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COUNTY COUNCIL  
OF DORCHESTER COUNTY, MARYLAND

2004 Legislative Session,  
Legislative Day No. August 17, 2004

Introduced by: County Council

Bill No. 2004 - 13

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155- 38 OF THE DORCHESTER COUNTY CODE TO PROVIDE THAT THE REVIEW PROCESS FOR BUFFER MANAGEMENT PLANS AND CRITICAL AREA PLANTING REQUIREMENT CAN BE DONE MORE EFFICIENTLY IN THE PLANNING AND ZONING OFFICE AT PERMIT APPLICATION, THEREBY ELIMINATING REVIEW BY THE FORESTRY BOARD; TO ALLOW THE PLANNING AND ZONING OFFICE TO CALCULATE THE FEE-IN-LIEU PAYMENT FOR FOREST REPLACEMENT FUND AND TO CORRECT THE MITIGATION RATIO FOR NON-BUFFER EXEMPT AREAS.

Introduced, read first time, order posted on official bulletin board of Dorchester County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, September 14, 2004, room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:15 p.m.

By Order: Jane Baynard  
Jane Baynard, County Manager

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155- 38 OF THE DORCHESTER COUNTY CODE TO PROVIDE THAT THE REVIEW PROCESS FOR BUFFER MANAGEMENT PLANS AND CRITICAL AREA PLANTING REQUIREMENT CAN BE DONE MORE EFFICIENTLY IN THE PLANNING AND ZONING OFFICE AT PERMIT APPLICATION, THEREBY ELIMINATING REVIEW BY THE FORESTRY BOARD; TO ALLOW THE PLANNING AND ZONING OFFICE TO CALCULATE THE FEE-IN-LIEU PAYMENT FOR FOREST REPLACEMENT FUND AND TO CORRECT THE MITIGATION RATIO FOR NON-BUFFER EXEMPT AREAS.

SECTION ONE: Acting under Article 25A, Section 5(x) of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155, Section 155 – 38.G thru 155-38. J of the Dorchester County Code be repealed and reenacted to read as follows:

Article VII, CA Critical Area Protection District

**G. Limited Development Areas**

The following regulations shall apply to development within limited development areas:

1. Additional low- or moderate-intensity development is allowed in limited development areas, subject to the land use and other regulations applicable to the underlying zoning district. The overall intensity of development within a limited development area shall not be increased beyond the established level so as to change its prevailing character as identified by existing density and land use.
2. Forests and developed woodlands which are cleared after the adoption of this section are to be replaced on not less than an equal basis. The formula for replacement of these forests is as follows:
  - a. If less than 20 percent of the forested land on the parcel is cleared, the forest shall be replaced on an equal basis.
  - b. If between 20 percent and 30 percent of the forested land on the parcel is cleared, the afforested area shall consist of one and one-half times the total surface acreage of the disturbed forest.
3. Forests and developed woodlands located on lots which were recorded prior to December 1, 1985, may be cleared beyond the 30 percent limitation established above. In such a case, the following conditions apply:

- a. The total area to be cleared shall be less than one acre.
  - b. The clearing must be necessary and incidental to providing an area for the homesite, sewage reserve area, driveway, lawn and so forth.
  - c. The afforested area shall consist of three times the total surface acreage of the disturbed forest.
4. Where sufficient land area does not exist on the site for afforestation, an applicant may make arrangements with other landowners or the county to reforest their lands within the critical area.
  5. There is hereby created a Forest Replacement Fund which shall be used to collect and disburse moneys for the sole purpose of afforestation and reforestation in the critical area. The fund shall be administered by the Dorchester County **PLANNING AND ZONING OFFICE** ~~Forestry Board~~.
    - a. Any developer unable to reforest to meet the standards established above shall pay into the Forest Replacement Fund a dollar amount equal to the total cost of replacing the forest land to be cleared, including appropriate penalties.
    - b. The fee shall be calculated on a per-acre basis and shall be determined annually by the Dorchester County ~~Forestry Board~~ **PLANNING AND ZONING OFFICE** ~~and the Maryland Forest, Park and Wildlife Service~~. All fees shall be made payable to the County Treasurer.
  6. Except as provided for otherwise, all clearing of forests and developed woodlands must take place outside of the tidewater buffer.
  7. Man-made impervious surfaces shall adhere to Section O. of §155-38. Critical Area Protection District.
  8. If no forest or developed woodlands are established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent.

