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COUNTY COUNCIL

OF

CIRCUIT COURT
DORCHESTER COUNTY

DORCHESTER COUNTY, MARYLAND

2012 Legislative Session,
Legislative Day No. 2, 2012

Introduced by: County Council

Bill No. 2012 - 1

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, ACTING PURSUANT TO ARTICLE 66B, SECTION 4.01 et.seq., GENERAL DEVELOPMENT REGULATIONS AND ZONING, OF THE ANNOTATED CODE OF MARYLAND, AND TITLE 27, SUBTITLE 01, CHAPTER 09, OF THE CODE OF MARYLAND REGULATIONS (COMAR) FOR HABITAT PROTECTION AREAS IN THE CRITICAL AREA, TO AMEND CHAPTER 140, SUBDIVISION REGULATIONS, ARTICLE XII, CRITICAL AREA PROTECTION, SECTION 140-54, INTRAFAMILY TRANSFERS, TO ADD ADDITIONAL STANDARDS AND PROCEDURES FOR INTRAFAMILY TRANSFER SUBDIVISIONS, AND TO AMEND CHAPTER 155, ZONING, ARTICLE VII, DISTRICT REGULATIONS, SECTION 155-13, TERMS DEFINED, SECTION 155-67, EXPANSION OR MODIFICATION OF NONCONFORMING USES OR STRUCTURES, SECTION 155-38, CA CRITICAL AREA PROTECTION DISTRICT, OF THE DORCHESTER COUNTY CODE, AND TO ADD SECTION 155-38K, BUFFER EXPANSION, TO ESTABLISH EXPANDED BUFFER STANDARDS AND PROCEDURES BY REQUIRING REGULATIONS THAT APPLY TO DEVELOPMENT WITHIN THE EXPANDED CRITICAL AREA BUFFER REGARDING BUILDING PERMITS, INTRAFAMILY TRANSFER SUBDIVISIONS, REASONABLE ACCOMMODATIONS FOR EMERGENCY SERVICES, FEE-IN-LIEU OF BUFFER MITIGATION, AND ADMINISTRATIVE VARIANCES.

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, May 8, 2012, room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:50 p.m.

By Order:


Jane Baynard, County Manager

COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, ACTING PURSUANT TO ARTICLE 66B, SECTION 4.01 et.seq., GENERAL DEVELOPMENT REGULATIONS AND ZONING, OF THE ANNOTATED CODE OF MARYLAND, AND TITLE 27, SUBTITLE 01, CHAPTER 09, OF THE CODE OF MARYLAND REGULATIONS (COMAR) FOR HABITAT PROTECTION AREAS IN THE CRITICAL AREA, TO AMEND CHAPTER 140, SUBDIVISION REGULATIONS, ARTICLE XII, CRITICAL AREA PROTECTION, SECTION 140-54, INTRAFAMILY TRANSFERS, TO ADD ADDITIONAL STANDARDS AND PROCEDURES FOR INTRAFAMILY TRANSFER SUBDIVISIONS, AND TO AMEND CHAPTER 155, ZONING, ARTICLE VII, DISTRICT REGULATIONS, SECTION 155-13, TERMS DEFINED, SECTION 155-67, EXPANSION OR MODIFICATION OF NONCONFORMING USES OR STRUCTURES, SECTION 155-38, CA CRITICAL AREA PROTECTION DISTRICT, OF THE DORCHESTER COUNTY CODE, AND TO ADD SECTION 155-38K, BUFFER EXPANSION, TO ESTABLISH EXPANDED BUFFER STANDARDS AND PROCEDURES BY REQUIRING REGULATIONS THAT APPLY TO DEVELOPMENT WITHIN THE EXPANDED CRITICAL AREA BUFFER REGARDING BUILDING PERMITS, INTRAFAMILY TRANSFER SUBDIVISIONS, REASONABLE ACCOMMODATIONS FOR EMERGENCY SERVICES, FEE-IN-LIEU OF BUFFER MITIGATION, AND ADMINISTRATIVE VARIANCES.

SECTION ONE: Acting under Article 66B, Section 4.01 et.seq. of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 140, Section 140-54, and Chapter 155, Sections 155-38, 155-13, and 155-67 of the Dorchester County Code be amended, and enacted to read as follows:

§ 155-13. Terms defined.

