

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401**

January 6, 2021

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
Curtis Beulah, Harford 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
David Marks, Baltimore County
Jennifer Merritt, Worcester County – Chesapeake Bay
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
Julie Oberg, Department of Agriculture
Tammy Roberson, Department of Environment
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Gary Mangum, Queen Anne's County
Steven Parker, Cecil County
Donald Sutton, Kent County

APPROVAL OF MINUTES: Commissioner David Marks motioned to approve the November 2020 minutes, and Commissioner Sandy Hertz seconded. All voted to approve.

STAFF PRESENTATIONS

PROJECTS

MDOT Maryland Transportation Authority (MDTA) – Bay Bridge Vehicle Maintenance Facility – New Office Building and Maintenance Building Replacement (Anne Arundel County)

Ms. Kate Durant presented for vote a proposal by the Maryland Transportation Authority (MDTA) to construct a new office building and demolish and replace an existing maintenance building, located at the William Preston Lane Jr. Memorial (Bay) Bridge Facility. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The 3.03-acre project site is located at 800 Oceanic Drive, on the western shore side of the Bay Bridge, and is currently used to maintain MDTA vehicles. The Critical Area designation is Intensely Developed Area (IDA). Site improvements will include a new parking area, additional parallel parking along the street, sidewalks, stormwater management, and new utility connections. The new building is required to provide office space for employees who will be working on long-term major capital projects related to improving the Bay Bridge. The existing vehicle maintenance building needs to be replaced to elevate it out of the floodplain and upgrade the equipment inside. The existing lot coverage is 0.73 acres and the proposed lot coverage is 0.38 acres, for total lot coverage of 1.11 acres after the project is completed. Additionally, MDTA is proposing permanent Buffer disturbance of 2,758 square feet to install a stormwater management facility.

This project requires Commission approval because it does not qualify for approval under MDTA's existing General Project Memorandum of Understanding (MOU) with the Critical Area Commission. Additionally, the project requires conditional approval under COMAR 27.02.06 by the Commission because the proposed permanent disturbance in the Buffer is not water dependent.

Chairman Deegan recognized Project Subcommittee Chair Sandy Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the project in accordance with COMAR 27.02.06 with the following conditions:

1. Within 30 days of approval, MDTA shall revise the proposed planting plan to provide an additional 347 square feet of planting, for a total mitigation requirement of 17,147 sf of planting and submit the plan to Commission staff for review and approval. MDTA cannot use excess 10% credit to count towards 347 square feet of tree canopy mitigation.
2. Prior to the start of construction, the Maryland Transportation Authority shall provide a completed revised Planting Agreement form and copies of all final approvals, such as stormwater management plans and erosion and sediment control plans, to Commission staff.

Commissioner Pat Mahoney seconded the motion. **Motion carried unanimously.**

MDOT Maryland Transit Administration (MTA) – Riverside Shop Heavy Maintenance Building (Baltimore City)

Ms. Alex DeWeese presented for vote a proposal by the Maryland Transit Administration (MTA) to build a new Maryland Area Regional Commuter Train (MARC) heavy maintenance shop building at the Riverside Rail Shop in Baltimore City. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The proposed work involves demolishing existing Building #6, constructing a 103-by-305 foot (31,415 square foot) building with a wheel truing machine, overhead crane and drop table, and associated improvements related to the maintenance building such as minor track realignment and underground utilities. The purpose of this project is allow MTA to maintain its locomotives and passenger cars on its property, rather than shipping cars offsite and relying on external contractors.

Due to the general size and scope of the proposed improvements, this project exceeds the parameters of 5,000 square feet of disturbance and 1,200 square feet building size of the Memorandum of Understanding (MOU) Exhibit between MDOT MTA and the Critical Area Commission. Therefore, review and approval by the Critical Area Commission is required.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Sandy Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the project with the following condition:

- Prior to the start of construction, MDOT MTA shall submit a copy of all final plans, permits, and approvals, including stormwater and erosion and sediment control authorizations, to Commission staff.

Commissioner David Marks seconded the motion. **Motion carried unanimously.**

PROGRAMS

Refinement – City of Fruitland – Critical Area Program Comprehensive Review (Wicomico County)

Ms. Tay Harris presented a refinement to the City of Fruitland's Critical Area Program. Ms. Harris reviewed her staff report, which is incorporated into and made a part of the minutes.

On December 10, 2020, the City Council for the City of Fruitland approved a comprehensive update to the Town's Critical Area Program, required as per Natural Resources Article, §8-1809(g). The City's Council repealed and replaced the City's Critical Area program through the adoption of Ordinance No. 300. The amendment addresses the update made to the Critical Area law changing impervious surface limits to lot coverage limits and includes minor grammatical errors. The City last completed a comprehensive review of its Critical Area Program on July 5, 2000.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who recommended on behalf of the Program Subcommittee that the Commission concur with the Chairman's determination that this comprehensive review be processed as a refinement to the City of Fruitland's Critical Area Program. Furthermore, because the Ordinance is consistent with the Critical Area law and regulations, the Program Subcommittee staff recommended the Chairman approve the comprehensive review as proposed.

Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – City of Fruitland – Critical Area Map Update (Wicomico County)

Ms. Tay Harris presented a refinement to the City of Fruitland’s Critical Area Program. Ms. Harris reviewed her staff report, which is incorporated into and made part of the minutes.

