

MINUTES

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

August 2, 2023

CALL TO ORDER: Chair Erik Fisher called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Steve Bunker, Charles County
Mark Conway, Baltimore City
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Anita Grant, At Large
Julia Glanz, Department of Housing and Community Development
Earl Hance, Calvert County
Rosa Hance, At Large
Deborah Herr Cornwell, Department of Planning
Sandy Hertz, Department of Transportation
Travis Marion, Cecil County
Alisha Mulkey, Department of Agriculture
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Todd Nock, Worcester County – Chesapeake
Jim Palma, Department of Commerce
Hitesh Patel, Somerset County
Larry Porter, Caroline County
Tammy Roberson, Department of Environment
Lisa Rodvien, Anne Arundel County
Christie Stephens, Harford County
Pat Young, Baltimore County

Commission Members Not in Attendance:

Tim Adams, Prince George's County

CHAIR'S REMARKS: Chair Fisher called the meeting to order and gave procedural instructions for the virtual meeting. He then introduced new Commissioners – Buddy Hance, Todd Nock, Steve Bunker; Rosa Hance, Hitesh Patel, Pat Young, and Mark Conway. Also Chair Fisher recognized Sandy Hertz for her service as Program Subcommittee Chair.

APPROVAL OF MINUTES: Commissioner Conway moved to approve the minutes from the June meeting. Commissioner Porter seconded. Motion passed unanimously.

STAFF PRESENTATIONS

PROJECT SUBCOMMITTEE:

Lula G. Scott Parking Lot Expansion (Anne Arundel County) – Conditional Approval Request

Ms. Esposito presented her staff report, the contents of which are incorporated into and made part of the minutes.

Anne Arundel County is proposing to expand the parking lot at the Lula G. Scott Community Center in Shady Side from 26 to 77 spaces. As a result, the site will exceed lot coverage limits and therefore requires Conditional Approval by the Commission under COMAR 27.02.06. The expansion of the parking lot is necessary to create a safer, less congested parking area for the older adults and community that use the facility. The additional parking will accommodate more individuals from the community to enjoy the amenities offered at the site. The 5.24-acre site is located entirely within the Critical Area on lands designated as a Limited Development Area (LDA) (4.01 acres) and as a Resource Conservation Area (RCA) (1.23 acres).

After Ms. Esposito's presentation, Chair Fisher opened the floor to questions and comments from Commissioners. Representatives from the County Planning and Zoning, Department of Public Works, and the builders were there. Commissioner Rosa Hance asked if public transit options had been explored, and Mr. Piero replied that as this is in a very rural area, mass transit options are limited. Hearing no further questions, Chair Fisher recognized Project Subcommittee Chair Conway, who moved on behalf of the Project Subcommittee that the Commission vote to approve the request with conditions as outlined in the staff report.

As required by Code of Maryland Regulations 27.02.06, this motion was based on the following considerations:

- (1) Except for the lot coverage in excess of 15% on the portion of the project within the Limited Development Area, the project is otherwise in conformance with local regulations for development in the Critical Area; and
- (2) In addition to meeting all applicable mitigation requirements for the site, including planting mitigation for developed woodland clearing as well as installation of several stormwater best management practice, Anne Arundel County proposes to offset the additional lot coverage by planting at an additional equivalent area; and
- (3) The purpose of the expansion will not only enhance community services provided to residents of southern Anne Arundel County, but will also incorporate stormwater management where previously none existed.

Commissioner Grant seconded the motion. Commissioner Rosa Hance made a motion to amend the motion by Chair Conway to add a fourth condition and require the County to select from one

of the following options: 1) Remove the seven parking spaces that are known to flood regularly; or 2) Replace the existing parking with pervious pavers as are being used in the expanded section of the parking lot; or 3) Phase the construction of the new parking to add the 3 parts in sequence to see if this mitigates the need for all of the spaces and potentially maintain the existing community children oriented services of a playground and basketball court. Commissioner Nock seconded the motion to amend the conditions. Chair Fisher asked for votes on the motion. Commissioner Rodvien asked what impact the revised conditions would have on the timeline for the project, and representatives from the County stated that it would result in the need for more permits, which would increase the time needed to complete the project. Following more discussion, a vote was taken, and all voted in favor of the amended motion with the exception of Commissioner Buddy Hance and Commissioner Rodvien. Amended motion was approved. Commissioner Rodvien stated that this is an important project for this area of the county, and encouraged everyone to support it. Following more discussion and clarification of procedures, Chair Fisher asked for a motion to approve with the following conditions as amended:

