for this alternative design. This is due to the ingenious design of the house proposed upon this lot – which, given its size, shape and location on the lot essentially serves as a retaining wall in and of itself, and most significantly, will minimize grading of the property. A letter from the applicant's engineer confirming this, along with plan exhibits

graphically showing the impact of the various development scenarios for this property, are attached hereto and incorporated herein as Attachments A and B, respectively.

The applicant submits that the alternative plan resulting in a clearing of 42% of Lot 7 meets the criteria for a variance of 12% from Section 5B-114 (e)(5) of the County Code, as set forth in Section 27-230 of the County Code, as follows:

- (a) (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);”

RESPONSE: The natural topography of this lot is so steep as to require a clearing of greater than 30% to allow a house to be constructed in a safe manner, while still respecting the environmental setting of this lot to the extent reasonably possible by minimizing grading, eliminating the need for a retaining wall, and providing for a safe and reasonable LOD.

- (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;”

RESPONSE: There can be no question that the uniquely steep topography of this lot causes the general restriction of a 30% maximum clearing of this lot to result in unusual and practical difficulties to the owner, which would result in, among other things, the virtual impossibility of siting a reasonably-sized house upon this property, the requirement for a retaining wall, and a greater amount of grading.

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

RESPONSE: The naturally steep topography of this lot requires certain extraordinary measures to allow a house to be constructed upon it. It should be noted that clearing anything less than 40.5% of the lot would require a retaining wall, which would be more damaging to the environmental setting of this property. As discussed above, the size, location and siting of the house proposed on this lot, with a clearing of 42% of the lot, is the minimum necessary to have it serve the functional purpose of a retaining wall relative to the topography of the property, to minimize grading of the property (by, among other things, eliminating the need for a retaining wall), and to provide a safe and reasonable LOD.

- (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;”

RESPONSE: The subject lot is subdivided and zoned R-R/L-D-O, and is thus consistent with the 2006 Approved Master Plan for the Henson Creek-South Potomac Planning Area, which recommends residential development for this property.

(5) “Such variance will not substantially impair the use and enjoyment of adjacent properties;”

RESPONSE: The requested variance will have no substantial impact upon 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.”

RESPONSE: As noted herein, the requested variance is made necessary as a result of the natural topography of this lot, as well as the stormwater management requirements for development of this lot, none of which is self-inflicted by the property owner.

(b) (1) “Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;”

RESPONSE: The naturally steep topography of this site, along with the stormwater management requirements for development of the lot as allowed through its subdivision approval, constitute “special conditions or circumstances” that are “peculiar to the subject land or structure” that would clearly result in “unwarranted hardship,” since the lot could not be reasonably and safely developed as allowed through its zoning and subdivision approval without the requested variance. Given these factors, the requested variance of 12% will be the least amount required to allow for a safe and realistic LOD for the proposed house, the size, location and siting of which will minimize grading of the subject lot.

(2) “A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;”

RESPONSE: Given the topography of the subject property, as indicated above, the size, location and siting of the proposed house will serve as a retaining wall for the steep grades, and will minimize grading for the lot. For these reasons, without the requested variance, this lot could not enjoy the development rights commonly enjoyed by other lots in this subdivision.

(3) “The granting of a variance would not confer upon an applicant any special privilege that would be denied by Critical Area Program to other lands or structures within the Critical Area;”

RESPONSE: Given the unique topography of the subject lot, the granting of this variance would not confer a special privilege that would be denied to other lands or structures within the Critical Area.

(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 condition relating to land or building use, either permitted or nonconforming, on any neighboring property;”

RESPONSE: The variance request is the result of the naturally steep topography of the subject lot, not the result of any actions by the applicant, nor from any particular land use on any neighboring property. In fact, as noted above, the size, location and siting of the house proposed upon this lot will serve to minimize grading and provide a reasonable and safe LOD upon the subject lot.

(5) “The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;”

RESPONSE: The granting of this variance will not adversely affect water quality, fish, wildlife, or plant habitat, and the creative engineering and design of the proposed development of this lot, by minimizing the amount of grading and avoiding the need for a retaining wall, is in harmony with the general spirit and intent of both the State and County Critical Area programs.

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

RESPONSE: The development of the subject lot, unlike other developed lots in this subdivision, is subject to stormwater management requirements, which will minimize any 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;”

RESPONSE: Especially given the lack of any significant vegetation on the subject lot, the stormwater management and other County regulations will

allow for the protection of all fish, wildlife and plant habitat in the designated critical area.

(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;”

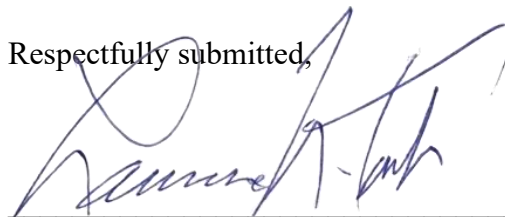
RESPONSE: The proposed development of this lot is consistent with its zoning and subdivision approval, and given the various County and State regulations, including, among other things, the County’s stormwater management regulations, this will not create any adverse environmental impact.

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

RESPONSE: As noted above, the proposed development of this lot is consistent with its zoning and subdivision approval.

Given all of the above information, and responses to the criteria for the granting of variances, both generally and within the Critical Area, the applicant respectfully submits that the proposed clearing of 42% of this lot is the minimum necessary to allow for a plan of development that will allow for stormwater management, minimize grading, and provide for a safe and realistic LOD that will promote good and appropriate development of the subject lot. For all of the above-stated reasons, the applicant herein respectfully submits that the requested variance of twelve percent (12%) from the requirement of Section 5B-114(e)(5) is justified, and requests that it be granted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Lawrence N. Taub', is written over a horizontal line.

Lawrence N. Taub
Attorney for Applicant



April 20, 2023

Mr. Thomas Burke - Supervisor
Environmental Planning Section – Countywide Planning Division
Maryland National Capital Park & Planning Commission
14741 Governor Oden Bowie Drive
Upper Marlboro, MD 20772

Re: DSP-86116-15; CP-22002
Waterside Subdivision - Hill Residence (Lot 7)

Dear Mr. Burke,

The purpose of this letter is to provide supplemental information in support of the revised Conservation Plan submission we've prepared for the above-referenced development project on behalf of the applicant, Mr. Michael Hill. The revisions were made in response to a meeting Mr. Hill had with the MNCPPC staff on April 6th, 2023.

We concur with the applicant's assessment that the configuration and position of the proposed dwelling presents a very efficient use of the lot topography while minimizing the overall grading required. An example of this efficiency is the minimal grading required for the northeast corner of the site & along the entire northern lot line. In addition, the L-shaped design allows for grading the difficult existing steep slopes encountered along the southern portion of the lot, which will meet existing grade without the need for a retaining wall along that lot line. In contrast, the previously approved DSP implements grading into the adjacent parcel A, despite the smaller size and a forward-facing garage, and also utilizes a substantial sized retaining wall behind the dwelling. Mr. Hill's proposal provides typical grading on all sides of his proposed structure.

Per the applicant's request, we've prepared a sketch plan outlining the potential site development of the property using the originally approved DSP dwelling and associated floor elevations. The sketch is attached for your consideration. Based on our findings for this original design, which was approved as Revision 11 to this DSP, a 54-ft long retaining wall is necessary along the southern lot line with a maximum height of about 7-feet. It is worth noting that off-site specimen tree ST-1 is in very close proximity to this retaining wall. The sketch plan for the same Revision also portrays the conceptual stormwater management facilities that would need to be employed to obtain a building permit from DPIE by today's permitting standards. Implementing the SWM design would require approximately 25% of additional on-site disturbance (compared to the original DSP design) to support these facilities and to provide a reasonable slope back to original grade. The applicant's design proposal will only require an additional 2,125 ft² of clearing compared to the sketch plan design. It is also our understanding that this additional area does not contain any trees. Based on these findings, it is our professional opinion that the prepared sketch plan is not a superior alternative to the applicant's current proposal.

In addition to the design alternatives described above, a plan was also presented to staff that required 40.5% of clearing. While this targeted disturbance is preferred by staff, the design utilized an unpractical limits of disturbance. We believe the submitted design of 42% of clearing provides a more realistic and safer design that uses no retaining wall yet would result in only a relatively minimal increase

to the proposed clearing. The implementation of retaining walls required for the alternate design will typically come with long-term costs, permanent environmental impacts, and safety concerns.

In conclusion, achieving a reduced limits of disturbance is realized by implementing the alternate design of the previous DSP. But after applying current SWM standards to that original plan, the limits of disturbance will increase, and the use of a retaining wall is still necessary. Based on these factors, we believe that the current proposal is a sound, safe, realistic and justifiable approach to developing the property.

Thank you for reviewing this information. If you have any questions or need any additional information, please do not hesitate to contact me directly.

Sincerely,

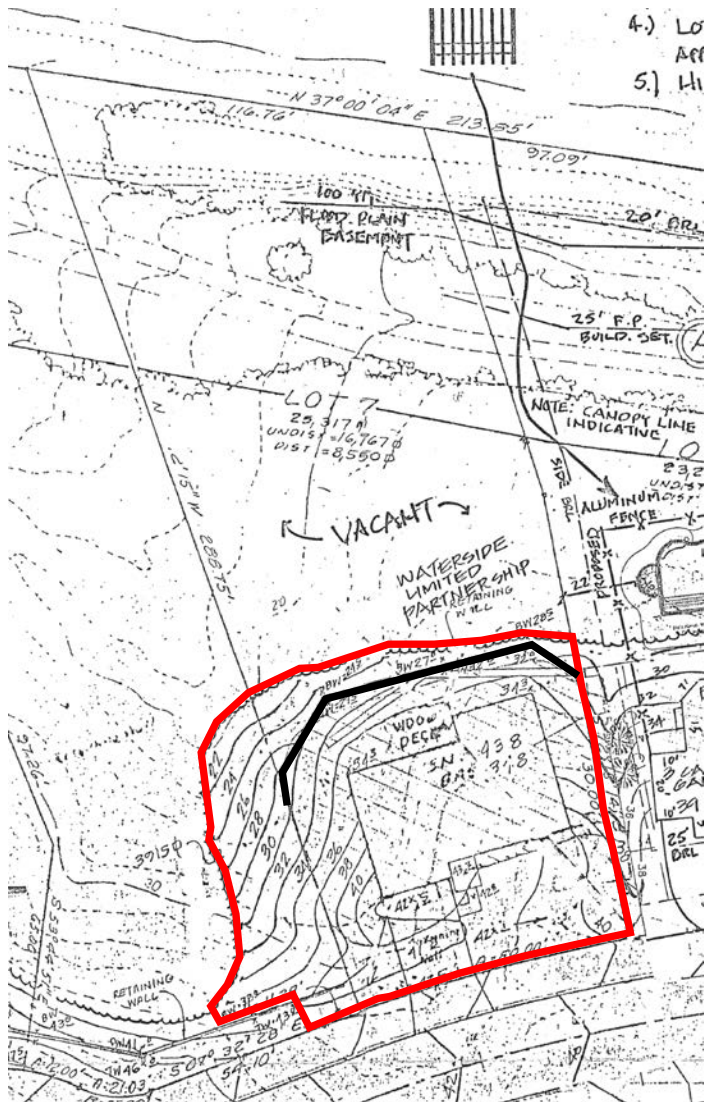
Jon A. Shiancoe, P.E.

