

MINUTES

Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland

August 5, 2020
~Revised~

CALL TO ORDER: Chairman Charles C. Deegan called the meeting to order at 1:00 p.m. Chairman Deegan announced that the meeting was being held remotely on Microsoft Teams due to the current public health emergency. He shared that the meeting was being recorded and streamed live to the public and that a copy of the recording would be made available on the Commission's website. Executive Director Kate Charbonneau did a roll call to confirm the Commission members in attendance.

Commission Members in Attendance:

Tim Adams, Prince George's County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Jeffrey Ferguson, Eastern Shore at Large
Anita Grant, Western Shore at Large
Sue Greer, Charles County
Deborah Herr Cornwell, Department of Planning
Sandy Hertz, Department of Transportation
Michael Hewitt, St. Mary's County
Matt Johnston, Anne Arundel County
Charles Laird, Somerset County
James Lewis, Caroline County
Pat Mahoney, Calvert County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Catherine McCall, Department of Natural Resources
Ewing McDowell, Department of Commerce
Marianne Navarro, Baltimore City
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Tammy Roberson, Department of Environment
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Carolyn Cummins, Worcester County – Coastal Bays
Jennifer Merritt, Worcester County – Chesapeake Bay
Michael McCarthy, Talbot County
Donald Sutton, Kent County

OPENING REMARKS: Commissioner Deegan began with a few words in memory of Commissioner Culver, Wicomico County Executive, who passed recently. He then introduced three new Commissioners; Commissioner Jeffrey Ferguson representing the Eastern Shore Member at Large, Commissioner Anita Grant representing the Western Shore Member at Large, and Commissioner Tim Adams, Mayor of the City of Bowie, representing Prince George's County.

STAFF PRESENTATIONS: The following presentations were made by Commission staff.

Regulations – Proposed – Agriculture Chapter Updates

Ms. Hoerger presented for a vote to publish the proposed changes to the Agriculture Chapter updates in the Maryland Register. Ms. Hoerger reviewed her staff report and attached regulatory proposal, the contents of which are incorporated into and made a part of these minutes.

At its May 1, 2019 meeting the Commission was introduced to this draft proposal to update the agriculture regulations as a part of its regular work revising and updating Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays regulations of the Code of Maryland Regulations (COMAR). Title 27 consists of three subtitles: Subtitle 01 Criteria for Local Critical Area Program Development; Subtitle 02 Development in the Critical Area Resulting from State and Local Agency Programs; and Subtitle 03 Project Applications. Currently staff are working through the chapters in Subtitle .01 in order to update the provisions. These updates may also include updates to Subtitle .02 and Subtitle .03. The purpose this proposal is to modernize the drafting style, update, and where necessary, delete certain outdated provisions in the Agriculture Chapter. The proposal does not include any additional regulatory requirements of the affected regulated community.

Commissioner Herr-Cornwell moved to authorize publication of the proposed regulatory changes to the Maryland Register as attached to the staff report and Commissioner Oberg seconded.

Motion carried.

Information Only – Water-Dependent Facility Chapter Updates

Ms. Hoerger presented a memorandum for information only, the contents of which are incorporated into and made a part of these minutes. At its June 3, 2020 meeting the Commission was introduced to the draft proposal to update the water-dependent facility regulations (COMAR 27.01.03). The purpose of the regulations are to specify the criteria for review and approval of a variety of facilities or activities that require location at or near the shoreline or in the Buffer. Under these criteria local jurisdictions can permit such activities without a variance to disturb the Buffer. The majority of the updates to this chapter modernize the drafting style by updating, and where necessary, deleting certain provisions.

This draft will also include a new regulation that will address the location of agricultural and forestry-related industries to locate certain activities in the Buffer in the Limited Development Area (LDA) and in the Resource Conservation Area (RCA). The current regulations already cover these types of activities in Intensely Developed Areas (IDA) at an industrial or port-related facility. It is important to note that this new provision is written as an "opt-in" provision by a

local government and is not a mandatory requirement to include it as part of a local Critical Area program.

