



PLANNING AND ZONING COMMISSION

MINUTES OF THE PLANNING COMMISSION MEETING JANUARY 24, 2024

- I. Commission Chair Kathleen Berault called the meeting to order at 6:00 pm. In attendance were Chair Berault, Laura Blackwelder, Larry Brown, Cindy Greengold, Jan Ruttkay, and Rachel Larsen Weaver, Commission Members, Sarah Franklin, Town Planner, and Sharon L. Humm, Commission Clerk. Absent was Commissioner Huhn.

II. **Approval of the January 24, 2024 Planning Commission Agenda**

MOTION: Commissioner Blackwelder moved to approve the January 24, 2024 Planning Commission agenda. Seconded by Commissioner Ruttkay. All in favor except for Vice-Chair Greengold, who abstained.

III. **Approval of the December 13, 2023 Planning Commission meeting minutes**

MOTION: Commissioner Weaver moved to approve the December 13, 2023 Planning Commission meeting minutes. Seconded by Commissioner Ruttkay.

MOTION: Commissioner Ruttkay moved to amend the December 13, 2023 Minutes, under Old Business, Fees-in-lieu, to add “per square foot” after \$4.05, to read “\$4.05 per square foot.” Also, under Old Business, Fees-in-lieu, in the second motion, to add “per square foot” after \$4.25 to read “\$4.25 per square foot.” Seconded by Commissioner Blackwelder. All in favor except for Vice-Chair Greengold, who abstained.

The Commission moved to approve the amended December 13, 2023 minutes. All in favor except for Vice-Chair Greengold, who abstained.

- IV. **Meeting Dates** – Chair Berault stated there are three months this year in which meeting dates will need to be re-scheduled, February, November, and December. The Commission recommended changing the February 28th meeting date to February 21st, the November 27th meeting date to November 20th, and the December 25th meeting date to December 18th. The new dates were approved and accepted by the Commission.

- V. **Public Comment on any item on the agenda** – Chair Berault stated a public comment was received, via email today, from Wes Donovan. Chair Berault read the public comment into the record.

V. **Old Business**

1. **Rules of Procedure** – The Commission reviewed the Rules of Procedure, which was adopted at the December 13, 2023 Planning Commission meeting, for any further revisions:

MOTION: Vice-Chair Greengold moved to amend the Rules of Procedure,

Section 2, A. Membership to delete the words “the majority of whom are residents” and replace with “who’s primary residence is the Town of Chesapeake Beach.” Seconded by Commissioner Ruttkay. After discussion, Vice-Chair Greengold withdrew her motion.

The Commission voted to have this as a future item to possibly re-visit. Ayes, Chair Berault, Vice-Chair Greengold, and Commissioners Ruttkay and Weaver. Opposed, Commissioner Brown. **Motion Passes.**

Chair Berault stated that wherever the word “Secretary” appears, that it be replaced with the word “Clerk.”

2. **Review of State’s Critical Area comments** – Town Planner Sarah Franklin gave a brief summary of her memo that was submitted to the Commission. Ms. Franklin stated she met with the State Critical Area Commission to discuss their comments, and concerns regarding the 200-foot buffer. The Town wants to make sure that folks who are in these areas that are close to waterways that are more sensitive and more subject to floodplain and sea level rise issues are mitigating in a way that helps resiliency. The State Commission understands the concerns of the Town but was concerned that the 200-foot buffer will create more variance requests and an enforcement problem. With that, instead of the 200-foot buffer, the State Commission is suggesting creating a coastal resiliency overlay with a higher level of mitigation and tie that to the sea level rise maps within the coastal resiliency plan. Thus, this would more directly address the issues in the area that will be impacted rather than just expanding the buffer. So, the buffer will have its regulations, and then you create an overlay with its own set of regulations, which will ultimately make those zones more resilient. Other initial comments and feedback include changes that are statutorily required, which are incorporated into the draft CA ordinance in ALL CAPS, and other recommended changes which have been highlighted in the draft ordinance for your review.

Ms. Franklin presented to the Commission three options for consideration, concerning the 200-foot buffer, which she provided in her memo for moving the ordinance forward:

- a) Send the ordinance as revised with no changes. She noted this could possibly create administrative problems and increase potential for non-permitted development, increasing the need for enforcement.
- b) Send the ordinance with a 100-foot buffer and immediately start an amendment process to add the Coastal Resiliency Overlay.
- c) Hold the ordinance to incorporate a Coastal Resiliency Overlay, sending the Town Council a request to make an amendment to the current Critical Area Ordinance increasing mitigation requirements, while moving forward on revisions.