Principal

Cc: Dominique Lockhart, AICP

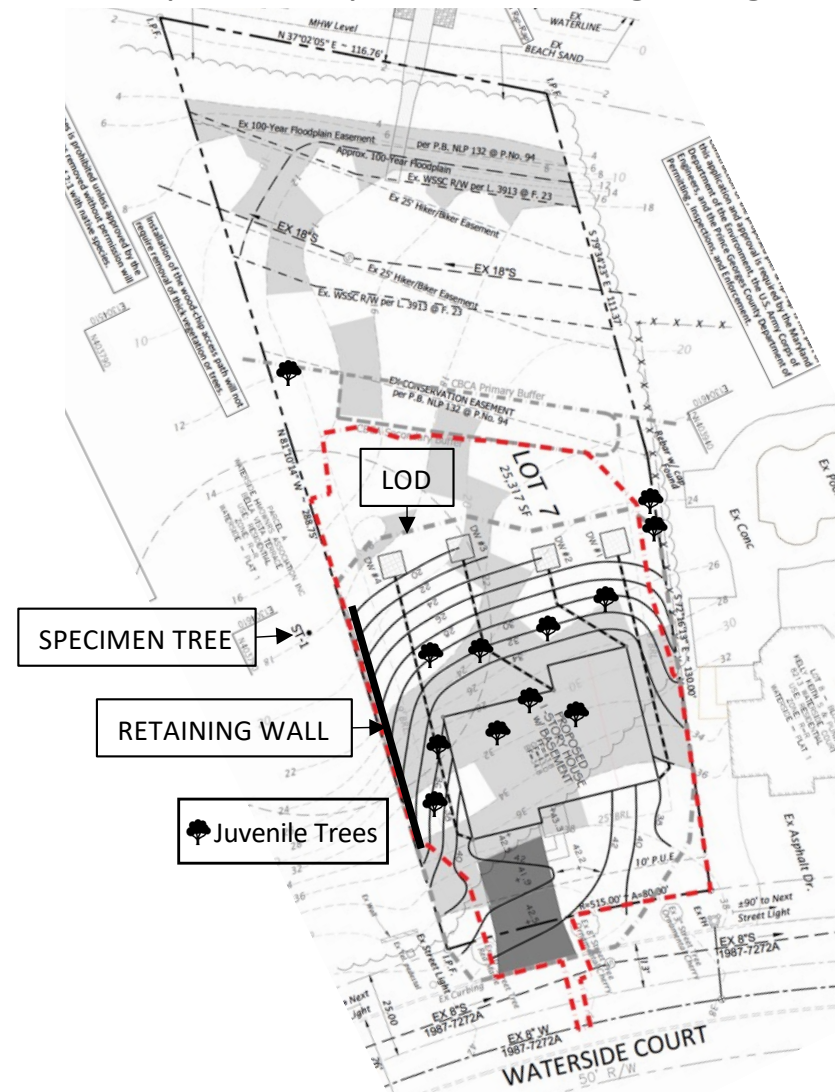
Cc: Chuck Schneider

DSP-86116-11



- Built on Control Fill
- Clears and grades on Parcel A in addition to Lot 7
- Requires Retaining Wall across lot behind house

Sketch of hypothetical scenario of same house attempted today w/ SWM and grading on lot only

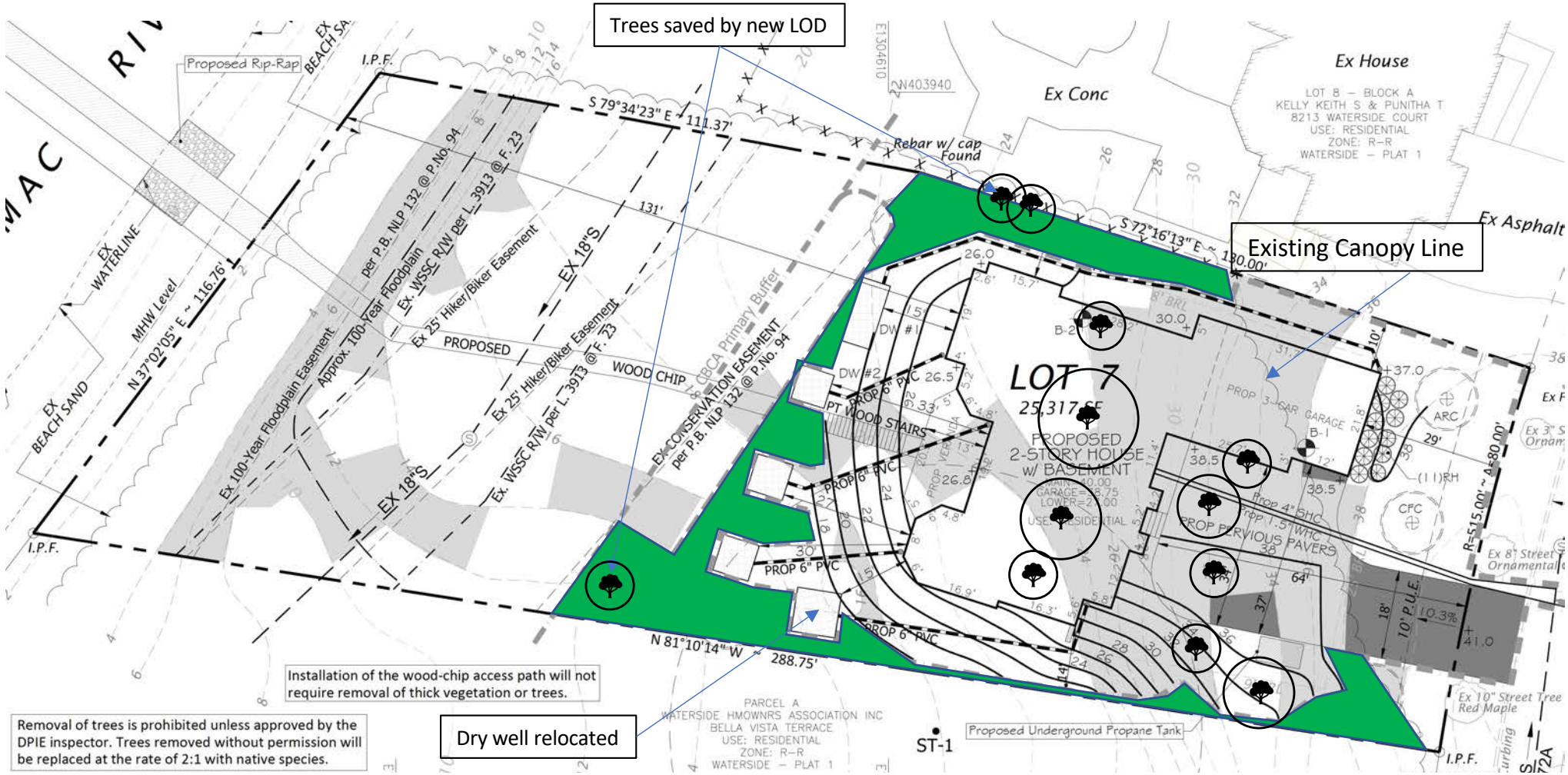


- Still built on Control Fill
- Clears and grades ~2,400+ SQFT more area on Lot 7 to accommodate SWM facilities
- Requires Retaining Wall along south boundary with footings of retaining wall threatening ST-1 critical root zone (within 10' of trunk)

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)

Option A Exhibit – Revising Proposed Plan to Reduce Woodland Clearing to 40.5% (8550 SF)

Exhibit Note: This property has been cleared at least twice during its recent history and thus is a sparsely wooded lot with no specimen trees on site and a large area with no trees at all between the area of an abandoned silt fence and the existing conservation easement aligned with the CBCA Primary Buffer. There are 12 juvenile trees within the building envelope. The rest of the canopy is dominated by invasive underbrush and debris. This exhibit demonstrates the most extreme reduction of the LOD without use of external retaining wall(s).



Removal of trees is prohibited unless approved by the DPIE inspector. Trees removed without permission will be replaced at the rate of 2:1 with native species.

Installation of the wood-chip access path will not require removal of thick vegetation or trees.

Dry well relocated

Trees saved by new LOD

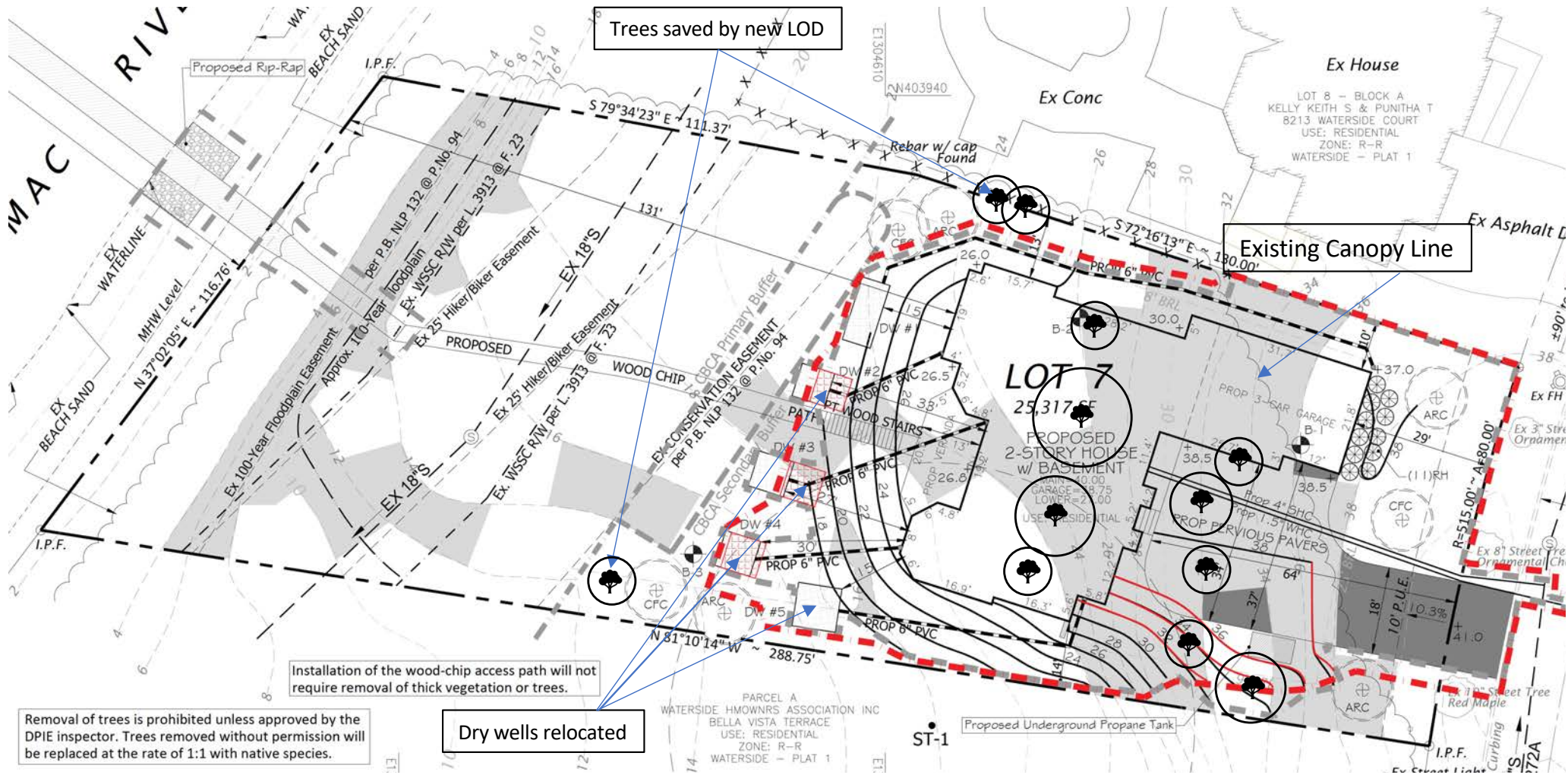
Existing Canopy Line

Existing Juvenile Tree
 2400 SF Reduced Woodland Clearing (inside line is new LOD and new canopy line)

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)

Option B Exhibit 1 – Revising Proposed Plan to Reduce Woodland Clearing to 42% (8868 SF)

Exhibit Note: This property has been cleared at least twice during its recent history and thus is a sparsely wooded lot with no specimen trees on site and a large area with no trees at all between the area of an abandoned silt fence and the existing conservation easement aligned with the CBCA Primary Buffer. There are 12 juvenile trees within the building envelope. The rest of the canopy is dominated by invasive underbrush and debris. This exhibit demonstrates a less extreme reduction of the LOD without use of external retaining wall(s).



