

Critical Area Commission

STAFF REPORT

October 7, 2020

APPLICANT:	Town of St. Michaels
PROPOSAL:	Comprehensive Review of Town of St. Michaels' Critical Area Program
JURISDICTION:	Town of St. Michaels (Talbot County)
COMMISSION ACTION:	Concurrence with Chairman's Determination of Refinement
STAFF RECOMMENDATION:	Approve with Conditions
STAFF:	Jennifer Esposito
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article 8-1809(g) Natural Resources Article 8-1808.4

DISCUSSION

On July 27, 2020, the Commissioners of St. Michaels voted to repeal and reenact Chapter 340 of the Town's Zoning Code through the adoption of Ordinance No. 512. This ordinance was drafted following a comprehensive review of the Town's Critical Area Program. Natural Resources Article, §8-1809(g) requires each local jurisdiction to review its entire program at least every six years. The previous update to the Town's Critical Area Program was approved by the Critical Area Commission in 2013.

The Town of St. Michaels is located in Talbot County along the Miles River. The Town encompasses all three Critical Area land designations; Intensely Developed Area (IDA), Limited Development Area (LDA), and Resource Conservation Area (RCA). In addition, a portion of the Town's shoreline is mapped as a Modified Buffer Area (MBA).

ORDINANCE UPDATE

The comprehensive update of the Town's Critical Area Program brings its zoning ordinance into conformance with the requirements of the Critical Area Law and Criteria. Changes to the Town of St. Michaels Critical Area Program are based upon the Commission's model ordinance for municipalities maintained by Commission staff. The update repealed and replaced all of the elements of the zoning ordinance related to development in the Critical Area, including development standards, density and use standards, amendment procedures, variances, and

enforcement. The majority of the updated Critical Area program does not deviate from the model; however, the Town modified the ordinance in a few different areas in order to accommodate their local needs, which are outlined below:

Alternative Forest Clearing Provisions

The Town included alternative forest clearing provisions that allows for lots less than 30,000 square feet in size that were platted prior to December 1, 1985 to clear in excess of 30% of the lot provided that mitigation is required at 1.5 times the entire area cleared. Section 340-17.C(4)(d) is consistent with other jurisdictions' provisions to provide more flexibility on small lots with limited forest and developed woodland cover.

Nonwater-Dependent Structures on Piers

The Town included provisions to allow nonwater-dependent structures on piers for both commercial nonwater-dependent projects in the Intensely Developed Area (IDA) and small-scale renewable energy projects in all Critical Area designations. Pursuant to the Natural Resources Article 8-1808.4 and COMAR 27.01.13, a local jurisdiction may not issue a building permit or any other approvals for a nonwater-dependent project until the Critical Area Commission approves an amendment to the jurisdiction's Critical Area Program which includes all of the required criteria. Section 340-29 of the updated code includes all of the required standards and restrictions as described within COMAR 27.01.13 – Nonwater-Dependent Projects.

Growth Allocation Floating Zone District

Currently, the growth allocation provisions are integrated within the Town's Critical Area Overlay District. Section 340-39 of the updated code establishes growth allocation as a floating zone. This change will not alter the requirements for growth allocation nor will it affect how an application for growth allocation will be processed. However, Commission staff recommends minor amendments to §340-39 as noted below for clarity.

Criteria for New LDA and IDA Lands

Section 340-39.C.4 provides criteria to allow for new Intensely Developed Area (IDA) lands to be less than 20 acres and to be located nonadjacent to existing LDA or IDA lands when such lands are intensified through the use of growth allocation. Any proposal for either new IDA lands less than 20 acres or new IDA lands that are nonadjacent to existing LDA or IDA lands must meet the following provisions:

- (a) The development will be serviced by public water and sewer;
- (b) The area is located in a Priority Funding Area;
- (c) The development is consistent with the St. Michaels Comprehensive Plan; and
- (d) The development will have an overall economic benefit to the community, or implements a specific goal, objective, or policy of the St. Michaels Comprehensive Plan.

The town elected not to pursue nonadjacent LDA provisions. The proposed amendments are consistent with provisions in other jurisdictions that were approved by the Critical Area Commission.

REQUIRED REVISIONS

Commission staff identified the following minor clerical errors within existing text to be corrected:

1. Pg. 36-37; *Intensely Developed Areas (IDA) - §340-15.D*: There is an error in the numerical formatting as the code skips Subparagraphs D.(3) and (4).
2. Pg. 70-87; *GA Growth Allocation Floating Zone District - § 340-39A through P -*: There is an error in the formatting as the code skips Regulation E. Updated text should end at O.
3. Pg. 86-87; *Growth Allocation Floating Zone District - §340-39.P.(5)(b)&(c)*: The internal reference in both of these standards references Subsection G(6). The reference should be updated to Subsection O(6), pending the above correction.