1. Prior to the start of construction, Anne Arundel County shall provide Commission staff with a signed planting agreement;
2. Prior to the end of construction, Anne Arundel County shall provide the Commission with a plan to either:
 - a. Remove the seven parking spaces located on the southeastern side of the existing parking lot that historically floods; or
 - b. Replace the existing parking with pervious pavers that will be used in the remainder of the project; or
 - c. Phase the construction of the new parking to add the 3 parts in sequence to see if this mitigates the need for all of the spaces and potentially maintain the existing community children oriented services of a playground and basketball court.
3. The County shall forward Commission staff a copy of the final grading plan.

Commissioner Rodvien so moved. Commissioner Nock seconded. **Motion passed unanimously.**

PROGRAM SUBCOMMITTEE:

Refinement: Baltimore City – Critical Area Management Program (CAMP) Manual Text Updates

Ms. Kate Durant presented a refinement to Baltimore City's Critical Area Management Program in the form of a text update. Ms. Durant's staff report and presentation are incorporated into and made a part of the minutes.

The City of Baltimore proposes minor updates to its Critical Area Management Program (CAMP) Manual to better implement its Critical Area Program. A brief description of each of the four proposed updates is below:

- Section 1.1 – Corrects a typographical error related to the reference of the State's Natural

Resource Article §8-1801.

- Section 4.4 – Clarifies that Buffer mitigation in the Intensely Developed Area is “based on new impervious areas and vegetation removal.” This is consistent with how the City has implemented its Critical Area Program for Buffer impacts under previously approved CAMP manuals.
- Section 4.8 – Clarifies language regarding public right-of-ways to say that they are “excluded from the 15% afforestation requirement,” not “excluded from Buffer requirements.” This clarification will allow the City to require mitigation for vegetation removal in the Buffer. This is consistent with how the City has implemented its Critical Area Program for Buffer impacts under previously approved CAMP manuals.
- Section 6.4 – Clarifies the information in Table 5: Planting credits for Buffer and non-Buffer mitigation by removing the reference to planting clusters and maximum % of landscape stock credit. Also, the City proposes new language for the footnote that states that “one canopy tree is equivalent to one planting unit, where each planting unit is allowed a maximum credit of 200 square feet in the Buffer and 435.6 square feet in non-Buffer areas.” By removing the cluster option, the City’s program is stricter than what is required under the Commission’s Buffer regulations, which is permitted.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Bunker, who recommended on behalf of the Program Subcommittee that the Chair approve the text amendment as submitted. Chair Fisher thanked him and said he accepted the recommendation, and that would stand as his final decision.

Refinement: Cecil County – Critical Area Boundary Map Update

Mr. Mike Grassmann presented a refinement to the Cecil County Critical Area Program. Mr. Grassmann reviewed his staff report, the contents of which were incorporated into and made part of the minutes. On May 16, 2023, the Cecil County Council approved Bill 2023-7, officially amending the County’s Critical Area maps to update the 1,000-foot boundary in accordance with Critical Area law. As required, the new 1,000-foot boundary is based on more accurate data and procedures. Due to the update, there was a gain of 2,040 acres of Critical Area and a loss of 2,227 acres, resulting in a net loss of 187 acres. Cecil County also had six preexisting Critical Area extensions, four of which did not change. One of the extensions was changed due to private properties opting out of the extended Critical Area, and another extension area was remapped to fit a growth allocation boundary. Cecil County chose not to include an accompanying text amendment to address pending approvals and applications, or to update the County’s Critical Area definition per Natural Resources Article §8-1807.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Bunker, who recommended on behalf of the Program Subcommittee that the mapping update be accepted as submitted, with the condition that the County submit a text amendment within 6 months of the approval date revising Article XI, Part I, Sections 191 (Critical Area Definitions) and 192 (Official Critical Area District Maps) of the Cecil County Zoning Code to reflect changes associated with the mapping update as stated in the staff report. Chair Fisher thanked him and said that he accepted the recommendation, and that this would be his final decision.