There were no questions posed by the Commission for Ms. Hoerger.

PROGRAMS

Refinement – City of Annapolis Comprehensive Review of the Critical Area Program (Anne Arundel County)

Ms. Kate Durant presented a proposed refinement to the City of Annapolis Critical Area Program. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On January 13, 2020, the Mayor and the City Council of the City of Annapolis voted to update and amend the City's Critical Area program through the adoption of Ordinance O-27-19. Ordinance O-27-19 also adopts the updated Critical Area maps for the City of Annapolis as final. On February 14, 2020, the Mayor signed the adopted Ordinance and on May 19, 2020, the City submitted the updated Ordinance to the Critical Area Commission for final review and approval.

The majority of the updates to the City's Critical Area Program are related to changes made to the Critical Area law and regulations since 2005 including provisions for reasonable accommodations related to disabilities, procedures for lot consolidation and reconfiguration and updated Buffer provisions. After reviewing the types of changes included in the Ordinance, Ms. Durant described a number of recommended revisions to the Code in order to ensure consistency with State law and regulations. Those revisions were further outlined in the staff report.

Chairman Deegan recognized Commissioner Herr-Cornwell, who chaired the Program Subcommittee in Commissioner Cummins' absence. She stated that the Program Subcommittee recommends concurrence with the Chairman's determination of a refinement. Further, in order to ensure consistency with Critical Area law and regulations, she recommended that the Chairman approve the refinement with the condition that the proposed ordinance be amended as outlined in the staff report and in the attached Ordinance.

There were no questions. Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – City of Annapolis Critical Area Boundary Map Update (Anne Arundel County)

Ms. Durant presented a refinement to the City of Annapolis Critical Area Boundary Map. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

Commission staff worked with the City of Annapolis, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the city. These draft maps were vetted by the aforementioned agencies, were presented at a public meeting in the City of Annapolis, and lastly, were delivered to the town for public comment and local approval. The

update resulted in a gain of 114 acres and a loss of 33 acres, with a net gain of 81 acres. As part of the mapping update, the Mayor and City Council approved Ordinance O-27-19 at their meeting on January 13, 2020.

Chairman Deegan recognized Commissioner Herr-Cornwell, who stated that, as the mapping update was completed in accordance with State Law and COMAR 27.01.11, the Program Subcommittee recommends concurrence with the Chairman's determination that the City of Annapolis mapping update can be reviewed as a refinement to the City's Critical Area Program. Further, she recommended the Chairman approve the map update portion of Ordinance O-27-19.

There were no questions. Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – Text Amendment – Minor, Private Utility (St. Mary's County)

Ms. Annie Sekerak presented a refinement to the St. Mary's County Comprehensive Zoning Ordinance. Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On May 19, 2020, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance (SMCZO). Ordinance No. 2020-19 will amend Section 51.3.98 of SMCZO to allow a new use, privately-owned minor utilities, across the County, including within the Critical Area. Ms. Sekerak reviewed how minor utilities are defined and limited in the Critical Area, including in the RCA. The purpose of the amendment is to help allow the location of replacement sewage disposal systems offsite in order to reestablish previously existing commercial uses.

Following this, Chairman Deegan recognized Commissioner Herr-Cornwell, who stated that the Program Subcommittee recommends concurrence with the Chairman's determination that these text amendments be processed as a refinement to the County's Critical Area Program. Further, the subcommittee recommends that the Chairman approve the text amendment with the condition that the proposed ordinance be amended as outlined in the staff report.

There were no questions or comments. Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – Text Amendment to Allow Accessory Dwelling Units (ADUs) in the Resource Conservation Area (RCA) (Queen Anne's County)

Ms. Susan Makhoulf presented a proposed refinement to Queen Anne's County's Critical Area Ordinance to allow accessory dwelling units in the RCA. Ms. Makhoulf reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On June 11, 2020, a citizen sponsored text amendment to allow ADUs in the RCA received a favorable recommendation by the Queen Anne's County Planning Commission. The Planning Commission found that the proposed text amendment is consistent with both the County Ordinance and the Comprehensive Plan. In particular, the Planning Commission determined that the text amendment is consistent with the standards for development in the RCA since it will allow residents to construct a moderate/modest ADU in the RCA by limiting the size and

location of the ADU and specifying that the ADU must be served by the same onsite sewage disposal system as the primary dwelling unit.