Additionally, the following minor text amendments are required to accurately reflect updates to Critical Area Law and regulation. New text is added in **BOLD**, and any deletions are noted as ~~strikethroughs~~:

1. Pg. 42; *Resource Conservation Areas - §340-18.A*: This section stipulates that a development activity within the RCA shall be consistent with the requirements and standards of the LDA. However, the section is missing the requirement from COMAR 27.02.05.C(10) restricting lot coverage when the entire parcel is located within the RCA or when only a portion of the parcel is RCA¹. The following provision should be inserted as new Subparagraph (4) and the remaining Subparagraphs renumbered:
(4) Lot coverage is limited as follows:
(a) When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and
(b) When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.
2. Pg. 56; *Other Habitat Protection Areas – § 340-26.B(2)* directs an applicant to develop a Habitat Protection Plan in coordination with the Department of Natural Resources in the event a Habitat Protection Area is confirmed by the Department of Natural Resources. Commission staff recommends including the following language as subparagraphs to B(2):

¹ Subparagraph (a)ii. requires parcels with split Critical Area land designation to be viewed separately in terms of lot coverage limitations. If a parcel was partially mapped as RCA and partially mapped as LDA, the lot coverage limitation is based on the size of the area within the RCA, and separately, is based on the size of the area within the LDA. These limitations are not transferrable between land designations. Thus, an applicant could not use land area within the RCA to base lot coverage limitations for land in the LDA and vice versa.

- a) **If potential Forest Interior Dwelling Species (FIDS) habitat is identified, the proposed development shall conform to the *Critical Area Commission's FIDS Guidance Manual, dated June 2000 as updated.***
- b) **If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05.**

3. Pg. 70; *Growth Allocation - §340.39.B(2)*: This section should be amended as follows: The Town's original **allotted** Growth Allocation acreage is ~~5-8245~~ acres. **To date, the Town has used 76.07 acres.** The Town's Growth Allocation acreage remaining is 168.93 acres ~~245 acres~~, as of the date of passage of this Chapter.

4. Pg. 72; *Growth Allocation Floating Zone - §340-39.D(6)*: This section will need to be amended as follows:

New Intensely Developed **Areas** or LDAs ~~to be located in RCAs~~ shall conform to all criteria of St. Michaels for such areas, shall be so designated on the St. Michaels Critical Area Maps and shall constitute an amendment to this Chapter subject to review and approval by the St. Michaels Planning Commission, the Town Commissioners, and the Critical Area Commission as provided herein.

5. Pg. 77-78; *Growth Allocation Floating Zone - §340-39.K*: This section gives the St. Michaels' Planning Commission the authority to approve minor amendments to an approved Growth Allocation Concept Plan without the requirement of the approved amendment to be forwarded to the Critical Area Commission for review and approval². Minor amendments can include, but are not limited to: changes to the location, number or types of uses so as long as the change in use does not significantly alter the character of land uses of the approved plan; internal road locations or reconfigurations; the number, type or location of dwelling units provided that the change does not result in the increase in the total approved number of dwelling units or height of buildings; and the location of public amenities, services, or utilities.

Commission staff recommends including a new Subparagraph (7) under §340-39.K to ensure any proposed minor amendment still meets the parameters of the approved growth allocation:

(7) Does not conflict with any condition imposed by the Critical Area Commission or amend any Critical Area development standard, including any new impacts to Habitat Protection Areas.

6. Pg. 78; *Growth Allocation Floating Zone - §340-39.L*: The following will need to be amended to ensure that the Critical Area Criteria is applied as the minimum standard

² Growth Allocation Concept Plan Section 340-39.P(6) directs the Town to forward any amendments other than minor amendments to the Critical Area Commission for review and approval.

when provisions of Chapters 340 and 290 (Subdivision of Land) are in conflict with the provisions of the Growth Allocation Floating Zone section.

Provision of the GA Floating Zone District, when found to conflict with other provisions of this Chapter, shall supersede those other provisions with which they conflict, **so long as all the requirements of the Critical Area Regulations apply as minimum standards**. Provisions of the GA Floating Zone District, when found to conflict with provisions of Chapter 290 of the Town Code, shall supersede those provisions with which they conflict, **so long as all requirements of the Critical Area Regulations apply as minimum standards**.

7. Pg. 267; *Amendment of Critical Area Program elements - §340-191(A)*: For consistency, the last sentence in the afore-referenced section should be corrected as follows:

Standards and procedures for Critical Area Commission approval of proposed amendments are as set for in §§ 8-1809(i) and 8-1809(d) of the Natural Resources Article of the Annotated Code of Maryland, ~~respectively~~.

RECOMMENDATION

Commission staff recommends that the Commission concur with the Chairman's determination that this Comprehensive Review be processed as a refinement to the Town's Critical Area Program, as the changes to the Town's Zoning Code is consistent with the Critical Area Law and its regulations.

Further, Commission staff recommends that the Chairman approve the Town's Comprehensive Review update with the condition that the Town amend Chapter 340 in accordance with the changes outlined in the "Required Revisions" section of this staff report.