Ms. Franklin addressed the Commission on their questions, concerns, and provided further details on the proposed overlay. After a very lengthy discussion, the following motions were presented:

MOTION: Commissioner Weaver moved to accept option (b) to forward the ordinance with a 100-foot buffer and immediately start an amendment process to add a coastal resiliency overlay. Seconded by Commissioner Ruttkay. Ayes, Chair Berault and Commissioner Weaver. Opposed, Commissioners Brown, Blackwelder, Greengold, and Ruttkay. **Motion Fails.**

MOTION: Commissioner Blackwelder moved to accept option (a), to forward

the ordinance as revised with no changes, which would include retaining the 200-foot buffer. Seconded by Commissioner Ruttkay. Ayes, Commissioners Blackwelder, Brown, Greengold, and Ruttkay. Opposed, Chair Berault and Commissioner Weaver. **Motion Passes.**

Chair Berault proceeded to the revised critical area ordinance to consider revisions as recommended by the State Critical Area Commission.

Part 1. Implementation-(Page 3)

E. Applications Referred to the CBCAC-

(e) Notwithstanding the above, all projects that are in the RCA or have an impact on any preservation area (as identified in Part 5 of this ordinance) shall be sent to the CBCAC for review.

MOTION: Commissioner Blackwelder moved to approve, accept, and include as written. Seconded by Commissioner Weaver, all in favor.

Part 2. Development Standards in the Critical Area-(Page 12)

D. Resource Conservation Areas (5) RCA Uses:

(h) Any proposed new use in the RCA or the underlying zoning district requires the review and approval of the CBCAC.

MOTION: Chair Berault moved to accept (h) and include as written. Seconded by Commissioner Ruttkay, all in favor.

Part 3. The Buffer-(Page 14)

B. Development Activities in the Buffer-(5) Associated with the placement of dredged material:

~~(vi) Land form measures to address coastal resiliency; and~~

MOTION: Chair Berault moved to approve deleting (vi). Seconded by Commissioner Ruttkay, all in favor.

Part 4. Modified Buffer Area-(Page 18)

B. General development standards.

(1) Development standards in the Modified Buffer Area.

(a) A "Modified Buffer Area" means ~~that area of the Buffer for which the Town has requested and the CBCAC has approved an exemption from the requirements of the Buffer~~ an area of land:

(i) Where the pattern of residential, industrial, commercial, or recreation development existed in the 200-foot buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and

(ii) That, as part of a local program approved by the ~~Commission~~ CBCAC is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.

MOTION: Commissioner Weaver moved to accept B.1 (a) (i) & (ii) as written and delete the word "Commission" in (ii) and replace with "CBCAC." Seconded by Commissioner Ruttkay, all in favor.

(c)(ii) Cutting or clearing of trees or removal of vegetation is allowed in the Modified Buffer Area for the following purposes only: ~~a. For personal use, provided that Buffer functions are not impaired, and trees cut are replaced;~~

MOTION: Commissioner Weaver moved to accept the removal of B.1(c)(ii)(a). Seconded by Commissioner Ruttkay, all in favor.

(Page 25)

(x) Fees in lieu of planting

b. Fees-in-lieu shall be collected at the rate per square foot of required mitigation that cannot be satisfied through planting or offsets *shall be \$4.25.*

~~i. For private development projects, the rate shall be \$1.25 per square foot.~~

~~ii. For public sector development projects, the rate shall be \$2.50 per square foot.~~

MOTION: Vice-Chair Greengold moved to amend *shall be \$4.25* to “shall be \$5.00 for properties under 40,000 square feet and \$10.00 for properties over 40,000 square feet. Seconded by Commissioner Ruttkay. Ayes, Chair Berault and Commissioners Blackwelder, Greengold, Ruttkay, and Weaver. Opposed, Commissioner Brown. **Motion Passes.**

~~e. Both rates are effective until two years have elapsed from the date of adoption of this amendment, at which time~~ The rates shall be re-evaluated and revised as needed.....

~~d. Any Category 2 site plan that is determined to be eligible for fee-in-lieu, shall be brought before the Planning Commission for approval.~~

~~e. Any after-the-fact permit approval requests that have mitigation effects that cannot comply with the offset requirements must pay the fee-in-lieu in addition to any penalties accessed.~~

MOTION: Chair Berault moved to accept the language of c, d, & e as written. Seconded by Vice-Chair Greengold. Ayes, Chair Berault, and Commissioners Blackwelder, Greengold, Ruttkay, and Weaver. Opposed, Commissioner Brown. **Motion Passes.**

Part 5. Other Habitat Protection Area-(Page 27)

A. Identification(2)(c) to add *(ii) Forest Conservation Areas in Chesapeake Village Subdivision*

MOTION: Commissioner Blackwelder moved to include under (2) (c), the following “(ii) Forest Conservation Areas in Chesapeake Village Subdivision.” Seconded by Commissioner Ruttkay, all in favor.