**H. Resource Conservation Areas**

The following regulations shall apply to development within resource conservation areas:

1. Additional low-intensity residential development is allowed in resource conservation areas, subject to the land use and other regulations applicable to the underlying zoning district. Residential uses shall not exceed an overall density of one dwelling unit per 20 acres.

2. In calculating the allowable residential development density for a parcel within a resource conservation area, the area of any private tidal wetlands located on the property may be included. However, the area of private tidal wetlands must be estimated on the basis of vegetative information as designated on the state wetland maps, and the development density on the upland portion of the parcel may not exceed one dwelling unit per eight acres.
3. Commercial, institutional, industrial, and agricultural facilities in the Resource Conservation Area shall be as follows:
  - a. Existing industrial, institutional, commercial and agricultural facilities, including those directly supporting agriculture, forestry, aquaculture, or residential development (not exceeding the density specified in §155-38.H.1.) shall be allowed to continue in RCA's.
  - b. Except as provided by Section §155-38.N additional land in the RCA may not be zoned for industrial, institutional, or commercial development.
  - c. New commercial, industrial or institutional uses in existing structures may be allowed where the underlying zoning classification permits, provided:
    - i. The existing structure or structures housed a commercial, industrial or institutional use and such commercial, industrial or institutional use has not been abandoned for more than one year; and
    - ii. The proposed new use does not constitute an intensification or expansion of the pre-existing commercial, industrial or institutional use.
  - d. Intensification or expansion of existing industrial, commercial, and institutional facilities and uses may be permitted in the RCA by the Planning Commission. A variance, in accordance with §155-38.M. must be granted if such expansion or intensification involves a use which the Planning Commission determines does not conform with the provisions of the Dorchester County Critical Area Program and the Critical Area Overlay Zone.
  - e. Non-residential uses permitted without growth allocation

The following non-residential uses may be permitted in resource conservation areas without obtaining growth allocation:

- i. Non-residential uses permitted in RCA districts on the Table of Permitted Uses by Zoning District.
    - ii. An accessory or supportive use clearly incidental to an existing industrial and commercial facility, including those that directly support agriculture, forestry, aquaculture, or residential development and is located wholly within an existing structure or structures. Any expansion of existing structures may only be approved with future growth allocation.
    - iii. A use that will be completely housed in an existing building or buildings expressly designed for the proposed use and use of the building or buildings has not been abandoned for more than one year.
  - f. Local government projects may be permitted in Resource Conservation Areas without obtaining growth allocation if certified by the County Commissioners as being a project of "local significance". A project of local significance is defined as a public project of minor scale which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located, does not substantially affect the Dorchester County Critical Area Program, and is not considered a major development by the Critical Area Commission.
  - g. Except as may be provided in e. and f. above, any additional structures, facilities, or uses not directly related to and a part of an existing industrial, commercial, or institutional use in terms of location, nature, and legal incorporation shall be considered a new use and must be located outside of the RCA except as may be provided by §155-38.N.
4. Forests and developed woodlands which are cleared after the adoption of this section are to be replaced on not less than an equal basis. The formula for replacement of these forests is as follows:
    - a. If less than 20 percent of the forested land on the parcel is cleared, the forest shall be replaced on an equal basis.
    - b. If between 20 percent and 30 percent of the forested land on the parcel is cleared, the afforested area shall consist of one and one-half times the total surface acreage of the disturbed forest.
  5. Forests and developed woodlands located on lots which were recorded prior to December 1, 1985, may be cleared beyond

the 30 percent limitation established above. In such a case, the following conditions apply:

