



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, July 28, 2021, at 6:00 p.m.

I. Welcome and Roll Call – Task Force Member and Acting Chair, Joe Hickman

Vice Chair Joe Hickman opened the meeting at 6:00 pm, conducting member roll call.

The following Task Force members were in attendance: Vice Chair Joe Hickman, Albert Nickerson, Bill Norris, Bill Sutton, Bryan Greenwood, Buck Nickerson, Chikki Shajwani, Cindy Genter, Jim Saunders, Pat Langenfelder, Paul Ruge, Tom Mason, and Tyler Brown.

The following staff attended: Planning Commission Attorney Cynthia McCann, Esq; DPHZ Director William Mackey, AICP; Deputy Director, Carla Gerber, AICP; Associate Planner, Mark Carper; Chief Enforcement Officer Michael Bitting; and Clerk, Michael Pelletier.

Members of the public who attended in-person or remotely included: Wilson Campbell; Eleanor Collyer; A Ford Hall, Sr.; Elizabeth Hodge; Janet Christensen-Lewis; Frank Lewis; and Annie Richards. The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Approval of Summary for the Task Force Meeting on July 14, 2021

The Chair requested a Motion to Approve the Meeting Minutes Summary from July 14, 2021. Pat Langenfelder moved to accept the minutes and Cindy Genter seconded the motion. All members were in favor of the motion. The minutes were accepted by the Vice Chair Joe Hickman, without objection or comment.

III. Purpose - Fair and Open Discussion on Proposed Text Amendments

Outcome - Staff is to summarize Task Force positions in Meeting Summary

Ground Rules

- A. Everyone is encouraged to share ideas openly and freely.
- B. There are no right or wrong inputs for discussion purposes.

Norms

- Participants speak 'through the chair'. This means raising your hand if you want to speak, and waiting for the Chair to call on you.
- Don't interrupt other people.
- Don't talk/debate amongst yourselves.
- Respect other's views.
- Keep contributions short and to the point.

Adopted on August 11, 2021

- Start and end on time.
- If online or on the phone: have your video ON and mute ON. Wait for the Chair to call your name before you unmute

IV. Old Business

- Review the Results of the Task Force Member Questionnaire
- Review of a proposed Schedule for Task Force Conversations
- Review of S1 (accessory dwelling units to the Village zoning district)

Mr. Sutton raised the issue of accessory dwelling units being allowed on farms and the possible effect on public services, noting that the Health Department would have to review additional units.

- Review of S9 (demolition process as it relates to age of structure)
- Review of S13 (overall approach to short-term vacation rentals)

V. New Business

- Review of P7: Request to review lot coverage standards and other Critical Area provisions, lot line adjustments on parcels under 5 acres, and wastewater treatment.

Ms. Gerber informed the Task Force that this is a request from the public that relates to a number of critical area provisions.

Ms. Gerber pointed out that all land within 1,000 feet of mean high tide falls within the Chesapeake Bay Critical Area which is governed by State law. The County implements an approved Critical Area Program which governs lot coverage, septic systems, buffer protections, etc. The Critical Area Commission has published a model ordinance as a guide for Counties to implement the State regulations. The County cannot be less restrictive than the State law, but the County can be more restrictive. Many of the comments in the requested text changes for this item are related to requirements in State law.

Ms. Gerber stated that this request from the public was to include driveways as lot coverage. Unfortunately, the County cannot do anything about that because the State law does define lot coverage as “the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any other manmade material.” Ms. Gerber noted that State law is very clear on what does and does not count as lot coverage.

Ms. Gerber noted that a second request from the public was to require nitrogen reducing systems for septic but not for double fields. She added that the type and size of a septic system drain field is determined by the Health Department and State regulations that the requestor must follow.

A Member had questions for Ms. Gerber regarding clarifying requirements for double field requirements. Ms. Gerber noted that this was a Health Department regulation and staff does not want to comment on Health Department activities. The member had concerns regarding whether this is a 10,000 square foot requirement or whether this could be a lot coverage matter and requested further clarifications from staff on this question.

