

MINUTES

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

October 2, 2019

CALL TO ORDER: A meeting of the Critical Area Commission was held at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Dave Cannon, Dorchester County
Robert Culver, Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Deborah Herr Cornwell, Maryland Department of Planning
Sandy Hertz, Maryland Department of Transportation
Michael Hewitt, St. Mary's County
Matt Johnston, Anne Arundel County
James Lewis, Caroline County
Pat Mahoney, Calvert County
Gary Mangum, Queen Anne's County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, MD Department of Commerce
Jennifer Merritt, Worcester County – Chesapeake Bay
Marianne Navarro, Baltimore City
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Gary Setzer, Department of the Environment
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Virginia Clagett, Western Shore Member-at-Large
Sue Greer, Charles County
Charles Laird, Somerset County
David Marks, Baltimore County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large

ANNOUNCEMENTS:

Chairman Deegan welcomed the new Commissioner from Dorchester County, Cambridge Councilman Dave Cannon, who was unable to make the last meeting. Chairman Deegan also made several announcements related to Commission staff. Staff member Jennifer Delve retired at the end of September after serving over thirty years for the Commission. Several Commission staff appeared before the Joint Committee on the Chesapeake and Atlantic Coastal Bays the previous week and updated them as to recent activities. Lastly, Chairman Deegan announced that staff would be holding four public information sessions in Anne Arundel County to update citizens regarding the Critical Area map update.

APPROVAL OF MINUTES: A motion was made by Commissioner Mahoney and seconded, to approve the minutes of the August 7, 2019 Commission meeting. **Motion carried.**

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

Washington Suburban Sanitary Commission – Piscataway Wastewater Treatment Plant (WWTP) Water Resources Recovery Facility (WRRF) Phase II (Bio-Energy)

Improvements:

Ms. Tay Harris presented for vote the proposed construction of new facilities at the Piscataway Wastewater Treatment Facility. Ms. Harris reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The Washington Suburban Sanitary Commission (WSSC) is proposing to renovate its Piscataway Wastewater Treatment (WWTP) facility by replacing the old operating systems with a new Water Resources Recovery Facility (WRRF), referred to as a bio-energy facility.

The overall project area consists of 309.65 acres, of which 181.09 acres lie within the Critical Area and are designated as a Resource Conservation Area (RCA). The project consists of the construction of new buildings, demolition and retrofit of existing buildings, and replacement and installation of pipelines throughout the project site. The limit of disturbance is 9.45 acres, of which 7.58 acres lie within the Critical Area. A Memorandum of Understanding (MOU) exists between the Critical Area Commission and WSSC; however, the proposed activities do not fall under the MOU due to land disturbance of more than 10,000 square feet; therefore, review and approval by the Critical Area Commission is required. At the conclusion of the presentation there were no questions.

Project Subcommittee Chair, Commissioner Setzer, moved on behalf of the Project Subcommittee that the Commission approve the Phase II renovations proposed by the Washington Suburban Sanitary Commission for the Piscataway Wastewater Treatment Plant Water Resources Recovery Facility in accordance with the staff report and presentation and with the following conditions:

- (1) Prior to the start of construction, the Washington Suburban Sanitary Commission shall submit copies of the final approvals for erosion and sediment control and stormwater

management to Critical Area Commission staff; and

- (2) Prior to the start of construction, the Washington Suburban Sanitary Commission shall obtain approval from Commission staff for the planting plan and execute a planting agreement.

Commissioner Beulah seconded the motion. Motion carried.

Anne Arundel County Public Schools – West Annapolis Elementary School Field Improvement Project – City of Annapolis.

Ms. Kate Durant presented for Conditional Approval the field improvement project at West Annapolis Elementary School in Annapolis, MD. Ms. Durant provided a Powerpoint and reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Anne Arundel County Public Schools (AACPS) proposes to install a rubber play surface to replace an existing grass playfield at the school. Additional site improvements include paths to the playing field and a stormwater management facility. It has become difficult to maintain grass on the existing playfield due to several factors, including poor drainage, too much shade, and extensive use. The play area will be excavated, gravel will be placed in the area and the rubber play surface will be placed on top.