- a. The total area to be cleared shall be less than one acre.
  - b. The clearing must be necessary and incidental to providing an area for the homesite, sewage reserve area, driveway, lawn and so forth.
  - c. The afforested area shall consist of three times the total surface acreage of the disturbed forest.
6. Where sufficient land area does not exist on the site for afforestation, an applicant may make arrangements with other landowners or the county to reforest their lands within the critical area.
  7. There is hereby created a Forest Replacement Fund which shall be used to collect and disburse moneys for the sole purpose of afforestation and reforestation in the critical area. The fund shall be administered by the Dorchester County **PLANNING AND ZONING OFFICE** ~~Forestry Board~~.
    - a. Any developer unable to reforest to meet the standards established above shall pay into the Forest Replacement Fund a dollar amount equal to the total cost of replacing the forest land to be cleared, including appropriate penalties.
    - b. The fee shall be calculated on a per-acre basis, and shall be determined annually by the Dorchester County **PLANNING AND ZONING OFFICE** ~~Forestry Board and the Maryland Forest, Park and Wildlife Service~~. All fees shall be made payable to the County Treasurer.
  8. Except as provided for otherwise, all clearing of forests and developed woodlands must take place outside of the tidewater buffer.
  9. Man-made impervious surfaces must adhere to Section O. of §155.38 of the Critical Area Protection District.
  10. If no forest or developed woodlands are established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent.

#### **I. General habitat protection area regulations**

The following regulations shall apply to all habitat protection areas:

1. Roads, bridges and utilities may not be located in any habitat protection area unless no feasible alternative

exists. This provision is not applicable to intensely developed areas.

2. All roads, bridges and utilities that must cross a habitat protection area shall be located, designed, constructed and maintained so as to avoid negative impacts to wildlife, aquatic life and their habitat. Hydrologic processes and water quality shall be maintained.

**J. Tidewater buffer**

The following regulations shall apply to the tidewater buffer area:

1. Cutting or clearing of trees in the tidewater buffer shall be prohibited, except as follows and then only with an approved buffer management plan:
  - a. Tree cutting or removal of natural vegetation may be performed where necessary to provide access to private piers, or to install or construct a shore erosion protection measure or a water-dependent facility. Such measure or facility must first have received all necessary federal and state permits.
  - b. Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or other functions of the buffer. The trees shall be replaced on an equal basis for each tree cut.
  - c. Individual trees may be removed which are in danger of falling causing damage to structures, blockage of streams or accelerated shore erosion.
  - d. Pruning and other horticulture practices may be used to maintain the health of individual trees.
  - e. Other cutting techniques may be undertaken within the buffer if necessary to preserve forests from extensive pest or disease infestation or threat from fire. Advice and guidance from the Maryland Department of Agriculture and Maryland Department of Natural Resources shall be obtained.
2. Proposed clearing of trees and other vegetation in the tidewater buffer will be allowed only upon approval of a buffer management plan. The requirements for content, submittal, review and approval of the buffer management plan are as follows:
  - a. Plan requirements. A person may not clear land in the tidewater buffer without an approved buffer management plan. The plan must meet the requirements of ~~the Dorchester County Forestry Board~~, the Dorchester County Critical Area Protection Program and this section.