ADMINISTRATIVE VARIANCE - CA – AN ALTERNATIVE TO THE STANDARD CRITICAL AREA BUFFER VARIANCE PROCEDURES AVAILABLE ONLY IF A DEVELOPMENT PROJECT MEETS SPECIFIC CRITERIA.

BUFFER - CA – HAS THE MEANING STATED IN COMAR 27.01.01.01.B.8.

LOT COVERAGE – HAS THE MEANING STATED IN NATURAL RESOURCES ARTICLE §8-1802(a), ANNOTATED CODE OF MARYLAND.

TIDEWATER BUFFER - CA – THE MINIMUM 100 OR 200 FOOT BUFFER AS DESCRIBED IN COMAR 27.01.09.01.E.

§ 155-38. CA Critical Area Protection District.
§ 155-38.D.8

- (8) THERE IS HEREBY CREATED A CRITICAL AREA FOREST REPLACEMENT FUND WHICH SHALL BE USED TO COLLECT AND DISBURSE MONIES 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.
 - (a) ANY DEVELOPER OR PROPERTY OWNER UNABLE TO REFOREST TO MEET THE STANDARDS ESTABLISHED IN THIS SECTION SHALL PAY INTO THE CRITICAL AREA FOREST REPLACEMENT FUND A DOLLAR AMOUNT EQUAL TO THE TOTAL COST OF REPLANTING AND MAINTAINING THE FOREST LAND TO BE CLEARED, INCLUDING APPROPRIATE PENALTIES.
 - (b) THE FEE SHALL BE CALCULATED ON A PER SQUARE FOOT BASIS, AND SHALL BE DETERMINED ANNUALLY BY THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE. ALL FEES SHALL BE MADE PAYABLE TO THE COUNTY FINANCE OFFICE.
- (9) EXCEPT AS PROVIDED FOR OTHERWISE, ALL CLEARING OF FORESTS AND DEVELOPED WOODLANDS MUST TAKE PLACE OUTSIDE OF THE TIDEWATER AND EXPANDED BUFFERS.
- (10) LOT COVERAGE (MAN-MADE IMPERVIOUS SURFACES) MUST ADHERE TO SUBSECTION O OF § 155-38, CA CRITICAL AREA PROTECTION DISTRICT.
- (11) PROPOSED DEVELOPMENT SITES WITHOUT A PRINCIPAL STRUCTURE SHALL BE PLANTED TO PROVIDE AT LEAST 15% FOREST OR DEVELOPED WOODLAND COVER.

§ 155-38.J.5

- (5) The following special provisions shall apply to development and redevelopment in mapped buffer exempt areas (BEAs) 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 BEAs under the provisions of this chapter while protecting water quality and wildlife habitat to the extent possible.
 - (b) Applicability. This section applies 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 BEAs as shown on the Critical Area Maps.
 - (c) Criteria.
 - [1] New development or redevelopment activities, including structures OR roads, parking areas, and other impervious surfaces will not be permitted in A

BEA 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.

- [2] New development or redevelopment shall minimize the shoreward extent of intrusion into A BEA and shall not exceed the shoreward extent of existing structures located on the property. In no case shall the intrusion into A BEA encroach into a required yard SETBACK unless a variance thereto has been first granted.
- [3] Development OR REDEVELOPMENT may not impact any habitat protection area (HPA) as defined in COMAR 27.01.01.01, except the buffer.
- [4] 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.
- [5] Any development OR REDEVELOPMENT in A BEA approved under the provisions of this subsection shall be mitigated as follows:
 - [a] NATURAL VEGETATION OF AN AREA TWICE THE EXTENT OF NEW LOT COVERAGE APPROVED BY THE PLANNING COMMISSION MUST BE ESTABLISHED IN THE BEA; AND
 - [b] SUCH MITIGATION SHALL BE PLANTED SHOREWARD OF EXISTING STRUCTURES, TO THE EXTENT POSSIBLE, IN ACCORDANCE WITH A BUFFER MANAGEMENT PLAN APPROVED BY THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE.
- [6] Any applicant eligible under THE provisions OF § 155-38M may elect to request a variance from the Board of Appeals.

§ 155-38.J.15

(15) New development activities, including structures, roads, parking areas and other LOT COVERAGE, AND mining and related facilities, are not permitted in the tidewater buffer except as otherwise provided for in this chapter.