The proposed project will be located on lands in the City of Annapolis designated as a Limited Development Area (LDA). The total acreage of the site is 2.20 acres, current lot coverage is 1.20 acres (54.5%), and proposed lot coverage is 1.32 acres (60%). The project requires conditional approval by the Commission because it is over allowable lot coverage. In addition to relocating four trees, the project will provide 1:1 mitigation for the additional new lot coverage of 5,074 square feet. At the conclusion of her presentation, Commissioner Cummins asked about the age of the transplanted trees and whether they would survive. The applicant noted that they have to provide a 2-year maintenance agreement with the City associated with the grading permit.

Project Subcommittee Chair, Commissioner Setzer, moved on behalf of the Project Subcommittee that the Commission approve the site improvements to West Annapolis Elementary School proposed by Anne Arundel County Public Schools in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, Anne Arundel County Public Schools shall submit copies of all final approvals, including erosion and sediment control and stormwater management, to Commission staff; and
- (2) Prior to the start of construction, Anne Arundel County Public Schools shall sign the Commission's landscape agreement providing 2 years of replacement coverage for the transplanted trees.

As required by Code of Maryland Regulations, this motion is based on the following considerations:

- Except for exceeding the allowable 15% lot coverage, the proposed project is in compliance with the relevant chapters of this subtitle.

- Disturbances to the Critical Area will be mitigated on site and at appropriate ratios specified by the Commission.
- The proposed project offers public benefits to the Critical Area Program by eliminating a source of sediment to Weems Creek, improving water quality through the construction of stormwater best management practice, and enhancing habitat through its mitigation plan.

Refinement – Buffer Modification Area Map Amendment – 301 West Haven Drive, Severna Park – Anne Arundel County.

Ms. Charlotte Shearin presented Anne Arundel County’s proposal to designate a property located at 301 West Haven Drive in Severna Park as a Buffer Modification Area (BMA). Ms. Shearin reviewed her staff report, the contents of which are incorporated and made into a part of these minutes. In addition, she presented slides of photographs of the project location.

On May 23, 2019, the Planning and Zoning Officer for Anne Arundel County determined that there was an omission in the mapping of a portion of the shoreline located at 301 West Haven Drive, Severna Park. The applicants petitioned Anne Arundel County for a map amendment to have the entire property classified as a BMA. They argued that there was an error or omission in the original maps because nearby properties on North Drive, South Drive, and the opposite side of Old Man Creek are designated as BMA. They stated that the development in the Buffer existed on the property prior to the effective date of the Critical Area law. They also asserted that the shoreline is eroding, and therefore the Buffer no longer fulfills its function in minimizing adverse effects of human activities on wetlands, shorelines, stream buffers, and aquatic resources. The applicants state that the Buffer also does not fulfill its function of maintaining an area of transitional habitat between aquatic and upland communities because sections of the eastern and northern sides of the property are unstable cliffs.

Anne Arundel County submitted this request to the Critical Area Commission on July 11, 2019 and Chairman Deegan determined that the request could be reviewed as a refinement on August 23, 2019.

~~The applicant argued that the entire property should have been mapped as BMA, and that the shoreline is not functioning as it should.~~ The County agreed with part of the applicant’s claim for a BMA designation on the property, and indicated that there was an error in not mapping part of the property as BMA; however, they felt that only the portion of the property with the house and associated amenities were not functioning properly. Portions of the remaining areas of shoreline are protected under a Forest Conservation Easement.

When the request for refinement was received by Commission staff, they were unaware that a previous variance on the property was postponed at the Board of Appeals level, as opposed to being withdrawn. It was then found that the client had previously submitted a variance request to build in the Buffer.

Program Subcommittee Chair, Commissioner Cummins, took the floor to deliver the Subcommittee’s findings. She stated that the Subcommittee had raised a number of issues and questions. The most significant concern was that there is an outstanding variance appeal at the Board of Appeals for a much larger structure that extends beyond the limits of the BMA.

Because of this, it is unclear how development will take place on the property and where it may be authorized. The Subcommittee concluded that it did not have enough information to make a recommendation on the BMA application.

Therefore, under Natural Resources Article 8-1809(p)(3)(iii)(2)(D), Commissioner Cummins, on behalf of the Program Subcommittee, recommended Chairman Deegan return the proposed refinement to Anne Arundel County with the following changes to be made:

- The variance case currently pending before the Anne Arundel County Board of Appeals, BA 9-18V, shall be completed, and all appeals shall be exhausted, prior to the County resubmitting the BMA application to the Commission for a decision.