Commission staff worked with the City of Fruitland, the Maryland Department of Planning Lower Eastern Shore Regional Office and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the City. The aforementioned agencies vetted, and the affected property owners were provided opportunity to comment on, these draft maps. Lastly, the maps were delivered to the City for public comment and local approval. The update resulted in a gain of two acres and a loss of six acres, with a net loss of four acres (see Attachment A).

As part of the mapping update, the President of the Council and Town Councilmembers approved Ordinance 300 at the public hearing on December 10, 2020. This action constituted local adoption of the updated maps.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the mapping update was completed in accordance with State Law and COMAR 27.01.11. The Program Subcommittee recommended the Commission concur with the Chairman’s determination that the City of Fruitland mapping update be reviewed as a refinement to the City’s Critical Area Program. She further recommended that the Chairman approve this map amendment as proposed.

Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Kent County – Mapping Update: Request for Extension of Time

Ms. Alex DeWeese presented for vote a request for a 90-day extension of the Critical Area updated map adoption timeline. Ms. DeWeese reviewed her staff report, the content of which is incorporated into and made a part of these minutes.

The Commission’s regulations, COMAR 27.01.11.06.C, requires a local jurisdiction to approve its Critical Area maps within 24 months from the date the Commission transfers the Summary Draft Map. February 4, 2021 is the 24-month deadline for Kent County’s adoption of the updated Critical Area Maps. The County is unable to meet this deadline due to the COVID-19 pandemic which has delayed the Kent County Comprehensive Rezoning and Critical Area map update process. Kent County is requesting a 90-day extension of the Critical Area updated map adoption timeline; therefore, the new deadline for local approval of the Critical Area maps will be May 3, 2021.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who moved on behalf of the Program Subcommittee to approve the requested time extension.

Commissioner Jeff Ferguson seconded the motion. **Motion carried unanimously.**

St. Mary’s County – Mapping Update: Request for Extension of Time

Ms. Annie Sekerak presented for vote a request for an extension of time for local approval of the Draft Critical Area maps. Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The Commission’s regulations, COMAR 27.01.11.06.C, require a local jurisdiction to approve its Critical Area maps within 24 months from the date the Commission transfers the Summary Draft Map. The 24-month deadline for St. Mary’s County to approve their draft Critical Area

maps is February 2, 2021. The County is unable to meet this deadline due to the pandemic. The draft maps are scheduled for review by the St. Mary's County Planning Commission on January 25, 2021; and then subsequently for review and approval by the Commissioners of St. Mary's County. Therefore, the County is requesting an extension. If this extension is granted, the new deadline for local approval of the draft Critical Area maps will be April 2, 2021.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who moved on behalf of the Program Subcommittee that the Commission approve the requested time extension. Commissioner Mike Hewitt seconded the motion. **Motion carried unanimously.**

OLD BUSINESS

Status Update – Renewable Energy Regulations

Ms. Lisa Hoerger provided an update on the Solar Regulations status. At the November 2020 meeting, there was a final review of the draft regulations, and the Commission voted to allow Commission staff to submit the regulations as proposed to the Maryland Register. The regulations were published in the December 18, 2020 edition. The 30-day comment period ends on January 19, 2021, and barring any issues, the regulations will be presented to the Commission after a 45-day hold period at the next meeting for a vote to publish as final in the Maryland Register.

LEGAL UPDATES:

Assistant Attorney General Emily Vainieri provided the following legal updates:

Trainer – Cecil County – This case involves a variance to exceed lot coverage to build a pool in the buffer. Over CAC objections, the Cecil County Board of Appeals voted to approve the request. An appeal was filed in the Circuit Court right before the holidays. The next step will be for the County to send their administrative record, containing all the documents the Board used to make a decision, as well as the transcript from the hearing, to the Court. The briefing process will follow this.

Radtke – Baltimore County – This case involves the construction of a 1,700sf concrete patio built in Buffer without approvals. Radtke appealed at every level and the case is currently before the Court of Special Appeals. The court referred the case to Alternative Dispute Resolution. As the result of the mediation sessions, Mr. Radkte has agreed to remove the illegal walkway from the Critical Area Buffer. He also agreed to remove 1600 of the 1700 sf of the patio next to the water. He may keep 100 sf of patio space near the water. But he is required to remove that 100 sf of patio space if he ever moves or sells the property. In addition, he has agreed to dismiss his appeal in the Court of Special Appeals.

Buck – Cecil County – This case involves the construction of a 4-acre motocross racetrack without approvals at Mt. Ararat Farm in Port Deposit, Maryland. The County cited 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 Circuit Court affirmed the Board of Zoning Appeals decision. The property owner filed an appeal to the Court of Special Appeals. The oral arguments were held remotely in September. The Court of Special Appeals issued an unreported decision by

Judge Harrell. Importantly, for Critical Area purposes, the Court agreed with the Commission's position that there was an unauthorized disturbance to the Critical Area Buffer by constructing the motocross track. There were some other zoning-only issues involved in this case, including the issue of what constitutes a "racetrack" under the zoning ordinance. The Court of Special Appeals remanded the case back to the Board of Appeals for the Board to clarify its decision on those zoning issues. Further updates will be provided as the case progresses.

NEW BUSINESS:

Chairman Deegan reminded the Commission that the next meeting is scheduled for February 3rd and staff will confirm the meeting within two weeks.



Lynette Fullerton, Commission Secretary

2/3/21
Date of Approval