Refinement: Dorchester County – Suicide Bridge Restaurant Growth Allocation

Mr. Grassmann presented a refinement to the Dorchester County Critical Area Program. Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made part of the minutes. Dorchester County has requested growth allocation to reclassify 4.1 acres of the Suicide Bridge Restaurant Parcel (Tax Map 12, Parcel 24) from Limited Development Area (LDA) to Intensely Developed Area (IDA) and 6.86 acres to reclassify a portion of the adjacent Parcel (Tax Map 12, Parcel 16) from Resource Conservation Area (RCA) to LDA. The new IDA designation will allow the existing business the ability to construct a 1,000 square foot (sf) platform over open water for expanded outdoor restaurant seating and the new LDA designation will allow the business to keep an unpermitted overflow parking area currently located in the RCA.

The Suicide Bridge restaurant facility is located on Cabin Creek, a tributary to the Choptank River. The site includes the restaurant, a wedding venue, a tiki bar, a marina, and a riverboat available for cruises and charters. The 4.45- acre property is waterfront to Cabin Creek on the southern boundary and borders a tidal wetland on the western boundary. The site pre-dates the County Critical Area Program, has expanded many times over the years, and is currently over the 15% lot coverage limit.

The adjacent 7.66-acre RCA Parcel is developed with a single-family dwelling and an overflow parking area that is used by the Suicide Bridge restaurant facility. Upon completion of the growth allocation, the restaurant will expand its seating capacities over the water in conformance with the non-water dependent structure on piers provision in the County code. The parking lot is not a permitted use in the RCA or AC-RCA zoning in Dorchester County. The County approved a zoning change for the overflow parking area from AC-RCA to B-2 General Business in conjunction with the growth allocation request to LDA. If growth allocation to LDA is granted, the parking lot will become a conforming use.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Bunker, who stated that the proposed growth allocation as approved by the Dorchester County Commissioners and as shown on the site plan and accompanying materials accepted by Commission staff on March 15, 2023, meets the required standards for location of new IDAs and LDAs and meets the requirement for a new IDA less than 20 acres under Natural Resources Article 8-1808.1(c), COMAR 27.01.02.06-3, and Chapter 68-12 of the Dorchester County Code, therefore the subcommittee concurred with the Chair's determination of refinement, and recommended approving the growth allocation request with conditions as follows:

1. To ensure compliance with all Critical Area requirements for new IDAs, Dorchester County shall prohibit the non-water dependent structure and the expansion of the seating capacity over the water until after the site is connected to the Twin Cities Wastewater Treatment Plant.
2. In order to ensure the design and maintenance of the proposed stormwater management facilities meets the required 10% pollutant reduction requirement for the IDA as well as compliance with ESD, the County shall submit the proposed stormwater management

plan and 10% pollutant reduction calculations to Commission staff for review and approval.

3. The County shall collect a bond to be held for 5 years to ensure the Buffer Management Plan meets the survivability requirements for landscape and flexible stock plantings.
4. Dorchester County shall enforce the approved Buffer Management Plan and the final Stormwater Management Plan.

Following this, Chair Fisher opened for comments from the Commission. Commissioner Rosa Hance asked for conditions 2-4 to be reviewed, as she had heard some discussion earlier but wanted to make sure she understood. Mr. Grassmann reviewed the conditions. Chair Fisher said he accepts the Commission's recommendation and that this would be his final decision.