- b. Content of plans. The buffer management plan shall contain information and drawings sufficient to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed clearing activity on water resources and the effectiveness and acceptability of compensatory measures.
  - c. The buffer management plan shall be prepared by the person proposing to clear vegetation on the site, in consultation with ~~the Dorchester County Forestry Board~~ **THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE AND/OR A FORESTER OR LANDSCAPE PROFESSIONAL.**
  - d. Review and approval of plans. The applicant shall submit the buffer management plan to the Maryland Forest Service **PLANNING AND ZONING OFFICE** for review. ~~The Maryland Forest Service shall forward the plan, together with any comments, to the Dorchester County Forestry Board for approval.~~
  - e. The buffer management plan shall be reviewed by the ~~Dorchester County Forestry Board, which shall solicit comments from~~ the Dorchester County Planning and Zoning Office, the Maryland Fish, Heritage and Wildlife Administration (if it involves a Habitat Protection Area on individual lots), and other appropriate agencies. In approving the plan, the ~~Forestry Board~~ **DORCHESTER COUNTY PLANNING AND ZONING OFFICE** shall consider all agency comments and may impose such conditions as deemed necessary.
  - f. The approved buffer management plan shall be fully implemented by the applicant in conjunction with any clearing activity on the site.
  - g. Plan revisions. Buffer management plan revisions may be requested by the applicant or by the Dorchester County Planning and Zoning Office. All revisions must be approved by the Dorchester County ~~Forestry Board~~ **PLANNING AND ZONING OFFICE.**
- 3. Nothing in this chapter shall prevent the normal and customary maintenance of lawns located in the buffer that were established prior to the adoption of this section.
  - 4. Nothing in this chapter shall prevent the replacement of a building or structure that was lawfully located in the buffer and existed as of (effective date of this amendment) and is accidentally destroyed by fire, explosion, act of God, or act of the public enemy nor shall it prevent the continuance of the use thereof as it existed at the time of such destruction provided the building or structure is replaced on the exact location of the prior existing building or structure within one year of the occurrence.

5. The following special provisions shall apply to development and redevelopment in mapped Buffer Exemption Areas (BEA's) in the IDA, LDA, and RCA.
- a. Intent. The following provisions are intended to accommodate limited use of shoreline areas that have been mapped as Buffer Exemption Areas (BEA's) under the provisions of this Ordinance while protecting water quality and wildlife habitat to the extent possible.
  - b. Applicability. This section applied only to new development or redevelopment within 100 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985 and located in mapped Buffer Exemption Areas as shown on the Critical Area Maps.
  - c. Criteria
    - i. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer Exemption Area unless the applicant can demonstrate and the Planning Commission finds that there is no feasible alternative. Such findings shall document that the intrusion is the least necessary. A copy of the Planning Commission's findings in this regard shall be available to the Critical Area Commission upon request.
    - ii. New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer Exemption Area and shall not exceed the shoreward extent of existing structures located on the property. In no case shall the intrusion into the Buffer Exemption Area encroach in to a required yard under the terms of the underlying zone unless a variance thereto has been first granted.
    - iii. Development may not impact any Habitat Protection Area (HPA) as defined in Section V of the Dorchester County Critical Area Program, except the Buffer.
    - iv. No natural vegetation may be removed in the Buffer except that required by the proposed construction and any other natural vegetation in the Buffer shall be maintained.
    - v. Except as provided in the Dorchester County Stormwater Management Ordinance the total impervious surface coverage of the Critical Area portion of the site shall be limited to a maximum of 15 percent of the building lot unless a

variance in accordance with §155-38.M.1. is received from the Board of Zoning Appeals.

- vi. Any development in the Buffer Exemption Area approved under the provisions of this subsection shall be mitigated as follows:
  - The extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained, in natural vegetation; and
  - Natural vegetation of an area twice the extent of the impervious surface must be created on the property or other similar location approved by the Planning Commission.
- 7. Any applicant eligible under those provisions may elect to request a variance from the Board of Appeals as per § 155-38.M.1.
- 8. Any required reforestation, mitigation or offset areas shall be designated under a development agreement or other instrument and recorded among the land records of Dorchester County.

d. Buffer Mitigation

- i. If a person demonstrates to the satisfaction of the Office of Planning and Zoning that mitigation requirements, on-site or off-site, cannot be reasonably accomplished, the person shall contribute money (a fee-in-lieu), at a rate to equal the total cost of replacing forest land to be cleared, to the Forest Replacement Fund. ~~This fund is allocated by the Dorchester County Forestry Board.~~
- ii. The fee-in-lieu collected will be calculated on a per acre basis, and shall be determined annually by the Dorchester County **PLANNING AND ZONING OFFICE** ~~Forestry Board and the Maryland Forest Service~~. All fees shall be made payable to the County Treasurer.
- iii. The fee in-lieu collected may only be used for projects within the Critical Area for the benefit of wildlife habitat, water quality improvement, or environmental education. These sites will be planted with more than one species and will remain **BE DESCRIBED** in a **CRITICAL AREA PLANTING PLAN AGREEMENT** ~~forest management plan held with the Maryland Forest Service.~~