§ 155-38.J.16

(16) Development OR REDEVELOPMENT in the buffer which is not located in a buffer exemption area, OR AS OTHERWISE PROVIDED IN THIS SECTION AND COMAR 27.01.01.01, ET. SEQ., shall be required to mitigate at a MINIMUM 3:1 ratio for ALL DISTURBANCES.

§ 155-38.J.20

(20) CRITICAL AREA FEE-IN-LIEU OF BUFFER MITIGATION.

- (a) IF A DEVELOPER OR PROPERTY OWNER DEMONSTRATES TO THE SATISFACTION OF THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE THAT MITIGATION REQUIREMENTS, ON-SITE OR OFF-SITE, CANNOT BE REASONABLY ACCOMPLISHED, THE DEVELOPER OR PROPERTY OWNER SHALL CONTRIBUTE MONEY (A FEE-IN-LIEU), AT A RATE EQUAL TO THE TOTAL COST OF REPLACING FOREST LAND TO BE CLEARED, TO THE CRITICAL AREA FOREST REPLACEMENT FUND.
- (b) THE FEE-IN-LIEU OF BUFFER MITIGATION COLLECTED WILL BE CALCULATED ON A PER-SQUARE-FOOT BASIS, AND SHALL BE DETERMINED ANNUALLY BY THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE. ALL FEES SHALL BE MADE PAYABLE TO THE DORCHESTER COUNTY FINANCE OFFICE AND THE MINIMUM FEE-IN-LIEU RATE SHALL BE \$0.40 PER SQUARE FOOT.
- (c) THE FEE-IN-LIEU OF BUFFER MITIGATION COLLECTED SHALL ONLY BE USED FOR PLANTING PROJECTS WITHIN THE CRITICAL AREA TIDEWATER AND EXPANDED BUFFERS. THESE SITES WILL BE PLANTED WITH MORE THAN ONE SPECIES AND WILL BE DESCRIBED IN A BUFFER MANAGEMENT PLAN.

§ 155-38.J.21

(21) DISTURBANCES ASSOCIATED WITH INSTALLATION AND MAINTENANCE OF STORMWATER MANAGEMENT PRACTICES ARE PERMITTED IN THE TIDEWATER BUFFER IF REQUIRED BY THE DORCHESTER COUNTY DEPARTMENT OF PUBLIC WORKS PROVIDED THAT 1:1 MITIGATION IS PERFORMED FOR THE REMOVAL OF WOODY VEGETATION.

§ 155-38.K

K. BUFFER EXPANSION. THE FOLLOWING REGULATIONS SHALL APPLY TO DEVELOPMENT WITHIN THE EXPANDED BUFFER AS DEFINED IN COMAR 27.01.09.01.E:

- (1) DEVELOPMENT IN THE EXPANDED BUFFER IS PROHIBITED UNLESS SUBJECT TO AN APPROVED VARIANCE OR

ADMINISTRATIVE VARIANCE UNDER § 155-38.M OR EXEMPT UNDER COMAR 27.01.09.01.E.8.

- (2) DISTURBANCES ASSOCIATED WITH INSTALLATION AND MAINTENANCE OF STORMWATER MANAGEMENT PRACTICES ARE PERMITTED IN THE EXPANDED BUFFER IF REQUIRED BY THE DORCHESTER COUNTY DEPARTMENT OF PUBLIC WORKS.
- (3) THIS SUBSECTION DOES NOT RELIEVE ANY PROPERTY OWNER(S) OR CONTRACTOR(S) FROM ANY OBLIGATION TO OBTAIN FEDERAL, STATE, OR LOCAL PERMITS OR APPROVALS FOR DISTURBANCES TO TIDAL OR NONTIDAL WETLANDS OR OTHER NATURAL RESOURCES OR HABITATS.
- (4) INTRAFAMILY TRANSFER SUBDIVISIONS.
 - (a) ON LOTS CREATED BY AN INTRAFAMILY TRANSFER SUBDIVISION FOR WHICH APPLICATION WAS MADE PRIOR TO JANUARY 1, 2010 AND FOR WHICH FINAL APPROVAL WAS GRANTED AFTER MARCH 8, 2010, DEVELOPMENT IN AND DISTURBANCES TO THE EXPANDED TIDEWATER BUFFER FOR HYDRIC OR HIGHLY ERODIBLE SOILS MAY BE PERMITTED WITHOUT A VARIANCE, PROVIDED THAT ALL OTHER SUBDIVISION REQUIREMENTS ARE MET OR, IN THE CASE OF COUNTY ROAD STANDARDS, WAIVED. MITIGATION AT A RATIO OF 3:1 MUST BE PROVIDED FOR ANY DEVELOPMENT ACTIVITIES IN AND DISTURBANCES TO THE EXPANDED BUFFER FOR HYDRIC OR HIGHLY ERODIBLE SOILS. NOTHING IN THE ABOVE IS MEANT TO ALLOW DEVELOPMENT IN OR DISTURBANCES TO 100 OR 200 FOOT TIDEWATER BUFFER.
 - (b) PURSUANT TO COMAR 27.01.09.01.E.6.C, IN THE CASE OF AN APPLICATION FOR AN INTRAFAMILY TRANSFER SUBDIVISION APPROVED AFTER JULY 1, 2010, THE 200 FOOT BUFFER REQUIRED BY COMAR 27.01.09.01.E.5 MAY BE REDUCED TO THE MINIMUM WIDTH NECESSARY TO ALLOW APPROVAL OF THE INTRAFAMILY TRANSFER SUBDIVISION, BUT NO LESS THAN THE 100 FOOT TIDEWATER BUFFER, PROVIDED THAT THE STRICT APPLICATION OF THE 200 FOOT BUFFER WOULD PRECLUDE THE INTRAFAMILY TRANSFER SUBDIVISION.