Refinement: Talbot County Critical Area Program Text Amendment Bill 1528: Structures and Erosion Control Measures Above Mean High Water, Piers, and Marine Uses

Ms. Esposito presented a refinement to the Talbot County Critical Area Program in the form of a text amendment. Ms. Esposito reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

The bill amends several sections of the County Code relating to erosion control measures and structures above mean high water (MHW), private piers, and Critical Area Buffer establishment requirements. The proposed changes that directly impact the County's Critical Area Program were reviewed and included a provision to allow for shore erosion control above Mean High Water, certain instances when a second pier may be located on a single parcel, and certain instances when a pier could be allowed as a primary use.

Bill No. 1528 was approved by the County Council on April 25, 2023. The changes to the Talbot County Critical Area Program are not effective until Critical Area Commission grants approval.

Talbot County representative Brennan Tarleton provided comments on behalf of the County. Hearing no additional questions, Chair Fisher recognized Program Subcommittee Chair Bunker, who recommended that the Chair return the amendment to the County with a list of changes to be made. Chair Fisher acknowledged the Commission's recommendation and said that he would return his final decision within 10 business days.

OLD BUSINESS:

Harford Comprehensive Review Update – Request to extend time for meeting Conditions

Dr. Nick Kelly presented a request from Harford County to extend time for meeting the conditions for approval that were part of the approval process at the time of review on October 5, 2022. Conditions were to be met by July 31, 2023, however, since the time of review, the County lost key Critical Area staff, including their lead planner and the Department attorney. The County has been unable to fill the planner position due to budget cuts, and the current legal staff is currently coordinating with the County planning department to understand the language that is needed and draft legislation. In addition, the County Council notified their staff that new agenda

items could not be added until they reconvened in the fall. The County Council will be in Session in September, and the County staff is planning to bring forth legislation addressing the above conditions during this legislative session.

In addition, the County is planning to expand the existing Otter Point Creek Habitat of Local Significance to include the HaHa Tidal Marsh. This expansion would be included under the County's Natural Resource Inventory (NRI) and maps to provide additional protections. The County is working with DNR Wildlife and Heritage and with Commission staff to incorporate these new protections in the Harford County Critical Area Program. They expect this coordination to be completed this coming fall in time to be included with the updated NRI inventory and maps.

Given these two circumstances, the County is requesting an extension of the deadlines for the Critical Area Commission's original conditions to December 31, 2023.

Hearing no questions, Chair Fisher asked for a vote on the requested extension. All voted in favor. **Motion passed unanimously.**

NEW BUSINESS:

Chair Fisher informed the Commissioners of work being done on the Bay Bridge. Because of the minimal impact it falls under the Memorandum of Understanding with the Department of Transportation.

LEGAL UPDATES:

Ms. Emily Vainieri provided 4 legal updates.

St. Mary's County - Two (*Kelly, Whittles*) involve variances granted for pools in the Buffer in St. Mary's County. The CAC is requesting the Court reverse the Board's decisions because they did not meet all seven of the Critical Area variance standards. For Critical Area variances, when an applicant fails to meet even one of the standards, that variance should not be issued. In both cases, the CAC has argued that the applicants have ample opportunity to construct their swimming pool outside of the 100-foot Critical Area Buffer and thus can eliminate the need for the variance altogether. One of the hearings will be on September 5. The other has not been scheduled yet.

Queen Anne's County – Varner – pool in Buffer. The CAC is requesting the Court reverse the Board's decision to allow the construction of a swimming pool in the Buffer on a property located along the Wye River because all variance standards were not met. The hearing for this case is scheduled for August 29.

Cecil County – lot reconfiguration – Cabin John Heights. This case involves the CAC's appeal of a decision by the Cecil County Land Use and Development Services Director to approve a resubdivision plat to reconfigure two parcels within an area called Cabin John Heights. The CAC is asserting that the County's approval of this resubdivision improperly created an additional waterfront lot within the Resource Conservation Area, where one is not allowed to be created. This case is early in the process. The next deadline is for the County to file the

administrative record with the Cecil County Circuit Court. After that, both the County and the Commission will submit briefs to the court.

Next Commission meeting will be on September 6 and is expected to be in person.

Commissioner Marion motioned to adjourn. Commissioner Rodvien seconded. All in favor.
Meeting adjourned at 2:35.



Lynette Fullerton, Commission Secretary

9/6/23

Date of Approval