Chairman Deegan agreed with the decision.

REGULATIONS:

VOTE – Wildlife Regulations – Permission to Publish as Final Regulations

Ms. Lisa Hoerger presented for vote a proposal to publish final regulations affecting the wildlife provisions of the Critical Area Criteria in the Maryland Register. At the May 1, 2019 meeting, Commission staff presented the draft of the wildlife regulations to the Commission for review and discussion. The Commission voted to give the staff permission to publish the draft in the Maryland Register as proposed regulations. On July 5, 2019 the regulations were published and the public comment period ran through August 5, 2019. No comments were received during the official public comment period.

Commissioner Cummins moved in favor of authorizing staff to publish these regulations as final, with a final effective date of November 4, 2019, and Commissioner Culver seconded. All voted in favor.

LEGAL UPDATES: Assistant Attorney General Emily Vainieri had the following legal updates to report:

Radtke (Update) – Illegal construction in the Buffer – Baltimore County. This is the case involving a 1,700 square foot concrete patio built without permits in the Buffer, about 9 feet from the water. Mr. Radtke is a disabled veteran and he has stated that he needs to be close to the water to help treat his PTSD. The County denied an after-the-fact variance for the patio. Mr. Radtke appealed. The Board of Appeals upheld the denial of the variance. Mr. Radtke appealed. The Circuit Court upheld the denial of the variance. Mr. Radtke to the Court of Special Appeals.

Update: The Court of Special Appeals identified this case as one that is appropriate for Alternative Dispute Resolution. That means that the briefing and argument deadlines are stayed while the parties participate in mediation with a retired judge and a staff attorney. Staff has participated in two mediation sessions and came to an agreement in principle. Ms. Vainieri will update the Commission as soon as the specific terms to the settlement are finalized.

Baldwin (Update) – Variance to the Buffer - Anne Arundel County. This is the case involving a 23-acre lot along Round Bay and Hopkins Creek, which is designated RCA and is located in

the Sahlin Estates subdivision. The contract purchasers propose to demolish and remove the existing one-story dwelling and additional house foundation remnants and construct a new dwelling, a pool, a detached garage and associated facilities. The Anne Arundel County Administrative Hearing Officer granted a variance for about a half-acre of disturbance to the expanded Buffer (expanded for steep slopes) for the construction of the new dwelling and associated facilities, including the pool. Three appeals have been filed opposing the issuance of this Critical Area variance: one by neighbors, one by the Chesapeake Bay Foundation, and one by the Critical Area Commission. **Update:** The Anne Arundel County Board of Appeals deliberated and voted to deny the variance. The Commission is awaiting the decision.

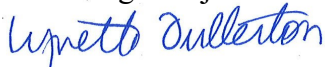
Mt. Ararat Farm / Buck – Illegal construction in the Buffer – Cecil County. The property owner's son constructed a 4-acre motocross racetrack without approvals at Mt. Ararat Farm in Port Deposit, Maryland. This resulted in the County citing the property owner for numerous violations including unauthorized construction in the Buffer and an unauthorized use of the Resource Conservation Area. The Board of Zoning Appeals affirmed those decisions of the Zoning Administrator. The property owner challenged the Board's decision in Circuit Court. The Commission, along with the County, participated in the case asking the Court to affirm the Board's decision. At the hearing in July, the judge ruled from the bench in our favor. The Commission is waiting for the Order to be signed and then the property owner has 30 days to decide whether to appeal the decision. If Ms. Buck does not appeal the decision, then it will revert to the enforcement action before the County where the Commission would want the racetrack removed, the area restored, and mitigation for the unauthorized impacts. The Circuit Court affirmed the Board of Zoning Appeals' decision. The property owner filed an appeal to the Court of Special Appeals.

OLD BUSINESS:

No old business to discuss.

NEW BUSINESS: There will probably not be a meeting in November. Next anticipated meeting will be on December 4.

Chairman Deegan adjourned the meeting at 1:45 p.m.



Lynette Fullerton, Commission Secretary

December 4, 2019

Date of Approval