

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland**

December 4, 2019

CALL TO ORDER: A meeting of the Critical Area Commission was held at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Virginia Clagett, Western Shore Member-at-Large
Carolyn Cummins, Worcester County – Coastal Bays
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
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Jennifer Merritt, Worcester County – Chesapeake Bay
Marianne Navarro, Baltimore City
Heather Nelson, Department of Environment (for Tammy Roberson)
William Neville, Ocean City (for Gail Blazer)
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Dave Cannon, Dorchester County
Robert Culver, Wicomico County
Ewing McDowell, Department of Commerce
Tammy Roberson, Department of Environment

ANNOUNCEMENTS: During lunch, before the official start of the meeting, retired Commissioner Gary Setzer was honored for his 18 years of service to the Commission with a plaque, and the presentation of a Citation from Governor Hogan.

APPROVAL OF MINUTES: A motion was made by Commissioner Mahoney and seconded, to approve the minutes of the October 2, 2019 Commission meeting. **Motion carried.**

STAFF PRESENTATIONS: The following presentations were made by Commission staff.

Washington Suburban Sanitary Commission – Anacostia Trunk Sewer Rehabilitation, Phase II - Prince George’s County

Mr. Michael Grassmann presented for vote the proposed Anacostia trunk sewer line rehabilitation project located within Anacostia Stream Valley Park by the Washington Suburban Sanitary Commission (WSSC). Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made a part of these minutes.

The 102-inch trunk sewer line transverses through the Anacostia Stream Valley Park on lands designated Resource Conservation Area (RCA) from the WSSC Anacostia Depot at the north-end to the WSSC processing facility located at the south-end. The project is mainly accomplished through a trenchless method, but impacts are required in order to install three new manholes resulting in lot coverage. Temporary disturbance will result in clearing both in the Critical Area and in the Buffer. WSSC will be providing mitigation at the required ratios. There are no permanent impacts to the expanded Buffer. There were no comments received from any of the agencies that reviewed the project, nor any public comments. At the conclusion of the presentation there were no questions.

Project Subcommittee Chair, Commissioner Hertz, moved on behalf of the Project Subcommittee that the Commission approve the rehabilitation of the Anacostia Trunk Sewer within the Anacostia Stream Valley Park proposed by the Washington Suburban Sanitary Commission in Bladensburg, Maryland in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, the Washington Suburban Sanitary Commission shall submit a planting plan and an executed planting agreement to Commission Staff for review and approval.

Commissioner Greer seconded the motion. **Motion carried.**

St. Mary’s College of Maryland –New Academic Building and Auditorium – St. Mary’s County

Ms. Susan Makhoulf presented for vote the proposed new academic building and auditorium at St. Mary’s College of Maryland. Ms. Makhoulf reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

St. Mary's College of Maryland (SMCM) in St. Mary's County is proposing to construct a new building and auditorium and associated site improvements of a parking lot, walkways, utilities, and stormwater management (SWM) facilities. The project will redevelop the site of an existing athletic track and field and of the 8.37 acre project, 2.84 acres is located within the Intensely Developed Area (IDA). The Critical Area stormwater requirement will be met by a reduction in impervious surface. Three trees will be mitigated at a ratio of 1:1. Maryland Historic Trust is requiring an archaeological monitoring plan. No other agency concerns or public were noted.

Project Subcommittee Chair Hertz moved on behalf of the Project Subcommittee that the Commission approve the construction of the Academic Building, Auditorium, and associated site improvements proposed by the St. Mary's College of Maryland in accordance with the staff report and presentation. The site improvements include parking lots, walkways, utilities, and stormwater management facilities. The motion was seconded by Commissioner Hewitt. **Motion carried.**

City of Baltimore Recreation and Parks Department - Middle Branch Fitness and Wellness Center and Reebird Park Improvements – City of Baltimore

Ms. Alex DeWeese presented for vote a multi-use fitness and wellness center at Reebird Park in Baltimore City. Ms. DeWeese reviewed her staff report as revised, the contents of which are incorporated into and made a part of these minutes.

The City of Baltimore Recreation and Parks Department proposes to redevelop a City-owned 33.9 acre waterfront parcel designated as a Resource Conservation Area (RCA) for a multi-use fitness and wellness center. The site is currently utilized as an active recreation site and is improved with buildings and trails in need of replacement and renovation. The existing facilities include an outdoor swimming pool, splashpad, pool building, basketball and tennis courts, playground equipment, walking trails, and parking spaces, all of which were in use prior to the adoption of the Critical Area Law. The City intends to improve the park by adding an artificial turf playing field, multiple grass playing fields, a playground, a dog park and a Fitness and Wellness Center. The proposed 34,000 square foot Fitness and Wellness Center will house an indoor pool, gymnasium, fitness space, walking track and community classrooms. The existing outdoor pool and pool building will remain and be incorporated into the overall development project. Lot coverage will increase from 6.4% to 19.3%.