A second member noted that he believed that the Health Department determined the size of a drain field based on the number of bedrooms in a house. Ms. Gerber indicated that she would go back and review the permit and see what she can find to clarify the members' questions.

A third request from the public sought to give a property owner the ability to remove fallen trees and debris from storms without exception. Ms. Gerber stated that the County cannot grant blanket approval to let homeowners remove fallen trees without exception following storms. However, the County can accept simplified forest clearing and buffer management plans following storm events.

Another request from the public sought an amendment allowing for properties with less than 5 acres to obtain lot line adjustments if the buyer and seller agree and are adjacent property owners. Ms. Gerber commented that lot line adjustments are permitted so long as the adjustment doesn't create a non-conforming lot or make a lot less conforming, and it complies with any other applicable County or State regulations. Ms. Gerber added that Critical Area law may present challenges to some lot line adjustment requests.

A final request sought to require farms, industrial, and government wastewater to have the same restrictions as private land holders regarding runoff and wastewater management. Most regulations concerning runoff and wastewater management are established by the State. The County may implement a local program, but it still has to comply with State law.

In summary of the staff's position, Ms. Gerber stated that Counties implement a number of State mandated programs that require a minimum level of regulations. There is very little that staff can do to alter these regulations.

Ms. Gerber added that Staff is completing a review of Critical Area regulations to ensure that the zoning regulations meet at least the minimum requirements. Specific differences will be highlighted in the draft ordinance as the new document is written.

In regard to the Staff's recommendation, there are no specific text changes to implement based on these public requests.

B. Review of P10: Request for modified buffer in RCD for campgrounds, as defined in §2.2(18) of the County's Land Use Ordinance

Ms. Gerber directed the Task Force to the Staff Report addressing modified buffers in the RCD for campgrounds. She noted this very specific public request is for modified buffer areas to be mapped in the Resource Conservation District for campgrounds and to exempt campgrounds from certain buffer requirements.

She noted that this request has multiple parts. The first part is to establish a process by which new Modified Buffer Areas may be requested and mapped.

The Critical Area Law sets forth the standards for mapping of new Modified Buffer Areas. Ms. Gerber noted that only lots of record as of December 1, 1985, are eligible for mapping as Modified Buffer Areas, and the parcel or lot being considered for a Modified Buffer Area shall contain a Buffer that was significantly impacted by development at the time of program adoption which prevents the Buffer from fulfilling its functions.

Ms. Gerber referenced two examples for designating new Modified Buffer Areas: Anne Arundel County which has an administrative process for property owners to request designation as a Modified Buffer Area and Talbot County which allows for the creation of or revision to Modified Buffer Areas following the process used for other amendments to the Official Zoning Maps.

The second part of the request is to include Modified Buffer provisions in the Resource Conservation District. The requestor provided a proposal as noted above. The Critical Area Commission has suggested that the County include language similar to what is found in the Modified Buffer sections of the Commercial Critical Area and Marine districts to address campgrounds.

Ms. Gerber added that the Commercial Critical Area and Marine district language, if incorporated, would be more restrictive than proposed by the requestor, but would allow them to modify the buffer from 100 feet to 25 feet.

In closing, Ms. Gerber confirmed that the Staff supports adding a process for property owners to request designation as a Modified Buffer Area. Staff also supports adding Modified Buffer language to the Resource Conservation District as recommended by the Critical Area Commission.

A member raised a question as to whether Staff could present these proposed regulations in more layman's terms, provide short form guidelines, or provide visuals and examples of situations to make this process clear to the task force and to the public. Ms. Gerber responded that it's very difficult to have examples as the law has evolved for over thirty-five years, and there are numerous scenarios depending on the type of dwellings or size of lots. Ms. Gerber did note there are several State publications that might assist in answering some of these questions. Ms. Gerber is concerned about copying this information and putting it on the County website as the law may change. Staff does not want outdated information being relied upon by the public. She also noted that she is always available to try to clarify any particular question.