§ 155-38.M.8

- (8) REASONABLE ACCOMMODATIONS FOR EMERGENCY SERVICES. THE BOARD OF APPEALS MAY MAKE REASONABLE ACCOMMODATIONS, ON THE BASIS OF PUBLIC NEED, FOR DEVELOPMENT AND REDEVELOPMENT IN THE BUFFER FOR EMERGENCY SERVICES. REASONABLE ACCOMMODATIONS MAY BE PERMITTED IN ACCORDANCE WITH THE EVIDENTIARY REQUIREMENTS SET FORTH IN THE FOLLOWING SUBSECTIONS:

- (a) AN APPLICANT SHALL HAVE THE BURDEN OF DEMONSTRATING THE FOLLOWING:
 - [1] THE EXISTENCE OF A PUBLIC NEED.
 - [2] LITERAL ENFORCEMENT OF THE PROVISIONS OF THIS SUBSECTION WOULD RESULT IN DIMINISHED OR INADEQUATE EMERGENCY SERVICES PROVIDED TO THE LOCAL COMMUNITY.
 - [3] WITHOUT A REASONABLE ACCOMMODATION, THE PROVISIONS OF THIS SUBSECTION WOULD PROHIBIT ADEQUATE EMERGENCY SERVICES IN THE LOCAL COMMUNITY.
 - [4] THE ACCOMMODATION REQUESTED WILL NOT SUBSTANTIALLY IMPAIR THE PURPOSE, INTENT, OR EFFECT OF THE PROVISIONS OF THIS SUBSECTION AS APPLIED TO THE PROPERTY.
 - [5] ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE ACCOMMODATION ARE THE MINIMUM NECESSARY TO PROVIDE ADEQUATE EMERGENCY SERVICES TO THE LOCAL COMMUNITY.
- (b) THE BOARD OF APPEALS SHALL DETERMINE THE NATURE AND SCOPE OF ANY ACCOMMODATION UNDER THIS SUBSECTION AND MAY AWARD DIFFERENT OR OTHER RELIEF THAN THAT REQUESTED AFTER GIVING DUE REGARD TO THE PURPOSE, INTENT, OR EFFECT OF THE APPLICABLE PROVISIONS OF THIS SUBSECTION. THE BOARD MAY ALSO CONSIDER THE SIZE, LOCATION, AND TYPE OF ACCOMMODATION PROPOSED AND WHETHER ALTERNATIVES EXIST WHICH ACCOMMODATE THE NEED WITH LESS ADVERSE EFFECT.
- (c) THE BOARD OF APPEALS SHALL REQUIRE 3:1 MITIGATION AS A CONDITION OF VARIANCE APPROVAL FOR REQUESTS REGARDING EMERGENCY SERVICES.