The project requires conditional approval under COMAR 27.02.06 from the Critical Area Commission because the project is not consistent with the current Baltimore City Critical Area Management Program (CAMP) Manual as active recreational uses are not permitted in the RCA, proposed lot coverage will exceed 15%; and the City is requesting that mitigation be calculated in accordance with COMAR requirements rather than under Baltimore City's requirements found in the Critical Area Management Program (CAMP) Manual.

The applicant has proposed numerous offsets in recognition of the Conditional Approval including: interpretive and educational signage for on-site stormwater management, native plantings and wildlife, and riparian Buffers; an invasive species management program for the site; and trash cleanup project along the 2,100 linear foot shoreline. An existing program, Canoe and Scoop, will be used to regularly clean the shoreline.

Project Subcommittee Chair, Commissioner Hertz moved on behalf of the Project Subcommittee that the Commission approve the construction of the Middle Branch Fitness and Wellness Center and the improvements to Reedbird Park proposed by the City of Baltimore in accordance with the revised staff report and presentation and the following condition:

- Prior to the start of Phase II construction, the City of Baltimore shall provide Commission staff with the following information:
 - 1) A copy of the MDE/USACE authorizations for nontidal wetland impacts.
 - 2) A copy of the stormwater management and sediment and erosion control approvals.
 - 3) A final planting plan for review and approval by Commission staff. These plans must demonstrate that all Buffer, forest and developed woodland clearing, and relocated planting requirements have been met, and include measures to plant both onsite and offsite areas, as well as monitoring and maintenance for invasive species. The plans must also include information regarding financial assurance of the planting plan, a minimum two-year maintenance and monitoring agreement, and identification of the responsible party via signature on the plans.
 - 4) Notification of the final fee in lieu collected for this project.

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

- Except for lot coverage exceeding 15% and inconsistencies with the current Baltimore City Critical Area Management Program Manual regarding recreational uses in Resource Conservation Areas and mitigation ratios, the proposed project is in compliance with the relevant chapters of this subtitle.
- Disturbances to the Critical Area will be mitigated at ratios that are inconsistent with the Baltimore City Critical Area Management Program Manual, but acceptable to the Commission under current COMAR requirements.
- The proposed project offers public benefits to the Critical Area Program by selecting a design that redevelops the existing Reedbird Park, which is situated on a legacy landfill, while minimizing, to the extent possible, impacts to the Critical Area, including the 100-foot buffer and the adjacent Patapsco River. Additionally, the proposed Project will: 1) Improve water quality through the construction of stormwater best management practices that will treat both existing and new impervious surfaces; 2) Enhance habitat by removing invasive species, developing an invasive species management plan, and removing trash along the shoreline of the Patapsco River; 3) Provide the local community with improved access to the Critical Area; 4) Provide an educational experience by incorporating signage along a multi-use waterfront path through the Critical Area buffer that will connect to the Gwynns Falls Trail; and 5) Pay an in-lieu fee that will fund additional water quality improvements and environmental enhancements in Baltimore City.

Commission Navarro seconded the motion. Commissioner Johnston asked for clarification about the forested area that was planted with fee-in-lieu money being removed, and asked if there were any other requirements about where the new plantings will have to be located. Ms. Charbonneau

replied that this was a very unusual situation, and that generally city governments are not expected to put easements on their lands. Commissioner Merritt then asked about the requirement that the fields that will be installed will be made of artificial turf, and a representative from Baltimore City Rec and Parks replied that the project was a collaboration between the City of Baltimore, the Cal Ripken Senior Foundation, and the South Baltimore Gateway Partnership. The Ripken Foundation's standard is synthetic turf.

With no further questions, the vote was taken. **Motion carried.**

Baltimore Development Corporation - TopGolf Baltimore Sports and Entertainment Complex – City of Baltimore

Ms. Alex DeWeese presented for vote a proposal by the Baltimore Development Corporation to develop City-owned property with a golfing and entertainment facility in the Critical Area. Ms. DeWeese reviewed her staff report as revised, the contents of which are incorporated into and made a part of these minutes.

The Baltimore Development Corporation (BDC), on behalf of the City of Baltimore, is requesting approval to redevelop two City-owned waterfront parcels designated as Intensely Developed Area (IDA) for a golfing and entertainment facility known as TopGolf. The project requires conditional approval by the Commission because it is not consistent with the City of Baltimore's Critical Area program or State Critical Area regulations for development within the Buffer and a Designated Habitat Protection Area.

The project will require approximately 13.35 acres of Buffer mitigation, some of which will be planted onsite and the remainder will be provided through a brownfield clean-up project at Ridgely's Cove. Critical Area stormwater requirements will be met through a combination of planting offsets in conjunction with BlueWater Baltimore and by payment of a fee-in-lieu at the rate of \$35,000 per lb. for the remainder.