A second member asked whether a campground asked for this change. The member sought clarification on where the need developed to make this proposed change. Ms. Gerber responded that there is a campground in the RCD that has been in existence since 1971 or 1972 that has a lot of development near the waterfront and wants to improve the property but would need a Modified Buffer. She noted there is at least one other property of which she is aware that would like to request a Modified Buffer designation.

The second member and Ms. Gerber discussed the procedures an applicant might be able to take to modify the buffer along with the applicant's burden of proof. They also discussed the Critical Area Commission's involvement in this process.

A third, fourth, fifth member and the first member joined in the discussion as to whether there should be graphics in the Code related to these items. Ms. Gerber indicated that Staff would see if they could find anything that would sufficiently meet the expectations of the Critical Area Commission.

Public Comment

Janet Christensen-Lewis, resident of Millington, asked whether there are any measures in place that require the applicant to mitigate smaller buffer areas in the event they are granted a Modified Buffer. Ms. Gerber responded that the County does have mitigation standards that are required under the Critical

Area law. Those standards require that Commercial, Industrial, or Recreation areas be located as far as possible from high tide and that any new development cannot be located any closer than existing development. Ms. Gerber also noted that there are mitigation efforts that would be required as well.

Ms. Lewis inquired as to the density and reforestation requirements. Ms. Gerber indicated she would need to do some research on this question. Mitigation locations were further discussed between Ms. Gerber and Ms. Lewis. Ms. Lewis was concerned that modified buffers might detract from the environmental purpose of having buffers.

Annie Richards, Chester Riverkeeper, informed the Task Force on how buffers and marshes are critical natural areas that provide protection for waterways and properties, especially with rising water levels due to climate change. She noted that Kent Island is a prime example of how development has led to a significant loss of marshland due to these modified buffers and it's important the County take that into account now before these problems develop here.

A sixth member asked the Task Force if they have a consensus of a request for graphics. Ms. Gerber reiterated the limited application of this Modified Buffer amendment. The sixth member had concerns that the 25-foot buffer is not very far and would not want to encourage other applicants to seek these modifications, especially since tides are going to rise. Ms. Gerber added she did not think that this would be the case.

The first member raised concerns that nobody understands this process until they come into the Planning Office to get an explanation. The member would like to see a simplified procedure readily available to the public as a handout or something on the webpage to which the member could refer people.

The second member inquired if there is any desire to strengthen the Land Use Ordinance to address these environmental concerns, so that Kent County does not develop the problems Kent Island has been experiencing. The first member stated the County ordinance is fine as it is now. Ms. Gerber added the Task Force could consider this over the next few weeks, so Staff may discuss these additional concerns when the Task Force covers Old Business at the next meeting.

A seventh member inquired how long the County has had a 25-foot modified buffer area. Ms. Gerber indicated the Critical Area law became effective in 1985. The County has had Critical Area regulations in the Code since 1989. Modified buffer areas have been mapped since 2002. Ms. Gerber added that the Land Use Ordinance may need a mechanism that would assist them to address properties that the County might have missed when the County initially mapped Modified Buffer areas.

The seventh member and Ms. Gerber discussed what is addressed when an applicant meets with Staff to go over the requirements. The first member added that the various buffers and locations are what cause confusion. Ms. Gerber addressed the first member's concerns and confirmed that the various scenarios and conditions could cause confusion.

The meeting closed for a 10-minute break at 6:58 p.m. and resumed at 7:10 p.m.

Before turning to the next agenda item, the first member informed the Task Force that a member that was attending remotely wanted to make a comment on the previous agenda item. The first member read a statement by the seventh member informing the Task Force that the member supported the Staff's recommendation and supported the idea of a visual graphic being added to the ordinance.

C. Review of TF9: Review elimination of the County's maximum pier length of 150 feet.

Turning to the Staff Report concerning elimination of the County's maximum pier length of 150 feet, Mr. Mackey read the task force request regarding the maximum pier length of 150 feet. In order to construct a pier, first an applicant must apply to the Maryland Department of the Environment (MDE) and Army Corps of Engineers for a license. This application must be reviewed and approved by seven State/Federal agencies including Army Corps of Engineers, MDE, DNR, MHT, US Fisheries, US Fish & Wildlife, before the license is granted. Then it must go under County review at the local level. The task force member request suggested removal of the zoning requirement by the County.