Removal of trees is prohibited unless approved by the DPIE inspector. Trees removed without permission will be replaced at the rate of 1:1 with native species.

Installation of the wood-chip access path will not require removal of thick vegetation or trees.

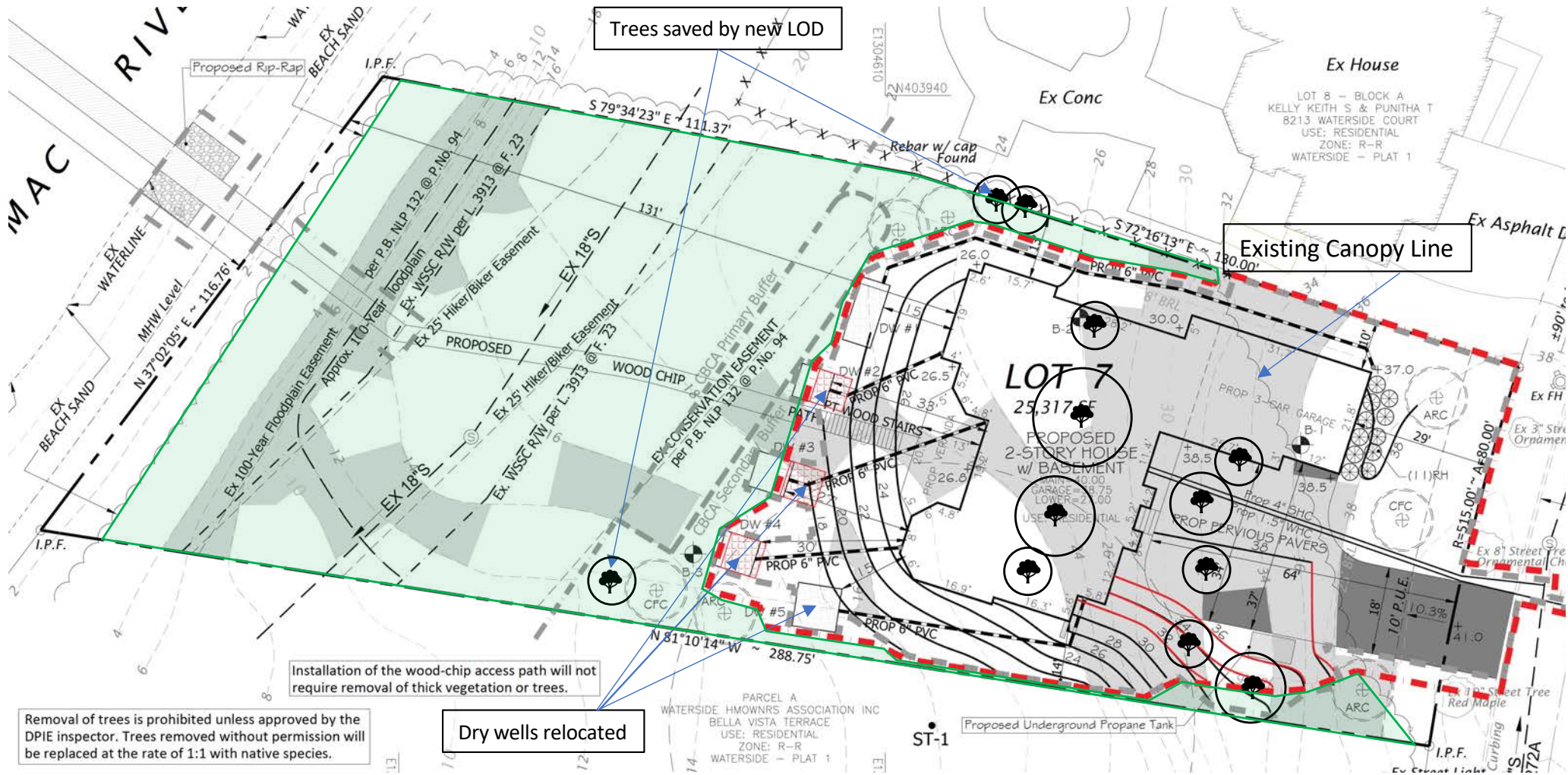
Dry wells relocated

Existing Juvenile Tree
 Changes (- - - New LOD for 2082 SF Reduced Woodland Clearing)

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)

Option B Exhibit 2 – Revising Proposed Plan to Reduce Woodland Clearing to 42% (8868 SF)

Exhibit Note: This property has been cleared at least twice during its recent history and thus is a sparsely wooded lot with no specimen trees on site and a large area with no trees at all between the area of an abandoned silt fence and the existing conservation easement aligned with the CBCA Primary Buffer. There are 12 juvenile trees within the building envelope. The rest of the canopy is dominated by invasive underbrush and debris. This exhibit demonstrates a less extreme reduction of the LOD without use of external retaining wall(s).



Removal of trees is prohibited unless approved by the DPIE inspector. Trees removed without permission will be replaced at the rate of 1:1 with native species.

Installation of the wood-chip access path will not require removal of thick vegetation or trees.

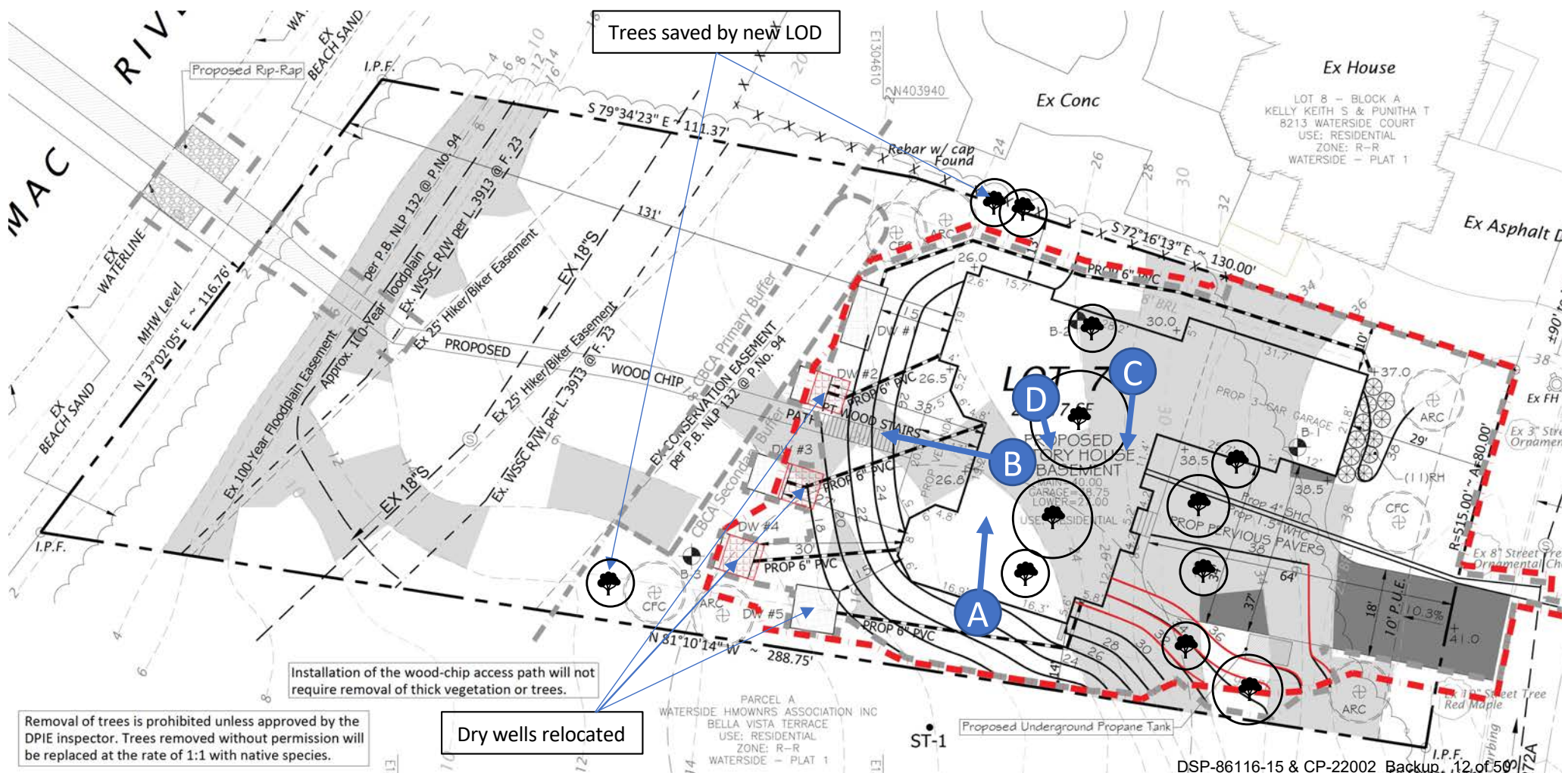
Dry wells relocated

Existing Juvenile Tree
 Preserved Woodland on Lot 7

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7) Guide to Photographic Exhibits

As shown by the four attached photographic exhibits, the rear area of the building envelope consists of mostly invasive regrowth, not trees. As the approved NRI demonstrated there are no specimen trees on the lot at all. The “wooded area” of the lot consists of mostly underbrush, seedlings, saplings, some dead trees, debris, and only a few immature trees outside of the abandoned, original silt fence as shown. There are three juvenile trees that are no longer within the LOD after recent revisions. Most importantly, photographs show that the excess clearing area necessitating the variance request does not require removal of mature or juvenile trees on site. Per code requirements, all reforested trees added both on-site and off-site will be larger than any immature trees removed from this rear LOD area.