§ 155-38.M.9

- (9) ADMINISTRATIVE VARIANCES IN THE CRITICAL AREA.
 - (a) ON A LOT OR PARCEL THAT WAS RECORDED BEFORE JANUARY 1, 2010, AN ADMINISTRATIVE VARIANCE IN THE CRITICAL AREA MAY BE GRANTED FOR THE REPLACEMENT, EXPANSION, OR RELOCATION OF A LEGALLY EXISTING, NONCONFORMING STRUCTURE, THE CONSTRUCTION OF A NEW ACCESSORY STRUCTURE, OR THE CONSTRUCTION OF A NEW PRIMARY STRUCTURE WITHIN THE BUFFER THAT MEETS THE FOLLOWING CONDITIONS:

- [1] IN THE CASE OF A REPLACEMENT OF A STRUCTURE OR THE EXPANSION OF A STRUCTURE IN THE 100-FOOT TIDEWATER BUFFER:
 - [a] THE REPLACEMENT OR EXPANSION DOES NOT ENCROACH ANY FURTHER THAN THE EXISTING STRUCTURE INTO THE 100-FOOT TIDEWATER BUFFER, UNLESS THE PROPOSED DEVELOPMENT IS RESTRICTED BY MORE THAN ONE BUFFER; IN THIS CASE, THE PROPOSED EXPANSION MAY NOT ENCROACH ANY FURTHER THAN 50 FEET INTO ANY ONE OF THE BUFFERS;
 - [b] THE PROPOSED EXPANSION WILL NOT ENLARGE THE EXISTING FOOTPRINT OF THE STRUCTURE BY GREATER THAN 30% OF WHAT EXISTED ON MARCH 8, 2010, OR 500 SQUARE FEET, WHICHEVER IS GREATER; AND
 - [c] THE PROPERTY WILL COMPLY WITH THE LOT COVERAGE RESTRICTIONS IN § 155-38.O.
- [2] EXCEPT AS IN COMAR 27.01.09.01.E.8, IN THE CASE OF A REPLACEMENT OF A STRUCTURE OR THE EXPANSION OF A STRUCTURE IN THE EXPANDED BUFFER:
 - [a] THE REPLACEMENT OR EXPANSION DOES NOT ENCROACH INTO THE 100-FOOT TIDEWATER BUFFER;
 - [b] THE PROPOSED EXPANSION WILL NOT ENLARGE THE EXISTING FOOTPRINT OF THE STRUCTURE BY GREATER THAN 30% OF WHAT EXISTED ON MARCH 8, 2010, OR 500 SQUARE FEET, WHICHEVER IS GREATER; AND
 - [c] THE PROPERTY WILL COMPLY WITH THE LOT COVERAGE RESTRICTIONS IN § 155-38.O.
- [3] IN THE CASE OF A RELOCATION IN THE 100-FOOT OR EXPANDED BUFFER:
 - [a] THE RELOCATED STRUCTURE LESSENS THE EXTENT OF THE NONCONFORMITY, UNLESS THE PROPOSED DEVELOPMENT IS RESTRICTED BY MORE THAN ONE BUFFER; IN THIS CASE THE PROPOSED RELOCATION MAY NOT ENCROACH ANY FURTHER THAN 50 FEET INTO ANY ONE OF THE BUFFERS;
- [4] IN THE CASE OF A NEW ACCESSORY STRUCTURE IN THE 100-FOOT OR EXPANDED BUFFER:
 - [a] THE NEW ACCESSORY STRUCTURE WILL NOT BE LOCATED ANY FURTHER SHOREWARD THAN THE CLOSEST POINT OF THE EXISTING

PRIMARY STRUCTURE , UNLESS THE PROPOSED DEVELOPMENT IS RESTRICTED BY MORE THAN ONE BUFFER; IN THIS CASE THE PROPOSED EXPANSION MAY NOT ENCROACH ANY FURTHER THAN 50 FEET INTO ANY ONE OF THE BUFFERS;