Mr. Mackey noted the Department found that Queen Anne's County and Talbot County both include a 150-foot maximum pier length as part of their regulations. Cecil County includes a 300-foot maximum pier length.

Mr. Mackey stated that the 2018 Comp plan strategy seeks to protect submerged aquatic vegetation, nursing habitats, and shellfish beds. As such, Kent County has limited pier lengths to a 150-foot maximum. Queen Anne's County and Talbot County have similar conditions. Staff recommends maintaining the current 150-foot pier length standard. As a compromise, the Task Force may want to consider an administrative variance procedure for a percentage increase to address special circumstances.

A member suggested increasing the length to 200 feet or allowing the County to review an application on a case-by-case basis so long as the request does not impede on the channel or waterways. A second member added that QAC's variance process has a higher approval rate than that of Kent County. A third member supports the ability to issue a variance and agrees with the first and second member that the 150-foot restriction may not be a necessity and the Task Force may want to consider extending the pier length limit. The second member added that the Town of Betterton and Chestertown have no pier limits so long as it meets the requirements of the MDE and the Army Corps of Engineers.

Public Comment

Annie Richards supports the Staff's recommendation of keeping the 150-foot pier length restriction and she believes a variance is a very fine alternative. She agreed that piers do impede the public's ability to enjoy the waterway and they also impede on aquaculture. The amount of water clarity and eggs produced in these beds is very important and dredging does disturb this activity. She recommends the Task Force review some of Virginia's zoning regulations on where docks should be built or whether variances should be allowed.

Janet Christensen-Lewis requested the Task Force take into consideration the Riverkeeper advice as Riverkeepers have knowledge of water sampling, the effects that an extension would have on our rivers, and how the shade from the piers effects the submerged aquatic vegetation (SAV). She supports a variance process but is opposed to any sort of extension to pier length limits.

A. Ford Hall, Sr., Georgetown Yacht Basin, shared his experiences with piers. He noted that most builders only seek to reach six feet of water during low tide, and he recommends the Task Force adopt this as a possible standard for a variance and perhaps extend pier length to 250 feet so long as it does not impede on the channel.

A member agreed with Mr. Hall that people who invest in a pier need to get to a certain depth. A fourth member stated that the task force should accept Mr. Mackey's recommendations as it provides some flexibility if there is a need for the pier length to go further. The first member stated that by extending the pier length, this would reduce the number of variances that would be required, and the process would be much less difficult on the Planning Commission and everybody else. A fifth member agrees with a 150-foot pier limit and at the same time provide for a variance if needed.

Annie Richards added that there are a number of boaters and kayakers who utilize the County's tributaries, and extending pier lengths would impact many of them, since there are several locations in which the water does not reach six feet until you are in the channel. She supports some sort of variance but does not support allowing pier lengths to be unrestricted.

Janet Christensen-Lewis added that it is better to allow for a variance so that neighbors get notice of the construction rather than observing the construction by surprise. A variance procedure would allow the River Keepers to come forward to comment on the environmental impact that a particular variance would have on the waterway.

Eleanor Collyer inquired as to how to weigh a property owner's right to extend a pier to 300 feet as opposed to the right of kayakers and boaters to have public use over the waterway. The second member responded that riparian rights of the owner have to establish some limits. It's where these limits end is where the Federal, State, and local governments set their limitations. The second member agreed with Mr. Ford Hall's comment that applicants will stop when they reach the six feet, and the property owners pay a lot of property taxes. This member is for having no limit and has concerns with the variance process being granted too often.

Vice Chair Hickman stated that the Staff will review the recording, and the Task Force will try to reach some sort of consensus. In reviewing the meeting, staff notes that more members spoke in support of flexibility to the regulations than members who preferred to keep the 150-foot maximum in place, as is.

D. Review of S14: Consider discussing climate change, resilience, and the floodplain regulations by potentially requiring Base Flood Elevation plus three feet for new projects.