- A** Photo toward north boundary
- B** Photo toward west boundary
- C** Photo inside old silt fence area
- D** Photo of old construction debris

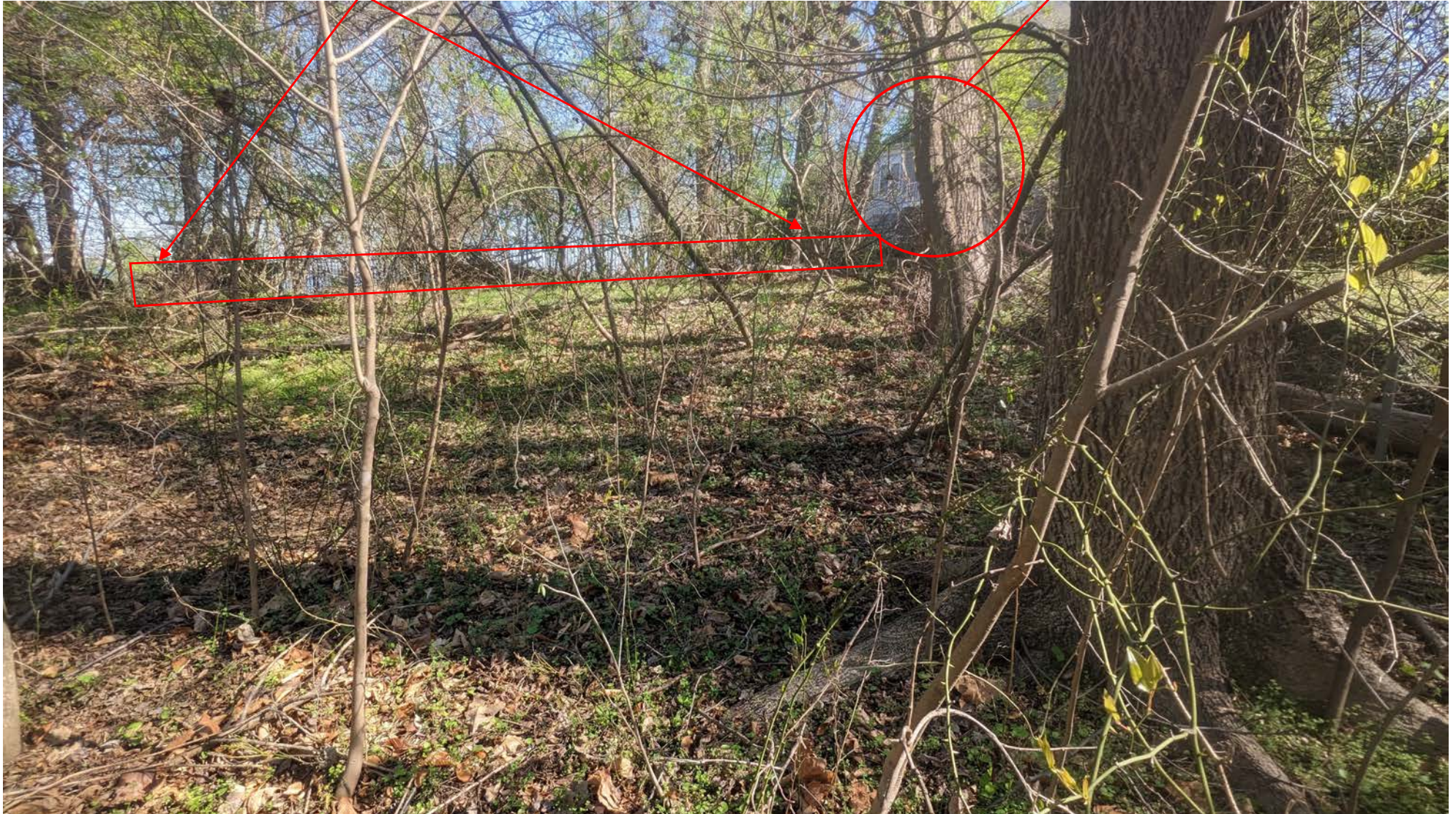


DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)
Photographic Exhibit A

A

Fence for Lot 8

Rear of house on Lot 8



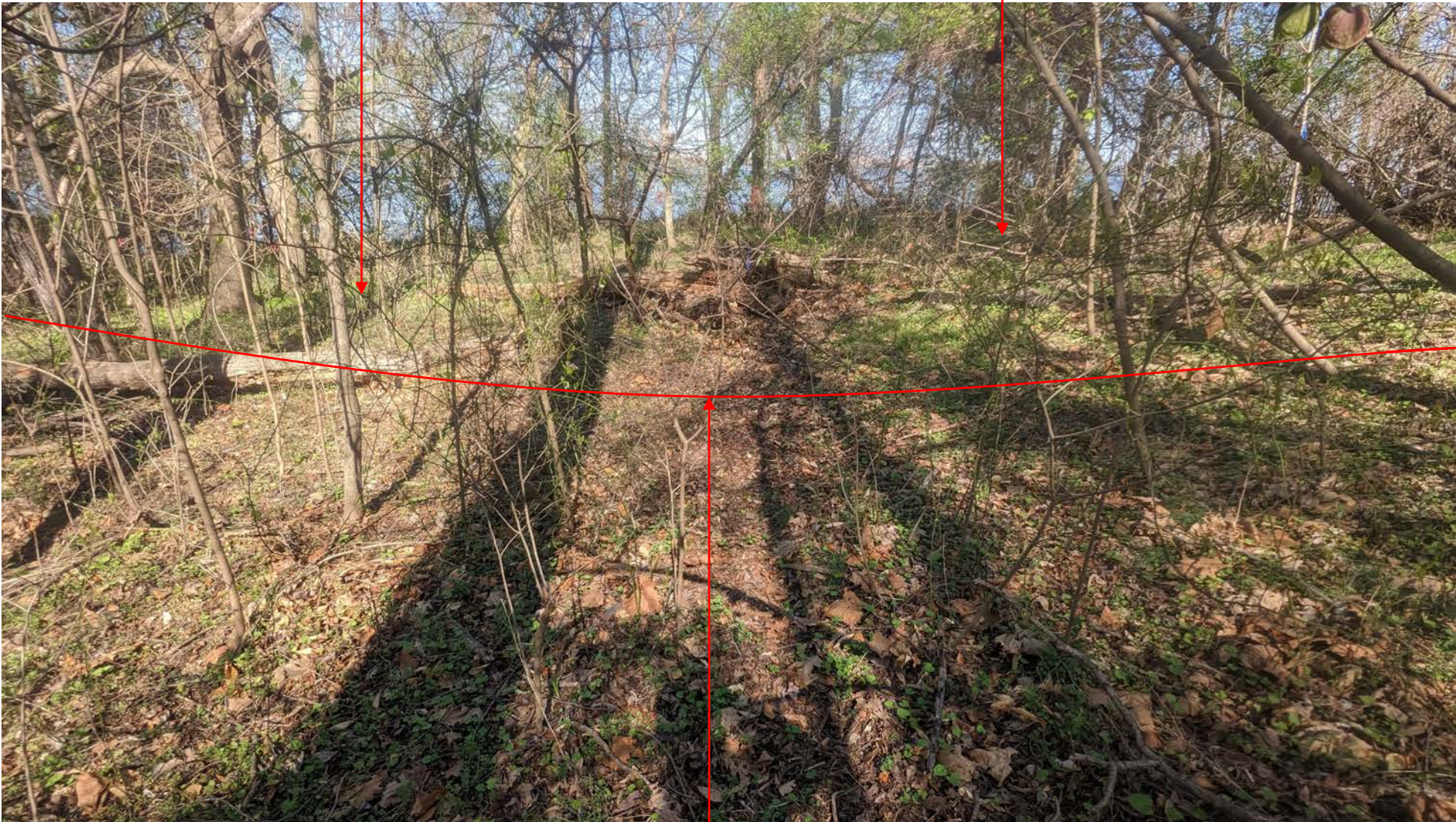
Lot 8 house and fence identified for perspective and matching the area to the plan. The larger juvenile trees on the right would have to be removed with any reasonable development of the property, even the small house from the Revision 11 plan for this lot. The limited growth on site is indicative of the repeated clearing of this lot by developers and utility companies.

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)

B

WSSC Easement

NPS Hiker/Biker Easement



Approximate location of the rear LOD

DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)



This photograph shows the size and sparse tree growth within the LOD for DSP-86116-11



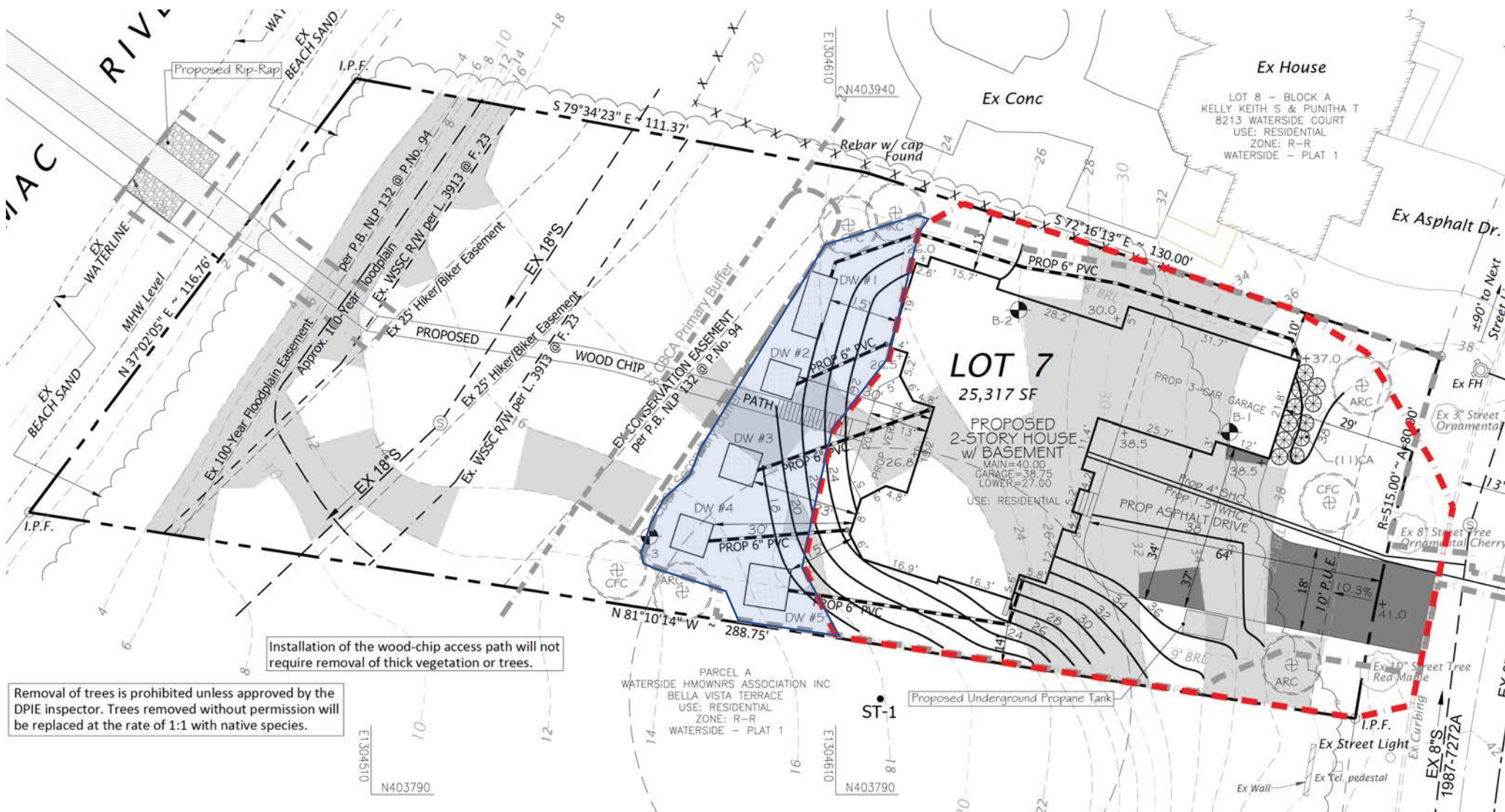


DSP-86116-15 (CP-22002) Waterside Subdivision - Hill Residence (Lot 7)

This is a sample of the debris on this site that will be cleared with this project. There are other locations on the lot where excess concrete was dumped. There is also normal trash litter scattered about as well as large piles of organic debris, evidently from landscaping projects on nearby properties. It is clear that this site has been used for dumping since the surrounding construction was completed.