Project Subcommittee Chair, Commissioner Hertz moved on behalf of the Project Subcommittee that the Commission approve the construction of the TopGolf Sports and Entertainment Complex proposed by the City of Baltimore in accordance with the revised staff report and presentation and the following conditions:

- 1) Prior to the start of construction, the City of Baltimore will provide copies of all approvals related to stormwater management and sediment and erosion control plans as well as payment of the Critical Area stormwater fee-in-lieu to Commission staff;
- 2) Within 180 days of Critical Area Commission approval, the City of Baltimore will submit final mitigation plans for Ridgely's Cove for review and approval by Commission staff. These plans must demonstrate that all planting requirements have been met at the Ridgely's Cove site, and include information regarding financial assurance of the planting plan, a minimum five-year maintenance and monitoring agreement, a start date of no later than November 15, 2020 and the identification of the responsible party via signature on the plans; and
- 3) All mitigation located at the TopGolf site shall be planted no later than one year following completion of all work at TopGolf.

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

- Except for inconsistencies with the Baltimore City Critical Area Management Program or with State regulations regarding proposed impacts to the expanded Buffer and to Designated Habitat Protection Areas, the proposed project is in compliance with the relevant chapters of this subtitle.
- Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission.
- The proposed project offers public benefits to the Critical Area Program by selecting development and mitigation sites that have been degraded and are eligible for remediation under the State's Voluntary Cleanup Program, which provides oversight for the cleanup of properties contaminated with hazardous substances. The Project is also designed to minimize adverse impacts to the Critical Area to the extent possible, while still contributing to the City's goal of enhancing the existing entertainment complex anchored by the Horseshoe Casino, M&T Bank Stadium, and Orioles Park at Camden Yards. In addition to the benefits provided by the remediation of the development and mitigation sites, water quality will also be improved by the urban tree planting in the Gwynns Falls and Harbor watersheds, which converge at the Project site. The Project's living shoreline constructed along the banks of the Middle Branch of the Patapsco River will also enhance water quality, as well as aquatic habitat. Finally, the remediation and planting of Ridgely's Cove, and the subsequent installation of a new walking path, will enhance the park experience for the local community.

Motion seconded by Commissioner Navarro. Commissioner Merritt had a question about what the economic impact would be. Ms. Kimberly Clark, Executive Vice President of the BDC informed the Commission that no economic study had been done, but wherever TopGolf goes the impact is quite substantial. Commissioner Johnston referred to the staff report where it says that no stormwater management can be done onsite, asking what the justification was for zero stormwater management. The response was that the design comes from TopGolf and doesn't allow for accommodation; furthermore, the rest of the site is maxed out with mitigation plantings.

Vote was taken, with one voting No (Commissioner Merritt), and all others voting in favor.

Motion carried.

Town of Sharptown – Critical Area Mapping Update

Ms. Lisa Hoerger presented a proposed refinement by the Town of Sharptown, in Wicomico County to update their Critical Area maps. Ms. Hoerger reviewed her staff report, the contents of which have been incorporated into and made a part of the minutes.

Commission staff worked with the Town of Sharptown, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies and were delivered to the town for public comment

and local approval. The update resulted in a gain of 3 acres and a loss of 8 acres, with a net loss of 5 acres.

As part of the mapping update, the Mayor and Town Commissioners approved Ordinance #51 at their meeting on November 18, 2019. This action constituted local adoption of the updated maps.

Program Subcommittee Chair Cummins stated that the mapping update was completed in accordance with State Law and COMAR 27.01.11. The Program Subcommittee concurs with the staff and recommends that the Commission concur with the Chairman's determination that the Town of Sharptown's mapping update can be reviewed as a refinement to the Town's Critical Area Program. Chairman Deegan stated that would stand as his final decision.

Town of Sharptown – Critical Area Program Comprehensive Review

Ms. Tay Harris presented a proposed refinement by the Town of Sharptown, in Wicomico County, to comprehensively review and update their Critical Area Program. Ms. Harris reviewed her staff report, the contents of which have been incorporated into and made a part of the minutes.

On November 18, 2019, the Town of Sharptown's Commissioners approved Ordinance #51 which comprehensively reviewed and updated their Critical Area Program as required under Natural Resources Article, §8-1809(g). The previous update to the Town's Critical Area was approved by the Critical Area Commission on May 12, 2012.

The proposed changes were mostly minor in nature and do not substantively change the Town's Critical Area ordinance. The intent was to provide clarity to existing requirements and make certain parts consistent with State law and Criteria, such as definitions.

Program Subcommittee Chair Cummins recommended that the Commission concur with the Chairman's determination that this comprehensive review can be a refinement to the Critical Area Program for the Town of Sharptown since the proposed changes are consistent with Critical Area law and regulations. Further, Commissioner Cummins recommends approval of the refinement as submitted. Chairman Deegan stated that would stand as his final decision.