- [b] THE SIZE OF THE NEW ACCESSORY STRUCTURE WILL NOT EXCEED 30% OF THE FOOTPRINT OF THE PRIMARY STRUCTURE AS IT EXISTED ON MARCH 8, 2010;
- [c] IF NO LOT COVERAGE ASSOCIATED WITH A PRIMARY STRUCTURE EXISTED ON THE SITE AS OF MARCH 8, 2010, THE SIZE OF THE NEW ACCESSORY STRUCTURE WILL NOT EXCEED 500 SQUARE FEET; AND
- [d] THE PROPERTY WILL COMPLY WITH THE LOT COVERAGE RESTRICTIONS IN § 155-38.O AND ACCESSORY STRUCTURE LIMITATIONS IN § 155-50.A.
- [e] THE FOOTPRINT OF ANY NEW ACCESSORY STRUCTURE APPROVED BY AN ADMINISTRATIVE VARIANCE SHALL BE COUNTED AGAINST THE EXPANSION OF A PRIMARY STRUCTURE ALLOWED UNDER § 155-38.M.9(b)[1][b] and § 155-38.M.9(b)[2][b].
- [5] EXCEPT AS IN COMAR 27.01.09.01.E.8, IN THE CASE OF A NEW PRINCIPAL STRUCTURE IN THE EXPANDED BUFFER:
 - [a] THE NEW PRINCIPAL STRUCTURE AND ANY ASSOCIATED PARKING PAD OR ACCESSORY STRUCTURE SHALL NOT ENCROACH INTO THE 100-FOOT TIDEWATER BUFFER;
 - [b] THE FOOTPRINT OF THE NEW PRINCIPAL STRUCTURE AND ANY ASSOCIATED PARKING PAD AND/OR ACCESSORY STRUCTURE WITHIN THE EXPANDED BUFFER SHALL NOT EXCEED 2,500 SQUARE FEET;
 - [c] THE WIDTH OF A PROPOSED DRIVEWAY WITHIN THE EXPANDED BUFFER SHALL NOT EXCEED 12 FEET; AND
 - [d] THE PROPERTY WILL COMPLY WITH THE LOT COVERAGE RESTRICTIONS IN § 155-38.O.
- (b) THE PLANNING DIRECTOR SHALL
 - [1] APPROVE, APPROVE WITH CONDITIONS, OR DENY AN ADMINISTRATIVE VARIANCE IN THE CRITICAL AREA PURSUANT TO THE STANDARDS FOR VARIANCES AS EXPRESSED IN § 155-38.M.6 AND NATURAL RESOURCES ARTICLE 8-1808(d);

[2] MAKE WRITTEN FINDINGS, BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, AS TO WHETHER THE APPLICANT HAS OVERCOME THE PRESUMPTION OF NONCONFORMANCE ESTABLISHED IN § 155-38.M.1, INCLUDING THAT THE GRANTING OF THE VARIANCE WILL NOT ADVERSELY AFFECT WATER QUALITY OR ADVERSELY IMPACT FISH, WILDLIFE, OR PLANT HABITAT WITHIN THE CRITICAL AREA, AND THAT THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH THE GENERAL SPIRT AND INTENT OF THE CRITICAL AREA LAW AND CRITERIA; AND

[3] BASE HIS/HER WRITTEN FINDINGS ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY THE APPLICANT, THE COUNTY, OR ANY OTHER GOVERNMENT AGENCY, OR ANY OTHER PERSON DEEMED APPROPRIATE BY THE COUNTY, WITH DUE REGARD FOR THE PERSON'S EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE.

(c) A RECOMMENDATION FROM THE PLANNING COMMISSION IS REQUIRED FOR ALL ADMINISTRATIVE VARIANCES.

(d) IN THE CASE OF AN APPROVAL OF AN ADMINISTRATIVE VARIANCE UNDER THIS SUBSECTION, THE PLANNING DIRECTOR SHALL REQUIRE THE FOLLOWING:

- a. FOR SUBSECTIONS [1] – [4] OF 155-38.M.9.(a), MITIGATION IS REQUIRED FOR ALL DISTURBANCE IN THE 100-FOOT OR EXPANDED BUFFER IN ACCORDANCE WITH COMAR 27.01.09.01-2;
- b. FOR SUBSECTION [5] OF 155-38. M.9.(a), THE PLANNING DIRECTOR SHALL REQUIRE FULL ESTABLISHMENT OF THE 100-FOOT TIDEWATER BUFFER, OR MITIGATION FOR ALL DISTURBANCE TO THE EXPANDED BUFFER AT 3:1, WHICHEVER IS GREATER, IN ACCORDANCE WITH THE PLANTING STANDARDS FOUND IN COMAR 27.01.09.01-2;
- c. MITIGATION PLANTINGS SHALL BE LOCATED IN THE FOLLOWING ORDER OF PRIORITY: WITHIN THE 100-FOOT BUFFER, WITHIN THE EXPANDED BUFFER, ON-SITE AND ADJACENT TO THE BUFFER; AND ON-SITE AND ELSEWHERE IN THE CRITICAL AREA;
- d. IF BUFFER MITIGATION CANNOT BE PLANTED IN ACCORDANCE WITH 155-38.M,9.(d)[3], A FEE IN LIEU SHALL BE COLLECTED IN ACCORDANCE WITH SUBSECTION 155-38.J.20.
- e. THE PLANNING DIRECTOR SHALL REQUIRE A BUFFER MANAGEMENT PLAN APPROVED BY THE

DORCHESTER COUNTY PLANNING AND ZONING
OFFICE IN ACCORDANCE WITH COMAR 27.01.09.01-3.