Additional clearing to eliminate need for retaining wall(s)



THERE ARE NO TREES OVER 2" THICK IN ENTIRE AREA OF ADDITIONAL CLEARING

Countywide Planning Division
Environmental Planning Section

301-952-3650

April 28, 2023

MEMORANDUM

TO: Dominique Lockhart, Planner III, Zoning Section, DRD

VIA: Tom Burke, Supervisor, Environmental Planning Section, CWPD *TB*

FROM: Chuck Schneider, Planner III, Environmental Planning Section, CWPD *CS*

SUBJECT: **CP-22002/DSP-86116-15, Waterside – Lot 7 (8215 Waterside Court)**

The Environmental Planning Section (EPS) has reviewed the Chesapeake Bay Critical Area (CBCA) Conservation Plan CP-22002(CP) and Detailed Site Plan DSP-86116-15(DSP), received by the EPS on December 12, 2022. Comments were provided in a Subdivision and Development Review Committee (SDRC) meeting on December 23, 2022. This application was presented to the Planning Board on March 23, 2023, and was continued to provide the applicant the opportunity to re-evaluate the proposed development. A revised CP and DSP were received on April 11, 2023, and an addendum to the statement of justification for the variance request was submitted on April 25, 2023.

The EPS recommends approval of CP-22002 and DSP-86116-15, subject to the conditions noted at the end of this memorandum, and approval of the requested variances to the CBCA Ordinance.

SITE DESCRIPTION

This 0.58-acre property, known as 8215 Waterside Court in Fort Washington, is in the Limited Development Overlay (LDO) Zone and the Residential Rural (RR) Zone; however, the applicant has opted to have this application evaluated under the prior Limited Development Overlay (L-D-O) Zone and the Rural Residential (R-R) Zone. The site contains CBCA 100-foot Primary Buffer, Secondary Buffer, FEMA 100-year floodplain, steep slopes, and is mostly wooded with no existing structures present. The developed woodlands within the 100-foot buffer and outside the 100-foot buffer throughout the property. This property has a natural shoreline similar to the 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 (SSPRA), nor are state or federal rare, threatened, or endangered (RTE) species mapped within the boundary area. The subject lot contains both Regulated and Evaluation Areas of the Green Infrastructure Network. The Web Soil Survey (WSS) indicates that the site is comprised of the Evesboro-Downer complex soil type.

PROPOSED ACTIVITY

The applicant proposes to develop this property by removing developed woodland for the

construction of a new single-family dwelling, driveway and required stormwater management (SWM) facilities. The proposed residential structure will not impact the Primary and Secondary Buffer. The site contains 0.48 acres(21,090 square feet) of developed woodlands. The current plan proposes to remove 8,868 square feet of the on-site developed woodlands (42 percent), which represents a reduction from the 52 percent clearing presented to the Planning Board at the March 23, 2023 hearing.

According to the prior and current Zoning Code, the 0.58-acre(25,265 square feet) lot is allowed a maximum lot coverage of 15 percent, or 3,790 square feet within the L-D-0 Zone. The applicant proposes to use the prior Zoning Ordinance, Section 27-548.17(c)(4), to increase the impervious lot coverage. This regulation states “For subdivisions approved after December 1, 1985, the overall Critical Area lot coverage for the subdivision may not exceed 15%. Lot coverage on individual lots may exceed 15% as long as the overall percentage of Critical Area lot coverage does not exceed 15%.”

The applicant was required to add an impervious lot coverage table for the entire Waterside subdivision to account for the lot-by-lot and roadway impervious area. An evaluation performed by the applicant shows that 14 percent of the overall Waterside subdivision contains impervious area, with Lots 6, 7, and 14 undeveloped.

PREVIOUS APPROVALS

The EPS previously reviewed the following applications and associated plans for the subject site:

Development Review Case #	Associated Tree Conservation Plan #	Authority	Status	Action Date	Resolution Number
4-85186	N/A	Planning Board	Approved	12/18/1985	85-431
DSP-86116	N/A		Research	10/31/1986	
DSP-86116-05	N/A	Staff	Approved	8/11/1997	
NRI-010-2022	N/A	Staff	Approved	5/11/2022	N/A
DSP-86116-15 CP-22002	N/A	Planning Board	Pending	Pending	Pending

According to PGAtlas, some woodland clearing occurred on this this lot as part of the Waterside Court construction between 1993 and 1998.

Preliminary Plan of Subdivision (PPS) 4-85186 was approved by the Planning Board on December 18, 1985. This was followed by Detailed Site Plan 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 for various lots in the Waterside subdivision:

<u>Case Number</u>	<u>Status</u>	<u>Nature of Revision</u>
DSP-89116/01	Approved 6/19/1990	Revise house footprints for houses in Block C
DSP-89116/02	Approved 8/15/1990	Add decks for houses in Block C
DSP-89116/03	Approved 10/24/1990	Revise front porches for houses in Block C
DSP-89116/04	Approved 8/25/1995	Revise house footprints, grading, and retaining walls for houses in Block C
DSP-89116/05	Approved 8/11/1995	Revise grading and LOD for lots in Blocks A and B
DSP-89116/06	Approved 3/21/2002	Swimming pool for Lot 5, Block C
DSP-89116/07	Approved 4/4/2003	Adjust house footprints in Block B
DSP-89116/08	Approved 11/06/2003	Two monumental entrance features -Block B
DSP-89116/09	Approved 7/15/2004	Deck for Lot 9, Block A
DSP-89116/11	Approved 12/09/2004	Approve house for Lot 7, Block A
DSP-89116/12	Approved 11/22/2004	Approve rear deck and front porch for Lot 6, Block C
DSP-89116/13	Approved 2/18/2005	Swimming pool for Lot 8, Block A

PREVIOUSLY APPROVED CONDITIONS

The following text addresses previously approved environmental conditions to be considered with this application.

Preliminary Plan of Subdivision 4-85186, approved by the Planning Board on December 18, 1985: The following environmental conditions of approval found in PGCPB No. 85-431.

5. **A 100-foot buffer measured from mean high tide must be maintained and covenants provided to ensure the inviolability of the buffer.**
6. **The applicant shall contact Natural Resources and DER for assistance in the design of stormwater facilities suitable for the site include those stormwater management facilities in the public right-of-way, such as grass swales.**
7. **The open space consists of the 100-year floodplain, wetlands, some slopes greater than 15 percent and a minimum 100 foot buffer along the Potomac River which shall remain undisturbed. This community open space shall be appropriately covenanted to prevent future disturbances.**
9. **Prior to final plats, the applicant shall submit the following for review and approval to the Planning Board:**
 - g. **Covenants shall be recorded in the land records of Prince Georges County to protect preserved slopes and vegetation and to assure maintenance..... (unreadable scan) .erosion control features and planting areas referenced in these conditions.**
11. **Approval of the 100-year floodplain by the Department of Public Works prior to final plat approval.**

Findings and reasons for decision:

- 1. Staff Exhibit B shows the location of the 25-foot-wide trail easement.**
- 2. The conditions are designed to ensure adequate protection of the Chesapeake Bay Critical Area.**
- 3. There is a 100-year floodplain within the property which should be restricted from development.**

Conditions 5 Through 9, and 11 above were met prior to the approval of the final plat.

VARIANCE REQUEST

The applicant requested two variances to the following section of the CBCA Ordinance, Subtitle 5B, of the Prince George's County Code:

1. The plan proposes disturbance to slopes in excess of 15 percent. Disturbance to slopes in excess of 15 percent is prohibited by the Conservation Manual and Section 27-548.17 of the Zoning Ordinance, without the approval of a variance.
2. Section 5B-114(e)(5) states, "Clearing in excess of 30 percent of a natural or developed woodland is prohibited without a variance." This requirement was applied and found to be compliant during the previous development of the site plan for the overall site. However, the 30 percent clearing threshold must be applied individually to this lot without consideration to the overall development and a variance approval is necessary.

The Planning Department received justification exhibits in support of both variances with the initial application on January 19, 2023, and revised materials on April 3 and April 25, 2023. The variance for steep slopes was not revised with the April 3 and April 25 submissions, but an addendum was submitted to update the variance for the clearing of developed woodlands in excess of 30 percent. On April 11, 2023, a revised CP was submitted without a revised variance that updated the woodland clearing. A revised woodland clearing variance and supporting materials were submitted on April 25, 2023.

After the Planning Board granted the continuance, several meetings took place between the applicant's team and MNCPPC staff. As a result of the meetings, a revised variance and supporting materials were submitted on April 25, 2023 with additional justification describing how the proposed development works with the existing steep slopes, and the engineering practices used in determining where the house footprint should be located without the need for constructing a high retaining wall.

Variance Requested – Disturbance to Steep Slopes: Variance #1

In accordance with Subtitle 5B, steep slopes are defined as "slopes of 15 percent or greater incline." The 1985 PPS layout for the subject lot was approved with impacts to the steep slopes outside the Primary and Secondary Buffer; however, there is no record of variances being approved for these impacts.

Section 27-230 of the Zoning Code contains required findings [text in **bold**] to be made before a variance can be granted. The plain text is staff's analysis of the applicant's revised variance request.

(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);**

This property is an existing undeveloped wooded residential lot. This lot is part of a subdivision that was approved with a PPS in 1985. The entire Waterside subdivision is located entirely within the CBCA and was one of the earliest subdivisions approved after the adoption of the CBCA regulations. This lot is one of three lots within the subdivision that has not been developed.

The developable area of this lot is limited to the area outside of the primary and secondary buffers, and within the existing building setback limits. This developable area contains developed woodland and steep slopes, which are defined as slopes 15 percent and greater.

- (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 applicant is proposing to develop this property and impact steep slopes outside the primary and secondary buffers. The majority of the site outside these buffers is encumbered by steep slopes, necessitating a variance for any development. Thus, the strict application of the law will create 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 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 Countywide Green Infrastructure Plan of the Approved Prince George's Resource Conservation Plan, May 2017 (Green Infrastructure Plan) places the Potomac River Shoreline in a Special Conservation Area. The Green Infrastructure Plan and the

Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area, April 2006 (Henson Creek Master Plan) state that this area should focus on water quality as well as the 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.

The site is an infill lot within an existing subdivision. The developable area of the property is encumbered with steep slopes. Granting this variance will 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.