Part 6. Water Dependent Facilities-(Page 31)

E. Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

MOTION: Commissioner Weaver moved to add the following:

“(3) Shall meet all other requirements of water-dependent facilities as described in this section.” Seconded by Commissioner Ruttkay, all in favor.

Part 7. Growth Allocation (Page 34)

D. Process

MOTION: Chair Berault moved to add under Part 7. Growth Allocation, D. Process, excerpts from Section 290-18 of the zoning code 290-18, C. (2) Procedure for processing GA District applications, # 5 & 6 below.

(5) The Town Council shall hold a public hearing on the proposed development and the GA District classification after approval by the 34 Critical Area Commission. The hearing shall include the following:

- (a) Presentation of the project by the applicant;*
- (b) Review comments and recommendations;*
- (c) Critical Area Commission approval of map amendments and state and county comments, if any; and*
- (d) Public comments.*

(6) The Town Council will then make the final decision on the projects that will be awarded growth allocation and will be granted the GA District classification.

Seconded by Commissioner Blackwelder. Ayes, Chair Berault, Vice-Chair Greengold, and Commissioners Ruttkay and Weaver. Opposed, Commissioner Brown. **Motion Passes.**

MOTION: Chair Berault moved to insert the following highlighted sentence at the beginning of #2 to read:

(2) All applications for GA District classification and growth allocation will be reviewed at one time in each calendar year. The application for growth allocation shall be reviewed by the Planning Commission, who shall transmit a recommendation to the Mayor and Town Council.

Seconded by Commissioner Blackwelder. Ayes, Chair Berault, Vice-Chair Greengold, and Commissioners Ruttkay and Weaver. Opposed, Commissioner Brown. **Motion Passes.**

F. Standards

MOTION: Commissioner Weaver moved to add the following under F. Standards as *“(4) New intensely developed areas shall only be located where they minimize their impacts to the defined land uses of the Resource Conservation Area (RCA).”* Seconded by Commissioner Ruttkay, all in favor.

G. Additional Factors

MOTION: Commissioner Weaver moved to add under G. Additional Factors (3) *“(d) to have a demonstrable economic benefit.”* Seconded by Commissioner Ruttkay. Ayes, Chair Berault, Commissioners Blackwelder, Brown, Ruttkay, and Weaver. Opposed, Vice-Chair Greengold. **Motion Passes.**

Part 8. Grandfathering

To accept the following statutory language:

C. Implementation.

(1) For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in this chapter.

(2) Nothing in this section may be interpreted as altering any requirements of this ordinance related to waterdependent facilities or habitat protection areas.

MOTION: Vice-Chair Greengold moved to approve the inclusion of Implementation (1) & (2). Seconded by Commissioner Weaver, all in favor.

The Town Planner stated the Critical Area Commission does recommend that the Town include the following language in a revision of its violations and enforcement section of the zoning code related to Critical Area: *“In addition to any other penalty applicable under this ordinance, every violation of a provision of the Natural Resources Article, Title 8, Subtitle 18, or the Critical Area Provisions of the Ordinance shall be punishable by a civil penalty of up to \$10,000 per calendar day.”*

MOTION: Chair Berault moved to approve incorporating the recommendation per the Critical Area Commission as stated in the Town Planner’s memo. Seconded by Vice-Chair Greengold. Ayes, Chair Berault, Vice-Chair Greengold, and Commissioners Ruttkay and Weaver. Opposed, Commissioner Brown.
Motion Passes.

MOTION: Chair Berault moved to approve sending the amended critical area document to the Town Council and the CBCAC for comment. Seconded by Commissioner Weaver. Ayes, Chair Berault, Vice-Chair Greengold, and Commissioners Ruttkay and Weaver. Opposed, Commissioner Brown.
Motion Passes.

VII. Adjournment:

There being no further comments, Commissioner Ruttkay moved to adjourn the meeting at 9:22 PM. Seconded by Commissioner Weaver, all in favor.

Submitted by,

Sharon L. Humm
Commission Clerk

This meeting can be viewed in its entirety on the Town website on the Planning Commission page www.chesapeakebeachmd.gov.