

COUNTY COUNCIL  
OF DORCHESTER COUNTY, MARYLAND

2004 Legislative Session,  
Legislative Day No. November 9, 2004

Introduced by: County Council

Bill No. 2004 - 28

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155- 38. N.OF THE DORCHESTER COUNTY CODE TO PROVIDE CLEARER GUIDELINES REGARDING GROWTH ALLOCATION PROCESS FOR MUNICIPAL AND NON-MUNICIPAL REQUESTS AS WELL AS DEFINING THE TERMS: MUNICIPAL INFILL GROWTH ALLOCATION, MUNICIPAL ANNEXATION GROWTH ALLOCATION, AND SUPPLEMENTAL GROWTH ALLOCATION.

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, December 7, 2004, room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:15 p.m.

By Order:

  
Jane Baynard, County Manager

FILED

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AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155-38. N. OF THE DORCHESTER COUNTY CODE TO PROVIDE CLEARER GUIDELINES REGARDING GROWTH ALLOCATION PROCESS FOR MUNICIPAL AND NON-MUNICIPAL REQUESTS AS WELL AS DEFINING THE TERMS: MUNICIPAL INFILL GROWTH ALLOCATION, MUNICIPAL ANNEXATION GROWTH ALLOCATION, AND SUPPLEMENTAL GROWTH ALLOCATION.

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the County Council of Dorchester County, Maryland that Chapter 155, Section 155-38.N. of the Dorchester County Code be repealed and reenacted to read as follows:

ARTICLE VII, §155-38.N. GROWTH ALLOCATION

**N. Growth allocation**

**1. Growth allocation categories**

- a. Growth allocation shall be available in ~~two~~ three general categories: COUNTY Residential and Non-residential, MUNICIPAL and ANNEXATION. Residential growth allocation shall include the uses listed under the residential use category on the table of permitted uses. Non-residential growth allocation shall include all other uses listed on the table of permitted uses.
- b. The use of land awarded growth allocation must be in accordance with the zoning district in which the parcel is located.
- c. GROWTH ALLOCATION AWARDS WILL BE EXECUTED BY RESOLUTION OF THE COUNTY COUNCIL.

**2. General policies regarding growth allocation**

- a. Growth allocation may be used to redesignate land from RCA to LDA or IDA, or to redesignate land from LDA to IDA. Redesignation from a "higher" designation to a "lower" designation (for example from IDA to LDA) does not require the use of growth allocation, BUT REQUIRES APPLICATION FOR ZONING MAP AMENDMENT.
- b. The county shall reserve a portion of its pool of growth allocation for its municipalities located within the critical area. ~~in accordance with the adopted Dorchester County Critical Area Protection Program.~~

There are two different types of municipal growth allocation. "Infill growth allocation" uses the growth allocation allotment allocated to the municipality by the County Council for projects within the municipal boundary as of original adoption of its Critical Area Program until completely expended, then an application must be submitted to Dorchester County Planning and Zoning for any additional growth allocation needs. ~~This infill allotment is used for projects within the municipal boundary as of original adoption of its Critical Area Program.~~ The second type "annexation growth allocation" applies to any area outside of the municipal boundary as of original adoption of its Critical Area Program. The procedures for both are outlined below.

- c. The County shall use the following guidelines when considering requests for growth allocation:
  - i. New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas.
  - ii. New limited development areas should be located adjacent to existing limited development areas or intensely developed areas.
  - iii. No more than one-half of the allocated expansion may be located in resource conservation areas. However, if the county is unable to utilize a portion of the growth allocation within or adjacent to existing intensely developed areas or limited development areas, then that portion of the growth allocation which cannot be, so located may be located in the resource conservation area in addition to the expansion allocated in this section.
  - iv. New intensely developed areas and limited development areas should be located in order to minimize impacts to habitat protection areas as specified in section V of the Dorchester County Critical Area Program, and in an area and in a manner that optimizes benefits to water quality.