Granting this steep slope impact variance will not substantially impair the use and enjoyment of adjacent properties. The original approved DSP development showed the adjacent properties with proposed development that would necessitate impacting steep slopes. Similar to those properties, the proposed impacts to steep slopes for this development will be confined to this property with appropriate sediment control and stormwater management required at the time of permit

(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 natural topography of this property contains steep slopes throughout the developable area. Any development within this area requires a variance to impact steep slopes. This variance request is not due to self-inflicted impacts by the property owner.

(b) Variances may only be granted by the Planning Board from the provisions of this Subtitle or Subtitle 5B for property located within the Chesapeake Bay Critical Area Overlay Zones where an appellant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance and where the Prince George's County Planning Board (or its authorized representative) has found, in addition to the findings set forth in Subsection (a), that:

- 1. Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;**

The site has frontage on the Patuxent River that requires primary and secondary buffers that extend onto the site to remain undisturbed. Additionally, the site contains steep slopes outside of the buffers. The subject lot cannot be developed without impact to the steep slopes. The approved PPS for the subject lot was approved with impacts to the steep slopes outside the primary and secondary buffer and with on-site woodland clearing for a house and yard area. 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.” COMAR 27.01.12.01. Thus, literal enforcement of the CBCA Ordinance would result in an unwarranted hardship to the applicant.

2. **A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;**

As previously stated, the lot was approved with impacts to the steep slopes outside the primary and secondary buffer and with on-site woodland clearing for a house and yard. Although the adjacent contained steep slopes outside the buffers prior to development, this office has no record of variances approved for the impacts. A literal interpretation of the CBCA Ordinance 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 Critical Area Program to other lands or structures within the Critical Area;**

The adjacent lots within the subdivision also contained steep slopes and were approved to be developed; however, this office has no record of variances approved for the impacts. All lots within the CBCA, L-D-O Zone are prohibited from developing on steep slopes without a variance.

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

The steep slopes on this property are all naturally occurring formations, and no grading or other man-made disturbance caused the slopes to occur. The variance request is not based upon conditions or circumstances which are the result of the applicant’s actions and does not arise from any conditions relating to land or building use, either permitted or non-conforming, on any neighboring property.

5. **The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;**

The applicant has an approved SWM concept plan, which was reviewed and approved by the DPIE. This SWM plan has been reviewed to ensure that no on-site sediment or stormwater leaves the site or enters the adjacent Potomac River. The proposed development will use five drywells located within the rear yard between the proposed house and 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 water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**

This CP incorporates SWM controls, as approved by DPIE, to address adverse impacts on water quality from pollutants discharged from structures, conveyances, or runoff from surrounding lands.

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;**

Woodlands for the development will be removed; however, the remaining on-site woodland in the primary and secondary buffer will be preserved and recorded in a conservation easement for protection. Forests and developed woodland provide important wildlife and habitat value, and contribute to stormwater attenuation and pollutant reduction.

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

This proposal is for the development of a new single-family residential dwelling in an existing residentially zoned and established community. Woodland will be preserved within the primary and secondary buffers, and stormwater management will be installed in accordance with DPIE requirements.

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

No growth allocation is proposed for this property.

Variance Requested – Clearing Developed Woodland greater than 30 Percent: Variance #2

In accordance with 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 of the Zoning Code contains required findings [text in **bold**] to be made before a variance can be granted. The plain text is staff’s analysis of the applicant’s revised variance request.

- (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);

This lot is part of a subdivision that was approved with a PPS in 1985. Waterside subdivision is located entirely within the CBCA and was one of the early subdivisions approved after the adoption of CBCA regulations. This is a waterfront lot and is adjacent to the Potomac River, containing primary and secondary buffers, and is one of three lots within the subdivision that has not been developed.

The topography outside of the primary and secondary buffers contains steep slopes requiring over 30 percent woodlands to be cleared to effectively develop the residence. An analysis provided by JAS LLC dated April 20, 2023 of the prior DSP-86116-11 approval, resulted in the requirement of a retaining wall that would have been 54 feet in length and contain sections ten feet in height. Developing the site with this type of a 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 proposed with this application will essentially use the proposed house structure as the retaining wall. Grading the site to tie into existing grades within the lot and the installation of required stormwater management results in 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;

As demonstrated by PPS 4-85186, it was possible to develop this property without clearing more than 30 percent by limiting woodland clearing to the buildable envelope, in accordance with the CBCA Ordinance; however, no SWM was 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 homeowners association (HOA) property in order to properly grade the site and install the retaining wall. The site was entirely wooded (0.58 acres) at that time, and now the site is 0.48 acres wooded with a 0.10-acre open area just off of Waterside court in the northeast corner of the site. Also, unlike the PPS approval, current regulations require SWM on individual lots for environmental site design.

The woodland clearing for siting the residence so that a retaining wall is not required, and treating stormwater, requires an increase in on-site woodland clearing over the 30-percent. Additionally, the applicant requests to increase the size of the building footprint from what was shown on the 1985 approved plan. This increase in building footprint is to design a house to be used to effectively retain the steep slopes without the need for a separate 54-foot-long, ten-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;

The subject property contains steep slopes throughout the developable area. The previously approved house design for this provided a retaining wall to prevent erosion due to steep slopes. Stormwater management is 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 Master Plan; however, development of this property with a single-family residence is possible while adhering to the standards of the CBCA Ordinance and preserving natural features. This lot is part of an existing 30-lot subdivision which, with the exception of three undeveloped lots, is otherwise fully developed. The waterfront and adjacent developed lots maintain various percentages of on-site woodlands. Granting the variance would 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.

Granting this proposed woodland clearing variance will not substantially impair the use and enjoyment of adjacent properties. The adjacent properties will retain their current views, and tree canopy if this variance is granted.

(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 requested variance is not self-inflicted by the property. The requested woodland clearing for the proposed development is the result of needed grading due to the natural steep slopes and the current stormwater management requirements.

(b) Variances may only be granted by the Planning Board from the provisions of this Subtitle or Subtitle 5B for property located within the Chesapeake Bay Critical Area Overlay Zones where an appellant demonstrates that provisions have been made to minimize any adverse environmental impact of the variance and where the Prince George's County Planning Board (or its authorized representative) has found, in addition to the findings set forth in Subsection (a), that:

- 1. Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Critical Area Program would result in unwarranted hardship which is defined as a circumstance where without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested;**

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.” COMAR 27.01.12.01.

This property is an infill lot within an existing developed subdivision. Additional clearing is needed to safely develop the site without requiring additional retaining walls and to provide required stormwater management. A hazardous 54-foot-long, ten foot high retaining wall would be required if this variance request was not granted.

The adjacent lots were developed before current SWM regulations and do not contain on-site SWM structures, which are currently required for new dwelling construction. The previously approved plan showed a retaining wall in the rear yard without any stormwater management devices.

This property does therefore exhibit special conditions or circumstances that would warrant the granting of the requested variance, and a literal interpretation of the CBCA Ordinance would prevent the applicant from safely developing the subject property with a single-family residence.

- 2. A literal interpretation of the provisions of the Critical Area Program and related ordinances would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;**

Lot 7 is an infill lot within an existing developed subdivision. All of the waterfront lots have been developed except for this lot. Revisions to the approved DSP allowed several of the adjacent waterfront owners to increase the impervious surface area and woodland clearing within the lot. The previously approved PPS and DSP for this property demonstrate that it can be developed with a single-family residence like other properties in similar areas within the CBCA without the requested variance; however, this would require a 54-foot-long, ten foot high retaining wall due to the existing topography. A wall of this scale would create a dangerous condition for the applicant, require maintenance, and disrupt the flow of wildlife. The current design eliminates the need for a retaining wall by incorporating the proposed 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.

Additionally, unlike the other adjacent lots within the CBCA, stormwater management is now required, further increasing the woodland clearing. A literal interpretation of the Subtitle would have deprived the applicant of the rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area.

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

This property contains steep slopes throughout the developable area. The proposed development requires additional woodland clearing to prevent the need for a 54-foot-long retaining wall. Additionally, the adjacent lots were developed before SWM regulations and contain no on-site SWM structures. Current SWM regulations require the subject lot to manage the stormwater on-site, which contribute to the need for additional clearing. The granting of this woodland clearing variance will not create a special privilege for the applicant because the required stormwater management facilities and the grading are necessary to meet current stormwater management requirements and prevent a retaining wall.

- 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 condition relating to land or building use, either permitted or nonconforming, on any neighboring property;**

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

- 5. The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law and the County Critical Area Program;**

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 stormwater management 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 proposed development will use five drywells located within the rear yard between the proposed house and 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 water quality resulting from pollutants discharged from structures, conveyances, or runoff from surrounding lands;**

This proposal incorporates approved 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 areas 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 be preserved with this application, retaining a natural shoreline environment for habitat. A conservation easement for the preserved woodland will be recorded 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, are in conformity to established land use policies and would not create any adverse environmental impact; and**

This proposal is for the development of a single-family residential dwelling in an existing residentially zoned established community.

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

No growth allocation is proposed for this property.

CHESAPEAKE BAY CRITICAL AREA COMMISSION (CBCA) REVIEW

The Critical Area Commission (“CAC”) provided a memo to EPS dated January 26, 2023, in response to the initial application, which requested 52 percent clearing and was not in opposition to the variance request. The memo, provided 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 acres 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% given the site design, including the amount of stormwater runoff generated by the proposed lot coverage on a lot comprising 0.48 acres, 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% 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% lot coverage limit is met for the entire subdivision; it is our understanding that M-NCPPC is in the process of completing this update.”

This application proposes 5,564 square feet (22 percent) of impervious area outside the primary and secondary buffers and proposes to clear 8,868 square feet of developed woodlands for the dwelling, grading, and stormwater management devices. No impacts are proposed to the primary and secondary buffers other than for a natural surface water access trail. The undeveloped areas of the lot will remain fully wooded, requiring all mitigation to be located in an approved off-site location.

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 MNCPPC staff, in interpreting that the applicable sections of Subtitle 5B of the Prince George’s County Code and COMAR Title 27 require the applicant to obtain a variance for clearing 30-percent or more of the developed woodland onsite, as well as conservation plan approval for the proposed clearing.

At the time of writing this referral, CAC has not provided a response pertaining to the April 11 and 25, 2023 submissions.

DEPARTMENT OF PERMITTING, INSPECTIONS, AND ENFORCEMENT (DPIE) – REVIEW

Copies of the approved SWM Concept Plan and letter (19892-2021-00), which is valid until October 12, 2025, were submitted with the subject application. The stormwater concept plan proposes stormwater to be directed to five dry wells for the treatment of on-site stormwater. These dry wells are in the rear of the proposed residential dwelling structure, but outside of 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 stormwater concept plan.

The revised April 11, 2023 CP 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 limits of disturbance (LOD).

ENVIRONMENTAL REVIEW

Natural Resources Inventory

A natural resource inventory plan (NRI) and forest stand delineation (FSD) were not required as part of the 1985 review of the overall subdivision. A NRI was completed to establish all the on-site environmental features (woodland limits, Potomac River water line, floodplain limits, Primary Buffer (CBCA 100-foot tidal buffer), Secondary Buffer (expanded Primary Buffer), and steep slopes). The NRI (NRI-010-2022) was approved on May 11, 2022, and was included with the application package. The NRI shows that the site contains 0.48 acre of developed woodlands and 0.05 acre of woodland area located within the 100-year floodplain. The CP correctly shows the site and buffers.

Chesapeake Bay Critical Area Conservation Plan (CP)

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 proposed driveway, house/garage location, and SWM structures, as required, as part of the overall review of the CP.

