



## Comments Regarding 4104 Woodlark Drive

### To Chesapeake Bay Ordinance Exceptions Review Committee

January 11, 2018

Article 5 of the Fairfax Hills covenant prohibits sale or rental to non-whites, an approach whose enforcement is no longer justifiable. Likewise, setback covenants are no longer justifiable when RPA's are violated. The covenant's setback provision must yield to the duty to preserve our natural heritage, just as its whites-only provision long ago yielded to the demands of social justice.

The Chesapeake Bay Preservation Ordinance Exception Review Committee needs to direct staff to report on other situations where covenants have overridden RPA restrictions. If there are many such cases, a precedent needs to be established to halt the practice, either by the Committee, or by the courts.

The situation is very much of the applicant's own making. The applicant is not the original owner of this property. The applicant did not innocently purchase this property before the existence of the Chesapeake Bay Ordinance or Resource Protection Areas. The applicant is an investment company specializing in real estate development. The applicant was fully informed of the environmental restrictions on the property and the importance of those restrictions to preserve the health of our streams and the Chesapeake Bay. Nonetheless, the applicant chose to purchase this particular property knowing their financial gain would come at the expense of the Chesapeake Bay.

Further, as a commercial entity specialized in real estate development, the applicant should have reasonably been expected to discover the covenant restrictions in the normal course of pre-purchase due diligence. Simple reasoning alone would have advised the applicant that there existed compelling reasons why this lot has lain undeveloped since 1941 while surrounded by subdivisions.

Yet further, as the applicant's representative made clear at the December 6th hearing, the applicant was, in fact, aware of the setback covenant, but felt safe from enforcement by an inactive civic association.

The applicant's intention is clearly to sell the property as soon as possible and leave others to deal later with the problems of flooding and environmental degradation.

The damage to the watershed is not insignificant. This decision is not made in a vacuum. It is a cumulative addition to all the other impositions on our watersheds, each with its own justification, each with its own claim to cause no significant degradation. Each road widening, each trail paving, each and every replacement of wooded habitat with pavement pushes our watersheds just that much closer to the edge.

A decision in favor of the applicant may be expected to cascade very soon, as this is just one of four side-by-side undeveloped properties along Woodlark Drive, each nearly identical in size and its relationship to both the street and the stream.

The Committee is being asked to consider and decide between two conflicting restrictions on the use of this property. One restriction is the Resource Protection Area, based on science and the unquestionable need to preserve the health of our streams and the Chesapeake Bay. The other restriction is the covenant, an arbitrary limitation intended to provide subjective benefits, conceived at a time when all the harms befalling the Chesapeake Bay were little understood.

Again, the covenant's setback provision is an artifact of the past which must give way to the duty to preserve our natural heritage, just as the covenant's whites-only provision has made way for society's duty to ensure equal justice.

No actual (as opposed to theoretical) injury to anyone will occur if the covenant is waived. In contrast, very real and everlasting damage will be caused by encroachment upon the Resource Protection Area.

The Committee's duty is to deny the application and direct the applicant to seek legal remedies to lift the covenant.

Yours,

**Friends of Accotink Creek**

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