- v. New intensely developed areas should be located in order to minimize their impacts to permitted land uses in resource conservation areas.
  - vi. 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 wetlands or tidal waters.
- d. ~~Deductions METHODOLOGY from the County's overall growth allocation; development envelopes~~

Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified as a growth allocation area, shall result in the acreage of the entire parcel not in tidal wetlands, counting against the MUNICIPAL OR NON-MUNICIPAL ~~jurisdiction's~~ allocation unless the development envelope concept is used as follows:

- i. Only one development envelope shall be established per parcel of land. The development envelope includes individually owned lots, required buffers (the minimum 100-foot buffer and the 25-foot nontidal wetlands buffer), impervious surfaces, roads, utilities, stormwater management facilities, on-site sewage disposal facilities, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria.
- ii. If a development envelope is proposed in the RCA and less than 20 acres remain outside of the envelope, then the entire parcel must be deducted from the MUNICIPAL OR NON-MUNICIPAL ~~jurisdiction's~~ allocation. If the original parcel in the RCA is less than 20 acres, then the entire parcel must be deducted from the MUNICIPAL OR NON-MUNICIPAL ~~jurisdiction's~~ allocation. This requirement is based on the principle that at least 20 acres are needed to maintain the character of an RCA.

- iii. If there is a permanently protected resource conservation area, such as a conservation easement, adjacent and contiguous to a residue of less than 20 acres which, when added to the residue, results in a minimum 20-acre residue, then the entire parcel does not have to be deducted.
- iv. Any remaining minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless permanent protection is in place.
- e. Growth Allocation shall not be awarded unless the project complies with items i. thru vi. and the jurisdiction(s) determines the developer has sufficiently addressed items vii. thru xi. below:
  - i. Comprehensive Plan consistency (both jurisdictions).
  - ii. Water and Sewer Plan consistency.
  - iii. Critical Area Program consistency. ie: buffers, slope, wetlands, plant and wildlife habitat, fish propagation waters, etc.
  - iv. Priority funding area consistency.
  - v. Compatibility of municipal zoning with Dorchester County Comprehensive Plan.
  - vi. Minimization of the use of growth allocation.
  - vii. Traffic impacts are minimized or adequately addressed.
  - viii. Minimization of impact to neighboring conservation easements and other protected lands.
  - ix. Staff may request to see a clustered concept plan due to the fifty (50%) limitation for growth allocation from RCA to LDA or IDA under the Critical Area law.
  - x. At its discretion, staff shall require the developer to perform any studies necessary to

insure the proper development of the property to the County and Municipal jurisdiction.

- xi. Staff should seek preliminary comments from the Critical Area Commission.

ef. New IDAs

New IDAs must be at least 20-acres in size unless they are contiguous to an existing IDA or LDA. However, they may be less than 20 acres if an existing use.

fg. Buffer

- i. For growth allocation areas proposed in the RCA, 300-foot naturally vegetated buffer is strongly encouraged and, in the case where it is provided, it shall not be deducted, even if the buffer does not meet the 20-acre requirement.
- ii. For waterfront projects, a minimum 100-foot naturally vegetated buffer must be established and be included in any acreage deduction.

3. Growth Allocation Standards

G a. COUNTY Residential growth allocation

- i. Residential growth allocation shall only be available in the Rural Residential (RR and RR-RCA) Suburban Residential (SR and SR-RCA) and Village zoning districts. It shall be available on a first-come, first-served basis.
- ii. Residential growth allocation may only be granted as a condition of approval of a final plat by the Planning Commission.
- iii. The Commission may require as a condition of granting growth allocation that a minimum of 30 percent of the parcel being subdivided be preserved in open space.
- iv. The County intends that the redesignation of land within the Rural Residential, Suburban Residential, and Village districts be processed as

a program refinement, not a program amendment, of the Dorchester County Critical Area protection program, pursuant to the processes for amendments and refinements adopted by the Critical Area Commission.

v. The redesignation of land within the Rural Residential, Suburban Residential, and Village districts for growth allocation shall not be construed as a rezoning of land and shall not be subject to the procedural requirements for the rezoning of property.

d b. County Non-residential growth allocation

i. Non-residential growth allocation shall be available in all zoning districts on a first-come, first-served basis.

ii. If the use proposed for growth allocation is not permitted in the zoning district in which the property is located, the property shall be subject to the rezoning process. Failure to successfully rezone the parcel shall have the effect of disapproving the request for growth allocation.

iii. Non-residential growth allocation may only be granted as a condition of approval of a site plan by the Planning Commission.