Town of Sharptown – Modified Buffer Area Program Adoption

Ms. Tay Harris presented a proposed refinement to the Town of Sharptown, in Wicomico County, to adopt new Modified Buffer Area maps. Ms. Harris reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

Pursuant to Code of Maryland Regulations 27.01.09.01-8 – Modified Buffer Area, the Town of Sharptown is requesting that of the Town's twenty parcels along its shoreline, eleven of the parcels be designated Modified Buffer Area (MBA). The Buffer's function is impaired on these properties either by parcel size, meaning the Buffer encompasses all or the majority of the parcel; or by the location of development, meaning development is located predominantly in the Buffer. In these instances, the Buffer cannot serve as a transitional space where vegetation removes or reduces sediments and nutrients, or serve as space for habitat; therefore, the Buffer cannot protect water quality as intended by the Critical Area Law.

The Town of Sharptown's Planning Commission held a public hearing on October 29, 2019, and after hearing public comment forwarded a favorable recommendation to the Town Commissioners. On November 18, 2019, the Town of Sharptown's Commissioners conceptually approved the MBA designations.

Program Subcommittee Chair, Commissioner Cummins stated that the MBA designation for 11 of the Town's 20 parcels is consistent with Critical Area law and regulations and concurs with the Chairman's determination of a refinement to the Critical Area Program for the Town of Sharptown. Further, Commissioner Cummins recommends approval of the refinement as submitted. Chairman Deegan stated that would stand as his final decision.

Refinement – Town of Betterton – Comprehensive Review of Critical Area Program

Ms. Annie Sekerak presented a proposed refinement by the Town of Betterton, in Kent County, to comprehensively review and update their Critical Area Program. Ms. Sekerak reviewed her staff report, the contents of which have been incorporated into and made part of the minutes.

On November 26, 2019, the Mayor and Town Council of the Town of Betterton voted to repeal and replace the Town's Critical Area program through the adoption of Ordinance 2019-06. This ordinance was drafted following a comprehensive review of the Town's Critical Area Program as required by Natural Resources Article, §8-1809(g). The previous update to the Town's Critical Area Program was approved by the Critical Area Commission in 2013.

The update follows the Commission's model ordinance for Towns with minor changes to incorporate Town needs. Mitigation will be required for all tree clearing in the IDA, alternative clearing limits were proposed for grandfathered lots in the LDA and RCA less than one acre in size, and the Town added a 5-foot setback to some of their MBA properties.

Program Subcommittee Chair, Commissioner Cummins stated the subcommittee concurs with the Chairman's determination that this comprehensive review be processed as a refinement to the Town's Critical Area Program as the proposed changes are consistent with the Critical Area Law and its regulations. Further, Commissioner Cummins recommends the Chairman approve Ordinance 2019-06 as submitted. Chairman Deegan stated that would stand as his final decision.

Town of Betterton – Critical Area Mapping Update

Ms. Hoerger presented a proposed refinement to the Town of Betterton, in Kent County, to update their Critical Area maps. Ms. Hoerger reviewed her staff report, the contents of which have been incorporated into and made a part of the minutes.

Commission staff worked with the Town of Betterton, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, were presented at a public meeting in Kent County, and lastly, were delivered to the town for public comment and local approval. The update resulted in a gain of 6 acres and a loss of 2 acres, with a net gain of four acres.

As part of the mapping update, the Mayor and Town Commissioners approved Ordinance No. 2019-07 at their meeting on November 26, 2019. This action constituted local adoption of the updated maps.

Program Subcommittee Chair, Commissioner Cummins stated the mapping update was completed in accordance with State Law and COMAR 27.01.11 and recommended concurrence with the Chairman's determination that the Town of Betterton mapping update can be reviewed as a refinement to the Town's Critical Area Program. It was further recommended that the Chairman approve Ordinance 2019-07. Chairman Deegan stated that would stand as his final decision.

LEGAL UPDATES:

Assistant Attorney General Emily Vainieri had no legal updates to report.


OLD BUSINESS:

Commissioner Johnston gave an update on the progress of the Little Island case. He stated that the lot coverage removal and planting as required by the Commission in conjunction with the MBA designation has been completed. The Commission will receive a letter informing them of that fact.

NEW BUSINESS:

Ms. Charbonneau announced that Anne Arundel County had recently approved a bill that is mostly related to the Forest Conservation Act. Part of the bill was to increase the Critical Area fee-in-lieu across the board, and this applies to both the Buffer and to clearing generally, up to \$2.00 per square foot from \$1.50.

Chairman Deegan adjourned the meeting at 2:10 p.m.



Lynette Fullerton, Commission Secretary

March 4, 2020

Date of Approval