The bill includes the limitations required by State law, including location within a dwelling or within 100 feet of the dwelling, no larger than 900 square feet, and service by the same sewage disposal system as the primary dwelling. These proposed text amendments provide consistency in reviewing and permitting ADUs in the RCA and ensure that development standards in the RCA will continue to be met.

Chairman Deegan recognized Program Subcommittee member, Commissioner Herr-Cornwell, who stated that the Program Subcommittee recommends concurrence with the Chairman's determination that this text amendment be processed as a refinement to the Queen Anne's County Critical Area Program since the text amendment is authorized under Natural Resources Article 8-1808.1(e)(2). The Program Subcommittee further recommended that the Chairman approve this text amendment as proposed.

There were no questions or comments. Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – Text Amendment – Special Events in Resource Conservation Areas (Worcester County)

Mr. Michael Grassmann presented a proposed refinement to Worcester County's Critical Area program to allow certain organized special events as a conditional use in the Resource Conservation Area (RCA). Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made a part of the minutes.

On May 19, 2020, the Worcester County Commissioners adopted Bill #20-3, "Natural Resources – Special Events in Resource Conservation Areas," which amended §NR 3-102 and §NR 3-108 of the County's Natural Resources Article in order to allow special events by Special Exception in the Resource Conservation Area (RCA) of the Atlantic Coastal Bays Critical Area. This would be the tenth RCA use permitted in the Atlantic Coastal Bays Critical Area. Other permitted uses include: home occupations, golf courses, a non-profit office or establishment, bed-and-breakfasts, and day-care facilities. The specific standards for the RCA included, among other items, a restriction on new lot coverage in the Buffer, a site plan showing how a special events use will minimize impacts to natural resources and protect the defined land uses in the RCA, a limitation to only allow events between April 1 and October 31, and a requirement that the event must meet all other Critical Area development requirements, including compliance with Habitat Protection Area provisions. Contrary to the workgroup recommendations made in 2012, the County Commissioners did not adopt a limitation on the duration of an event or on the number of events that could be held during the noted yearly timeframe in order to limit the number, movement, and activities of people in the RCA.

Chairman Deegan recognized Program Subcommittee member, Commissioner Herr-Cornwell, who stated that the Program Subcommittee concurs with the Chairman's determination that the Worcester County text amendment can be reviewed as a refinement to the County's Critical Area Program. Commissioner Herr Cornwell further recommended that in order for the text amendment to be consistent with the purposes, policies, and goals of the Critical Area statute and

regulations the Chairman should return the proposed Ordinance back to Worcester County with the requirement for two changes to be made:

- The County shall include additional measures to limit the number, movement, and activities of people in the Resource Conservation Area and to minimize impacts to the defined land uses of the Resource Conservation Area. This should include limits to the number of special events and/or duration of special events.
- The following language (in **Bold**) shall be added to to § NR 3-108(d)(1) of the Worcester County Zoning Ordinance:
 - “All lot coverage pertaining to the special event activities, including, but not limited to, temporary structures, temporary tents, **parking areas (including grassed areas, lawn, and farm fields)**, and otherwise must occur outside the 100-foot Buffer **or other Habitat Protection Areas** unless the lot coverage is **legally developed** and existed at the time of special exception application, and lot coverage limits are met.”

There were no questions or comments. Chairman Deegan stated he accepted this recommendation and this would be his final decision.

OLD BUSINESS

Executive Director Kate Charbonneau stated that there was no old business to address at this time.

LEGAL UPDATES:

Assistant Attorney General Emily Vainieri had no legal updates to report.

Chairman Deegan adjourned the meeting at 2:45 p.m.



Lynette Fullerton, Commission Secretary

9/2/2020

Date of Approval