34. ~~Process Procedure for review of NON-MUNICIPAL growth allocation submissions~~

a. Non-municipal (county) Process

i. Prior to the final approval of the subdivision plat or site plan, whichever is applicable, the Planning Commission shall review the request for growth allocation. In order for a project to receive a favorable recommendation, the Planning Commission must find that the request for growth allocation:

- a. Does not exceed the maximum pool of growth allocation available to the county, minus any land set aside for the municipalities,
- b. Is consistent with the Comprehensive Plan, and

- c. Meets the procedural requirements of this chapter.
  - ii. The Planning Commission shall forward its recommendation to the County Commissioners-COUNCIL. The County Commissioners COUNCIL shall hold a duly advertised public hearing on a proposed amendment to the Dorchester County Critical Area Protection Program to assign growth allocation and reclassify the property.
  - iii. Subsequent to holding the public hearing, the County Commissioners may formally amend the Critical Area Protection Program. The amended program, as proposed, shall be forwarded to the Critical Area Commission for review and final approval. A resolution will be adopted within 90 days of the Critical Area Commission's approval.
  - iv. If the Critical Area Commission does not approve the proposed program amendment or refinement, the applicant may revise the proposed development to address specific concerns raised by the Critical Area Commission. Subsequent to holding another public hearing the County Commissioners of Dorchester County may formally amend the Critical Area Protection Program. The amended program, as revised, shall be forwarded to the Critical Area Commission for review and final approval. A resolution will be adopted within 90 days of the Critical Area Commission's approval of the revised amendment.
  - v. Following approval of the amended Critical Area Protection Program by the Critical Area Commission, the conditional approval granted by the Planning Commission shall automatically become full final approval.
- b. Municipal Process (Infill)
- i. The municipal planning staff shall advise the Dorchester County Planning staff of submittal of the development proposal requiring growth allocation. The municipal staff shall then review the proposed development proposal with the following guiding principles:
    - a. Minimizing the use of growth allocation.

- b. Encourage the use of growth allocation for new developments and not allocate it to existing developments since Critical Area Program adoption that were clearly restricted with regard to impervious surfaces so as to reserve an adequate amount of growth allocation for future growth.
  - c. Must meet requirements of the municipality's Critical Area Program.
- ii. The Critical Area Commission staff shall notify the county and municipal planning staffs of the Commissions decision following review.
- c. Annexation or Supplemental Growth Allocation Process
- i. The applicant shall file an application with the municipality for annexation. In addition to complying with municipal requirements, the applicant shall also provide information required pertaining to map amendments with the Dorchester County Planning and Zoning Office.
  - ii. The county and municipal planning staffs shall review the sketch plan (or similar review) jointly based on the General Policies, section 2 (e) above and forward their staff report(s) to the Planning Commissions for both jurisdictions before sketch plan or comparable municipal review process can proceed.
  - iii. The Dorchester County Planning Commission may hold a joint hearing with the municipal Planning Commission or individual hearing on the growth allocation and forward a recommendation to the County Council. The County Council shall then hold a public hearing before adopting or denying the request. The County Council shall formulate a "findings of fact" stating the reasons for approval or denial of the request based on review per the General Policies, section 2 (e) above. If approved, a resolution shall then be developed listing any conditions, restrictions, or

limitations placed on the approval allocating supplemental growth allocation to the municipality for the project from the county's pool of growth allocation. The resolution shall become effective on the date of final plat approval by the jurisdiction, or 45 days after resolution signed by Dorchester County Council approving supplemental growth allocation, or upon Critical Area Commission approval, which ever is later.

- iv. Subsequent to the County Council hearing, the county or municipal staff shall forward the growth allocation request to the State of Maryland Critical Area Commission for approval.

SECTION TWO: 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 155-13 of the Dorchester County Code be amended to add the following terms and definitions:

**Municipal Infill Growth Allocation** - Infill growth allocation allotment allocated to the municipality by the County Council that is used for projects within the municipal boundary as of original adoption of it's Critical Area Program.

**Municipal Annexation Growth Allocation** - Areas outside of the municipal boundary as of original adoption of the municipalities Critical Area Program.

**Supplemental Growth Allocation** - Growth allocation granted for a specific project as part of annexation process.

SECTION THREE: 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.N and Section 155-13 of Chapter 155 in the Dorchester Code accordingly.

SECTION FOUR: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that this bill shall be known as Bill No. 2004- ~~28~~ of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage.

PASSED this 7th day of December, 2004.

ATTEST:

COUNTY COUNCIL OF DORCHESTER  
COUNTY:

BY: Jane Baynard  
Jane Baynard, County Manager

Glenn L. Bramble  
Glenn L. Bramble, President

Bramble ay  
Yockey ay  
Elzey ay  
Flowers ay  
Nichols ay

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