

**Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting at 100 Community Place, Crownsville, Maryland**

September 7, 2022

Program Implementation Subcommittee

Approved October 5, 2022

Attendees: Greer (Chair), Blazer, Ferguson, Herr Cornwell, Hewitt, Mulkey, Taylor, Grant, Acle

Item 1. Town of Chesapeake City – Critical Area Map Designation Updates

Presented by Alex DeWeese

The Mayor and Council of the Town of Chesapeake City adopted Ordinance No. 2022-002 on July 11, 2022. This action constituted local adoption of the updated Critical Area map of the Town. The update resulted in a gain of 6.8 acres and a loss of 0.7 acres, with a net gain of 6.1 acres. There were 246.5 acres that remained the same.

Discussion: Commissioner Hewitt made a comment about ‘grandfathering’ language and asked for clarification about the critical area designation and landowners’ rights. Alex said it would depend on what stage the application was in, whether it would still be approved under the new designation. Lisa Hoerger also responded and explained how Commission staff works with local jurisdictions in determining which designation to apply to newly included areas.

Commissioner Ferguson moved to concur with the Chairman’s determination of a refinement and recommend the Chairman approve the Critical Area Map update as outlined in the staff report. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**

Item 2. Town of Chesapeake City – Comprehensive Review

Presented by Alex DeWeese

On July 11, 2022, the Town Council of the Town of Chesapeake City voted to amend the Town’s Critical Area program through the adoption of Ordinance 2022-001. Natural Resources Article §8-1809(g) requires each local jurisdiction to review its entire program at least every six years. The Critical Area Program for the Town has not had a comprehensive review since October 3, 2012. The program was originally adopted in August of 1988. Upon review of the adopted ordinance, Commission staff noted necessary minor edits that are not substantive in nature, as well as a few minor text corrections as outlined in Attachment 1 of the staff report. There was no discussion.

Commissioner Grant moved to concur with the Chairman's determination of a refinement and also to recommend the Chairman approve the Town of Chesapeake City's comprehensive review subject to the proposed text changes as outlined in the attachment to the staff report. Commissioner Taylor seconded the motion. **Motion passed unanimously.**

Item 3. St. Mary's County – Supplemental Use Standards for Residential Pools Text Amendment

Presented by Annie Sekerak

On June 14, 2022, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance. Ordinance No. 2022-24 will remove an existing provision from a specific Supplemental Use standard of the County code. Supplemental Use Standard #122 affects residential swimming pools across the County. Among other items, the existing standards prohibit a residential property owner in the Critical Area from applying for a variance to disturb the Critical Area Buffer for the purpose of installing a swimming pool and associated decks. Removal of this provision will provide a property owner in the Critical Area the opportunity to apply to the County Board of Appeals for such a variance. There is no such prohibition in State law or regulations.

Discussion: Commissioner Blazer asked staff to confirm whether the County code currently does not allow for variance applications to disturb the Buffer in order to install a pool, but with the text amendment County residents would now be able to apply. Ms. Sekerak replied that was correct. She reiterated that no other jurisdiction has provisions that prohibit applying for a variance for a pool. County Assistant Attorney John Houser came up and also spoke to the County's variance standards in the Critical Area.

Commissioner Hewitt raised concerns about the ability of a property owner in obtaining a variance to disturb the Buffer. Ms. Vainieri and Ms. Charbonneau answered that every variance application is reviewed individually and the Commission role is to provide comment based on the law, regulations, and the specifics of the case.

Commissioner Hewitt made a motion to concur with the Chairman's determination of a refinement and to recommend the Chairman approve the text amendment as proposed. Commissioner Ferguson seconded. All voted in favor. **Motion passed unanimously.**

Item 4. Proposed Regulation Updates – Growth Allocation Provisions and Shore Erosion Control Chapter

Presented by Lisa Hoerger

At its July 6, 2022 meeting the Program Subcommittee was introduced to the draft proposal to update the shore erosion control regulations found in COMAR 27.01.04 and COMAR 27.02.05.05. The updates are intended to modernize the drafting style, update certain provisions, and where necessary, delete certain provisions. The proposal also includes an update to the growth allocation provisions that specify limits on growth allocation in the RCA. The update clarifies that this limit does not apply to municipalities.

Discussion: Commissioner Hewitt asked whether it was possible for state owned properties to obtain growth allocation. Ms. Hoerger replied that that the state does not have growth allocation allotted so it is not applicable to those properties.

Commissioner Herr-Cornwell made a motion to approve the proposed updates to the regulations in accordance with the staff report and submit them to the Maryland Register as proposed. Commissioner Ferguson seconded the motion. All voted in favor. **Motion passed unanimously.**

Item 5. Approval of May and July Program Subcommittee Meeting Minutes

Commissioner Hewitt moved to approve both the May and July Program Subcommittee Meeting Minutes. Commissioner Blazer seconded the motion. Commissioner Greer abstained from voting to approve the July minutes, as she was not in attendance at that meeting. All others voted to approve. Minutes approved.