Turning to the Staff Report, Mr. Mackey noted that the Staff suggestion raises the issue of potentially addressing climate change through a specific measure.

Mr. Mackey added that Kent County's freeboard elevation requirement is 2 feet above the 100-year flood, and increasing freeboard height requirements could potentially lower flood insurance premiums for property owners. Under the 2018 Comprehensive Plan, the County's strategy is to maintain, enforce, and strengthen regulations that protect buffer areas, shorelines, and floodplains for flood reduction and habitat protection benefits. The County will keep its regulations current to standard practice and obtain higher levels of protection, as appropriate.

Mr. Mackey noted that the 2016 Kent County Climate Change Adaptation Report recommends that the County explore implementing a 3-foot freeboard on new construction.

Mr. Mackey also noted the County's 2019 Nuisance Flooding Plan that is used as a model statewide. The plan recommends additional freeboard as a tool to reduce flooding.

Since most of the effected properties would be waterfront or have water access, such a provision might impact an important sector of the economy by deterring vacation and seasonal home construction, when such homes must be located in the floodplain due to lot constraints. In many jurisdictions, such properties pay higher taxes while requiring fewer services. The financial impacts of increasing the required freeboard are not understood, and the two reports cited above do not address costs. Certainly, there will be increased costs, and they will affect the decisions that people make to construct new projects.

Staff recommends that the Task Force consider suggesting additional freeboard as a recommendation, based on the recommendations in the 2016 Kent County Climate Change Adaptation Report and the 2019 Kent County Nuisance Flooding Plan. Comprehensive Rezoning is an appropriate time to make this change.

Mr. Mackey informed the Task Force that Mike Bitting, the County's FEMA Liaison and its Floodplain Manager, is in the audience and available to answer any questions.

A member had further questions about freeboard and clarification on the change from a 2-foot to 3-foot elevation. Mr. Bitting responded that freeboard is the additional amount of height above a base flood elevation. Currently, Kent County requires only 2-feet. Mr. Bitting added that, for all new construction, raising the elevation to 3-feet would help prevent damage from nuisance flooding and storm surge. As a visual, it would be similar to adding an extra row of cinderblock, which is approximately eight inches in height. Mr. Bitting added that MDE has a map on its website that shows all of the 100-year floodplains within the County.

Another member asked if there were some way to show the impact. Mr. Bitting conveyed that FEMA has a lot of tools on its website that would show the difference. Mr. Bitting offered to look into this resource and provide the Task Force with links.

The second member was in favor of raising the freeboard to 3 feet as the member has witnessed sea level rise personally. A third member added that they recall the damage that occurred in Rock Hall during Hurricane Isabelle.

A fourth member asked Mr. Bitting how the base flood elevation is determined. Mr. Bitting indicated it is determined by a surveyor for a new structure or substantial renovations, and then the surveyor would apply the 2-foot or 3-foot standard.

A fifth member added that Maryland's Environmental Resources and Land Information Network (MERLIN) has a layer that shows potential sea level rise. The member also added that base line elevation is based on 100-year storms.

Public Comment

A. Ford Hall, Sr. has a number of buildings in the floodplain and understands about the additional foot but is concerned that there is another regulation that limits the amount of fill that an owner can put in the floodplain. Mr. Bitting noted that along with the freeboard requirement there are also requirements for venting which allow floodwaters to freely pass. Mr. Hall noted that he has a lot of equipment, and his structures won't allow for a suspended floor. He noted that if the County was going to require the 3-foot freeboard, then they should also increase the amount of fill an owner can put in the floodplain to accommodate that extra foot of height.

Mr. Bitting added that this appears to only apply to new structures.

The fourth member recommended that the best thing to do with these existing structures is to add a French drain to allow water to vent.

VI. Task Force Comments - There were no additional comments.

VII. Adjournment

With no further business to discuss, Task Force Member Pat Langenfelder motioned to adjourn the meeting, seconded by Task Force Member Cindy Genther, and all were in favor. The meeting adjourned at 7:56 pm.