The application is on an infill lot within a 30-lot subdivision for the development of a new single-family detached dwelling with garage and install SWM structures. This lot has frontage on the Potomac River and is one of three lots that remain undeveloped. Since this lot is located adjacent to the tidal waters of the Potomac River, the environmental features, such as CBCA primary and secondary buffer, and 100-year floodplain area, steep slopes, and woodlands, are applicable.

According to PGAtlas.com, supplemental imagery around 1988 and 1989, this section of Waterside subdivision was wooded, and construction of the infrastructure (woodland clearing, and grading) had started. Current aeriels reflect that the woodland clearing associated with Waterside Court and approved with the 1985 PPS development was completed. Since no development occurred on this lot, natural regeneration occurred, and the open area naturally regenerated with trees and woody vegetation. During this 1988-1989 infrastructure activity for the overall subdivision, no woodland clearing took place within the primary buffer on this lot. As shown on the previously approved plans and the plat, the primary buffer contains an existing Washington Sanitary Sewer Commission (WSSC) sanitary sewer easement with an existing 18-inch pipeline. Within this WSSC easement is the Fort Foote Trail, a 25-foot hiker biker trail easement. All of the Waterside subdivision waterfront lots contain this sewer and Fort Foote Trail hiker biker easements. The hiker biker trail is owned by the National Park Service (NPS), but parts of this trail have been constructed within the Waterside subdivision.

The CP shows the required plan view information and tables. Included with the CP is a lot-by-lot table of impervious surfaces for the entire Waterside subdivision. This table was required since the applicant is requesting to use over the lot maximum of 15 percent impervious area but maintain the overall Waterside subdivision at less than 15 percent impervious area, as provided for in Subtitle 27-548.17(c)(4). A note shall be added below the table indicating that the Lots 6 and 14, the two remaining undeveloped lots, shall be limited to 15 percent impervious area.

Before the CP is certified, all remaining developed woodlands on the subject lot shall be placed in a conservation easement. The previously issued December 12, 2022 CP submitted by the applicant, proposed to meet a portion of their developed woodland requirement with on-site plantings. These on-site plantings cannot be credited for CBCA plantings as a single row in the front yard because they will not provide a substantial area to regulate in a conservation easement. Currently, the April 11, 2023 CP shows four individual native landscape tree species within the proposed 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 at an off-site location.

The applicant is proposing 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, the NPS should be contacted for comment.

Pier construction must be approved through a permit with the Maryland Department of the Environment (MDE), and the United States Army Corps of Engineers (USACOE). MNCPPC is not part of the pier permit process.

Technical revisions to the CP are required prior to certification.

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 the development of the site.

Chesapeake Bay Conservation Easement

A Conservation Easement will be required for this site, existing developed woodlands, and the mitigation plantings area. A metes and bounds description must accompany the easement. Review of the easement falls under the purview of DPIE.

Environmental Planning Section Recommendation

The EPS supports conditional approval of CP-22002 and DSP-86116-15 and recommends the approval of the requested variances to disturb slopes greater than 15 percent and to clear natural or developed woodlands in excess of 30 percent of the site.

SUMMARY OF RECOMMENDED FINDINGS AND CONDITIONS

The EPS recommends approval of CP-22002 and DSP-86116-15, subject to the following findings and conditions.

Recommended Findings:

1. No specimen trees are proposed for removal with this application.
2. The regulated environmental features (REF) on the subject property have been preserved and/or restored to the fullest extent possible based on the limits of disturbance shown on the conservation plan (CP) and detailed site plan (DSP). This application proposes no Primary or Secondary Buffer impacts other than the allowable access to the adjacent Potomac River.

Recommended Conditions:

1. Prior to certification of the CP, the following plan revisions shall be provided:

Conservation Plan

- a. Add below the Waterside lot-by-lot impervious table 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.
2. Prior to certification of the CP, the applicant shall work with DPIE 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 CP, the applicant shall execute and record a Chesapeake Bay Conservation and Planting Agreement. The agreement shall be reviewed by the County prior to recordation. The applicant shall provide a copy of the recorded agreement to DPIE, 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 the certification of the CP, a conservation easement for the proposed mitigation plantings and the existing developed woodland preservation area shall be recorded in the 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. ____.

December 14, 2022

MEMORANDUM

TO: Dominique Lockhart, Zoning Review Section, Development Review Division

VIA: Howard Berger, Historic Preservation Section, Countywide Planning Division **HSB**

FROM: Jennifer Stabler, Historic Preservation Section, Countywide Planning Division **JAS**
Tyler Smith, Historic Preservation Section, Countywide Planning Division **TAS**
Amelia Chisholm, Historic Preservation Section, Countywide Planning Division **AGC**

SUBJECT: DSP-86116-15 (CP-22002) (Hill Residence – Waterside Subdivision)

The subject property comprises 0.58 acres and is located on the west side of Waterside Court, near Fort Foote Road. The subject property is zoned RR (Rural Residential) and located within the 2006 *Approved Master Plan for the Henson Creek-South Potomac Planning* area. The subject application proposes the construction of a new two-story, single-family residence and boat pier in the CBCA, along with three variance requests.

The 2006 *Approved Master Plan for the Henson Creek-South Potomac Planning* contains goals and policies related to community heritage and culture (pages 99-102). However, these are not specific to the subject site or applicable to the proposed development. The subject application will have no impact on any Prince George's County Historic Sites or resources.

The subject site was once part of the Admirathoria (Upper Notley Hall) Plantation (Historic Site 80-005). Built in the nineteenth century and remodeled in the 1870s, Admirathoria is a two-and-one-half-story late-Georgian brick plantation house; its walls are laid in Flemish bond, and the stair hall takes up one of the four large spaces of the square floor plan. It was built for the Rozier family and remained the family home for nearly a century. The house replaced an earlier frame home called Lower Notley Hall, named for Notley Rozier. The original tract was called Admirathoria. In the 1870s, the original hip roof was replaced with the present mansard roof. Admirathoria is a significant Georgian structure and a unique example of its type in Prince George's County.

The Notley Hall Amusement Park (Archeology Site 18PR311) was located to the south of the subject site. The park was established in 1894 and operated until 1924. The Notley Hall Association, a black-owned-and-operated amusement park company formed about 1894, established a park on the Potomac waterfront in cooperation with the Independent Steamboat and Barge Company. Steamboat excursions were a popular form of entertainment in the late nineteenth and early twentieth century. Steamboats originating in Washington, D.C. made regular trips to the park, which offered a dancing

pavilion, bowling alley, shooting gallery, and horse rides. Lewis Jefferson, an African American businessman, general contractor, and real estate developer from Washington, D.C., assumed management of the Notley Hall Amusement Park in 1901. Jefferson renamed the resort Washington Park, added a roller coaster, carousel, penny arcade, and fortune-telling tent, built a new wharf, and installed electric lighting. Archeological investigations at the site identified 12 features associated with the park, 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.

The subject property is located in the Waterside Subdivision to the north of the site of the Notley Hall Amusement Park and to the west of the Admirathoria/Notley Hall Historic Site. The site where the proposed house is to be located was previously graded c. 1998. Therefore, Phase I archeological investigations are not recommended due to this previous ground disturbance. Historic Preservation staff recommends approval of DSP-86116-15 (CP-22002)(Hill Residence – Waterside Subdivision), with no conditions.

January 6, 2023

MEMORANDUM

TO: Dominique. Lockhart, Urban Design

FROM: Joanna Glascoe, Permit Review Section, Development Review Division

SUBJECT: Referral Comments for **DSP-86116-15 & CP-22002 Hill Residence - Waterside Subdivision**


1. Please provide the dimension of the driveway on site plan
2. Site plan must demonstrate the number of car garage 1, 2 or 3.
3. Please demonstrate set-back front, rear and sides on site plan.

301-952-3972

January 25, 2023,

MEMORANDUM

TO: Dominique Lockhart, Planner II, Zoning Section, Development Review Division

VIA: David A. Green, MBA, Planner IV, Community Planning Division 

FROM: Chidy Umeozulu, Planner III, Neighborhood Revitalization Section, Community Planning Division *CU*

SUBJECT: CP-22002, DSP-86116-15, Hill Residence - Waterside Subdivision

FINDINGS

Community Planning Division staff finds that pursuant to Division 2 of the Chesapeake Bay Critical Area Ordinance, Master Plan Conformance is not required for this application. However, it conforms to the Residential, Low Density land use recommendation of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*.

BACKGROUND

Application Type: Conservation Plan with a variation from the Chesapeake Bay Critical Area requirements.

Location: West side of Waterside Court south of its intersection with Cagle Place – 8215 Waterside Court

Size: 0.58 Acres

Existing Land Use: Vacant

Proposal: Construction of a new two-story single-family residence and boat pier in the Chesapeake Bay Critical Area (CBCA)

GENERAL PLAN, MASTER PLAN, AND SMA

General Plan: Plan Prince George's 2035 designates the area in the Established Community Growth Policy area. The vision for the Established Communities is context sensitive infill and low- to medium-density development. (P.20)

Master Plan: *The 2006 Approved Henson Creek-South Potomac Master Plan* recommends Residential, Low-Density land use on the property.

Planning Area: 80

Community: South Potomac

Aviation/MIOZ: This application is not located within an Aviation Policy Area or the Military Installation Overlay Zone.

SMA/Zoning: The 2006 Approved Henson Creek-South Potomac Sectional Map Amendment retained the Residential Estate (R-E) Zone with Limited Development Overlay (L-D-O).

ADDITIONAL INFORMATION

None

c: Long-range Agenda Notebook
Frederick Stachura, Planning Supervisor, Neighborhood Revitalization Section, Community Planning Division

Wes Moore
Governor

Aruna Miller
Lt. Governor



Charles C. Deegan
Chairman

Katherine Charbonneau
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

January 26, 2023

Mr. Chuck Schneider
Planner III
Maryland-National Capital Park and Planning Commission
Prince George's County Department of Planning
9400 Peppercorn Place, Suite 230
Largo, MD 20774

**Re: Hill Steep Slopes and Clearing of Natural or Developed Woodland Variance
DSP86116-15 (8215 Waterside Court)**

Dear Mr. Schneider:

Thank you for submitting the information regarding the variance request to disturb steep slopes in excess of 15% and to clear natural and developed woodland in excess of 30% on a parcel designated Limited-Development-Overlay (L-D-O), as required under §5B-121(e)(5) of the Prince George's County Code, COMAR 27.01.0.09.01.E(1)(ii), §27-548.17 of the Prince George's County Code, and COMAR 27.01.02.04.C(3)(d), respectively. The vacant parcel is 0.58 acres in size, of which 0.48 acres exists of natural and developed woodland. The applicant proposes to clear 0.25 acres (52%) of the existing natural and developed woodland onsite to newly construct a residential dwelling, a driveway, and to emplace a woodchip riparian accessway from the deck to the shoreline.¹ A secondary buffer exists due to steep slopes in excess of 15% that are contiguous to the primary buffer. The installation of a dry well and part of the riparian accessway will impact the steep slopes in excess of 15%, located in the secondary buffer. The proposed lot coverage is 5,564 sf (22%).