6. New or expanded water-dependent development activities are permitted in the tidewater buffer within Intensely Developed Areas and Limited Development Areas only. Such projects must meet a recognized public need or private right, and adverse effects to water quality and to plant, fish or wildlife habitat must be minimized.
7. New, expanded or redeveloped industrial or port-related water-dependent facilities and the replacement of these facilities are permitted only in those portions of intensely developed areas that are exempt from tidewater buffer designation. Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities.
8. New or expanded marinas and related water-dependent facilities are permitted in the tidewater buffer within Intensely Developed Areas and Limited Development Areas. New marinas shall not be permitted in the buffer within Resource Conservation Areas, except in compliance with Subsection J.9. below. In the case of expanded marinas, it must be sufficiently demonstrated that the facility will not adversely affect water quality.
9. New or expanded community marinas and other noncommercial boat docking and storage facilities are permitted in the tidewater buffer, provided that all of the following conditions are met:
  - a. These water-dependent facilities may not offer food, fuel or other goods and services for sale, and shall provide adequate sanitary facilities.
  - b. The facilities are community owned, and established and operated for the benefit of the residents of a recorded riparian subdivision.
  - c. The facilities are associated with an approved residential development and are consistent with all state criteria and local regulations for the critical area.
  - d. Disturbance to the buffer is the minimum necessary to provide a single point of access to the facilities.
  - e. If community piers, slips or moorings are provided as part of the new development, private piers in the development are not allowed.
10. Public beaches or other public water-oriented recreation or education areas, including but not limited to publicly owned boat launching and docking facilities and fishing piers, are permitted in the tidewater buffer. In the case of public recreational areas within Limited Development Areas and

Resource Conservation Areas, all of the following conditions must be met:

- a. Adequate sanitary facilities exist.
  - b. Service facilities are located, to the extent practicable, outside the buffer.
  - c. Permeable surfaces are used to the extent practicable, if no groundwater degradation would result.
  - d. Disturbance to natural vegetation is avoided where possible.
11. Areas for passive recreation are permitted in the tidewater buffer within Resource Conservation Areas, provided that service facilities for these uses are located outside the buffer.
  12. Water-dependent research facilities or activities operated by federal, state or local agencies or by educational institutions are permitted in the tidewater buffer, provided that non-water-dependent structures or facilities associated with these projects are located outside the buffer.
  13. Commercial water-dependent fisheries facilities, including but not limited to structures for crab picking and shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities, are permitted in the tidewater buffer in all development areas.
  14. New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal waters or tidal wetlands.
  15. New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic systems, are not permitted in the tidewater buffer except as otherwise provided for in this chapter.
  16. Development in the buffer which is not located in a Buffer Exemption Area shall be required to mitigate at a 2 3:1 ratio for development impacts.
  17. A single point of access to the shoreline will be allowed in the buffer but such access shall be limited to a path or boardwalk six feet in width and boardwalks over tidal wetlands must be constructed at a minimum of three feet above tidal wetlands.
  18. Where agricultural use of lands within the area of the buffer ceases and the lands are proposed to be converted to

other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the policies of this chapter.

- 19. New agricultural activities or structures in the Resource Conservation Area are permitted in the tidewater buffer if water dependent and an accessory or supportive use clearly incidental to an existing agricultural operation.

**SECTION TWO:** BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that General Code Publishers is directed to codify amended Section 155- 38.G. thru 155-38.J. of Chapter 155 in the Dorchester Code accordingly.

**SECTION THREE:** BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that this bill shall be known as Bill No. 2004- 13 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage.

PASSED this 14th day of September, 2004.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY:

BY:

Jane Baynard  
Jane Baynard, County Manager

Glenn L. Bramble  
Glenn L. Bramble, President

Bramble - aye  
 Yockey - aye  
 Elzey - aye  
 Flowers - aye  
 Nichols - aye