Per §27.548.17(c)(4) of the Prince George's County Code, lot coverage on individual parcels may exceed 15 percent if the overall percentage of lot coverage does not exceed 15 percent for the entire subdivision and if the subdivision was approved after December 1, 1985. Based on conversations between Maryland-National Capital Park and Planning Commission (M-NCPPC) staff and Critical Area Commission staff, if the proposed variance is approved, the entire subdivision can still meet the 15% lot coverage threshold. Specifically, 38,768 sf (2.4%) of lot coverage will still be available within the Critical Area-designated portion of the entire subdivision. The lot coverage threshold (15%) for each of the two remaining vacant parcels totals 10,689 sf, which M-NCPPC has determined is adequate to accommodate the development of the two vacant parcels. This would also leave additional lot coverage for additions and/or modifications to improvements located on existing developed parcels and the HOA-dedicated area within the Critical Area-designated portion of the subdivision.

¹ A walkway in the buffer or expanded buffer, including a stairway, that provides direct access to a community or private pier is not defined as lot coverage per Natural Resources Article § 8-1808.2(17)

Maryland's Critical Area Law provides that variances to a local jurisdiction's Critical Area program may be granted only if the Board of Appeals finds that an applicant has satisfied the burden to prove that the request meets each and every one of the State's variance standards, which can be found in Prince George's County Subtitles 27 and 5B. Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is sought does not conform to the purpose and intent of the Critical Area law. In order for the Board of Appeals to grant this variance, the applicant must address, and the Board of Appeals must find that each and every one of the County's variance standards, including the standard of unwarranted hardship, are met. Unwarranted hardship is defined as such "that without a variance, an applicant would be denied reasonable and significant use of the *entire* parcel or lot for which the variance is requested."

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 acres 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% given the site design, including the amount of stormwater runoff generated by the proposed lot coverage on a lot comprising 0.48 acres, 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% 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% lot coverage limit is met for the entire subdivision; it is our understanding that M-NCPPC is in the process of completing this update.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for the variance. Please notify the Commission of the decision made in this case. If you have any questions, please feel free to contact me at (410) 260-3481.

Sincerely,



Tay E. Harris

Natural Resources Planner

File: PG 457-22

January 31, 2023

MEMORANDUM

TO: Dominique Lockhart, Planner III, Zoning Section
VIA: Mridula Gupta, Planner III, Subdivision Section *MG*
FROM: Antoine Heath, Planner II, Subdivision Section *AH*
SUBJECT: DSP-86116-15 (CP-22002); Hill Residence – Waterside Subdivision

The property considered in this amendment to detailed site plan (DSP-86116-15) and Conservation Plan CP-22002 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 is located within the Rural Residential (RR) Zone and was located within the prior Rural Residential (R-R) Zone. The property is also located within the Limited Development Overlay (LDO) Zone for the Chesapeake Bay Critical Area in both the current and prior Prince George's County Zoning Ordinance. The applicant has elected to file this application pursuant to the prior Subdivision Regulations and Zoning Ordinance.

The property is subject to Preliminary Plan of Subdivision (PPS) 4-85186 titled "Waterside" which was approved by the Prince George's Planning Board on December 18, 1985 (PGCPB Resolution No. 85-431). PPS 4-85186 approved 34 lots for the development of 34 single-family detached dwellings.

PPS 4-85186 was approved subject to 12 conditions of approval. The conditions relevant to the subject application are shown below in **bold** text. Staff analysis of the project's conformance to the relevant conditions follows each one in plain text.

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 DSP provided by the applicant provides custom architecture, a walkout basement on the (down-hill side) of the property, and a retaining wall. The applicant also submitted a copy of the Sediment Control Plan, but did not submit a soils report in accordance with Condition 3f. Conformance to this condition should be further reviewed by the Environmental Planning Section and Urban Design Section.

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

A final plat (5-87108) was approved by the Planning Board for the subject property on May 7, 1987. Therefore, this condition would have been satisfied prior to the final plat approval. The applicant has, however, submitted a copy of the Stormwater Management (SWM) Concept Plan and letter (#19892-2021-00), approved by the Department of Permitting, Enforcement, and Inspections (DPIE).

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 a CBCA primary buffer line. It is not clear, however,

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 mangagment facilities in the public right-of-way, such as grass swales.

Confromance to this condition should be reviewed by DPIE and Environmental Planning Section.

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

The Parks and Recreation memorandum dated November 14, 1985 has two recommendations, which are as follows:

- 1. **In accordance with Section 24-135 of the Subdivision Regulations of the Prince George's County Code, the Planning, Design & 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' 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 & 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 for the following reason/s checked:

The reasons checked on this memorandum for requiring a fee-in-lieu of dedication were the location, topography, and configuration. This condition would have been previously addressed at the time the final plat approved 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.**

A final plat (5-87108) was approved by the Planning Board for the subject property on May 7, 1987. Therefore, this condition would have been satisfied prior to the final plat approval. With this DSP application, however, the applicant has 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 to 9f should be further reviewed by Environmental Planning Section and Urban Design Section.

- 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, if approved, will conform to this condition.

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

A final plat (5-87108) was approved by the Planning Board for the subject property on May 7, 1987. Therefore, this condition would have been satisfied prior to the 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 should be reviewed by the Historic Preservation Section.

Additional Comments:

Notes 6 and 7 of the record plat are applicable at the time of grading and/or building permit, and are as follows:

- 6. Issuance of grading or Building Permits for Lots 5, 6, 7, 8, and 9, Block "A", subject to completion of Phase II Archeological Investigations of those sites recommended for such treatment in the Phase I Archeological Survey.**
- 7. Issuance of final building Permit subject to erection of historic marker or similar, interpretive device concerning the Notley Hall Amusement Park, of an appropriate spot adjacent to the 25' Hiker/Biker easement.**

Recommended Conditions:

None.

This referral is provided for the purposes of determining conformance with any underlying subdivision approvals for the subject property and Subtitle 24. The DSP has been found in conformance with the approved preliminary plan of subdivision. All bearings and distances must be clearly shown on the DSP and must be consistent with the record plat, or permits will be placed on hold until the plans are corrected.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Countywide Planning Division
Transportation Planning Section

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco
301-952-3680

February 1, 2023

MEMORANDUM

TO: Dominique Lockhart, Zoning Section, Development Review Division

FROM: *BAP* Benjamin Patrick, Transportation Planning Section, Countywide Planning Division

VIA: *WCA* William Capers III., PTP, Transportation Planning Section, Countywide Planning Division

SUBJECT: DSP-86116-15 & CP-22002 Hill Residence- Waterside Subdivision

Proposal:

The referenced Detailed Site Plan (DSP) application with a companion Conservation Plan (CP) application proposes the construction of a new single-family dwelling unit and an associated boat pier in the Chesapeake Bay Critical Area (CBCA). The subject property is located on the west side of Waterside Court, near Fort Foote Road. The subject property is zoned RR and located within the 2006 *Approved Master Plan for the Henson Creek-South Potomac Planning* area. The transportation planning review of the referenced DSP application was evaluated under the prior Section 27, Zoning Ordinance.

Prior Conditions of Approval:

Preliminary Plan of Subdivision (PPS) 4-85186 was approved by the Planning Board on December 18, 1985. This was followed by Detailed Site Plan DSP-86116, which laid out the subdivision as it currently exists. Since that time, numerous minor revisions to the DSP have been approved.

Comment: There are no transportation conditions related to the subject application from the prior approvals for this site.

Master Plan Compliance:

Master Plan Right of Way

This development case is subject to the 2009 Approved Countywide Master Plan of Transportation (MPOT), however, there are no master plan right of way recommendations that impact the subject site.

Master Plan Pedestrian and Bicycle Facilities

There are no master plan bicycle and pedestrian facilities recommended for the subject site, however, a public use trail easement was established for the Waterside subdivision through approved Site Plan SP-86116. The easement is reflected on approved record plats NLP-132-94 and

NLP-132-95 (Waterside, Plats One and Two) and shown on the detailed site plan as a “25-foot hiker/biker easement”. This easement is accurately shown on the submitted detailed site plan and is acceptable to staff.

Transportation Planning Review:

As mentioned above, this application proposes the construction of a single-family home and boat pier. Access is provided to the residential lot via a driveway from Waterside Court. There are no prior conditions of approval or master plan recommendations, and the hiker/biker easement is accurately shown on the plans.

Conclusion:

In consideration of the scope of this application, the Transportation Planning Section recommends approval of DSP-86116-15 & CP-22002 Hill Residence with the no additional conditions of approval.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org
301-952-3530

February 1, 2023

MEMORANDUM

TO: Dominique Lockhart, Planner III, Zoning Section

FROM: Tom Burke, Planner IV, Urban Design Section *TB*

SUBJECT: **Detailed Site Plan DSP-86116-15**
Chesapeake Bay Critical Area Conservation Plan CP-22002
Hill Residence - Waterside

The Urban Design Section has reviewed this application accepted on December 12, 2022 in support of Detailed Site Plan DSP-86116-15 and Chesapeake Bay Critical Area Conservation Plan CP-22002. The applicant is proposing to develop this currently undeveloped waterfront property with a 3,555 square foot dwelling and associated appurtenances, resulting in a total impervious area on the property of 5,564 square feet, or 22-percent of the total lot area.

The property is located within the Residential, Rural (RR) Zone; however, this application is being reviewed and evaluated in accordance with the prior Prince George's County Zoning Ordinance, Rural Residential (R-R) Zone.

Conformance with the Requirements of the Prince George's County Zoning Ordinance

1. The application is subject to the requirements of the prior Rural-Residential (R-R) Zone. The proposed single-family detached is a permitted use in the R-R Zone.

CHESAPEAKE BAY CRITICAL AREA (CBCA) ORDINANCE

2. The application is subject to the requirements of Section 5B-114, Limited Development Overlay (L-D-O) Zone of the CBCA Ordinance. Conformance with the requirements of this section will be evaluated by the Environmental Planning Section

Conformance with Prior Approvals

3. Preliminary Plan of Subdivision (PPS) 4-85186 was approved by the Planning Board on December 18, 1985, and subsequently Detailed Site Plan, DSP-86116 was approved. These approvals established the overall layout for the Waterside community. DSP-86116-11 was approved by the Planning Director on December 9, 2004 for a single-family detached dwelling on this property; however the dwelling was never constructed.

Conformance with the Requirements of the Prince George's County Landscape Manual

4. The development proposal for a new single-family detached home is subject to the prior 2010 *Prince George's County Landscape Manual* because the application is for new construction. Specifically, the following sections of the *Landscape Manual* are applicable to this property:

Section 4.1 - Residential Requirements: The plan provides the schedule and plantings showing the requirements of Section 4.1 being met for lots between 20,000 square feet and 39,999 square feet by planting four shade trees and three ornamental trees and 23 evergreen trees.

Section 4.9 - Sustainable Landscaping Requirements: The correct schedule and notes have been provided on the plan showing conformance with the requirements of Section 4.9 for native species.

Conformance with the Prince George's County Tree Canopy Coverage Ordinance

4. This property is located within the Chesapeake Bay Critical Area and is therefore exempt from the requirements of the Tree Canopy Coverage (TCC) Ordinance in accordance with Section 25-127(b)(1)(E).

Urban Design Section Recommendation

In accordance with the above analysis, the Urban Design Section has no objection to the approval of Detailed Site Plan DSP-86116-15 and Chesapeake Bay Critical Area Conservation Plan CP-22002, for Hill Residence-Waterside.