- (e) DECISIONS ON ADMINISTRATIVE VARIANCES BY THE PLANNING DIRECTOR MAY BE APPEALED WITHIN 30 DAYS TO THE BOARD OF APPEALS.
- (f) ADJOINING PROPERTY OWNERS WILL BE NOTIFIED BY MAIL OF AN APPLICATION FOR AN ADMINISTRATIVE VARIANCE AS PART OF THE PLANNING COMMISSION RECOMMENDATION PROCESS.

§ 155-38.M.10-11

- (10) Applications for a variance OR ADMINISTRATIVE VARIANCE shall be made in writing to the Dorchester County Board of Zoning Appeals OR PLANNING DIRECTOR, RESPECTIVELY, in accordance with the procedures set forth herein. The Critical Area Commission shall receive a copy of the application for any variance OR ADMINISTRATIVE VARIANCE that relates to the CRITICAL AREA at least 15 days prior to any hearing on such matter and shall receive a copy of the finding.
- (11) Variance OR ADMINISTRATIVE VARIANCE decisions may be appealed as provided herein. In addition, the Chairman of the Critical Area Commission may appeal an action or decision, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

§ 155-38.O

- O. LOT COVERAGE requirements. The following regulations apply to LDA, limited development areas, and RCA, resource conservation areas.
 - (1) LOT COVERAGE IS limited to 15% of a parcel or lot, except as provided below:
 - (a) If a parcel or lot ½ acre or less in size existed on or before December 1, 1985, then LOT COVERAGE IS limited to 25% of the parcel or lot.
 - (b) If a parcel or lot greater than ½ acre and less than one acre in size existed on or before December 1, 1985, then LOT COVERAGE IS limited to 15% of the parcel or lot.
 - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then LOT COVERAGE of the lot may not exceed 25% of the lot. However, the total of the LOT COVERAGE over the entire subdivision may not exceed 15%.
 - (2) This section does not apply to a trailer park in residential use on or before December 1, 1985.
 - (3) The Director or his designated representative may allow a property owner to exceed the LOT COVERAGE limits provided for in Subsection O(1)(b) and (c) of this section, if the following conditions exist:
 - (a) New LOT COVERAGE on the property HAS been minimized;

- (b) For parcels or lots ½ acre or less in size, total LOT COVERAGE DOES not exceed 31.25% or 25% PLUS 500 square feet, whichever is greater;
 - (c) For a parcel or lot greater than ½ acre and less than one acre in size, total LOT COVERAGE DOES not exceed 15% or 5,445 square feet, whichever is greater;
 - (d) Water quality impacts associated with runoff from the PROPOSED LOT COVERAGE can be and have been minimized through site design considerations or use of best management practices approved by the local jurisdiction to improve water quality; and
 - (e) The property owner performs on-site mitigation as required by the Director or his designated representative to offset potential adverse water quality impacts from the new LOT COVERAGE, or the property owner pays a fee to Dorchester County in lieu of performing the on-site mitigation.
- (4) A fee-in-lieu shall be provided to the county if the area of the site precludes the implementation of on-site mitigation. The amount of the fee shall be determined by the Director or his designated representative. All moneys collected will be retained in the CRITICAL AREA Forest Replacement Fund.

§ 155-67.C

C. ADMINISTRATIVE VARIANCES.

- (1) ADMINISTRATIVE VARIANCES IN THE CRITICAL AREA AUTHORIZED IN § 155-38.M.9 ARE NOT SUBJECT TO THIS SECTION.

§ 140-54. Intrafamily transfers.

- A. An owner of a parcel of land in a RESOURCE CONSERVATION AREA (RCA) may transfer a portion of his/her property to an IMMEDIATE family member, notwithstanding the density provisions of the Critical Area Protection Program AND § 155-38.H.1. Any LOT OR parcel IN THE RCA SUBJECT TO AN INTRAFAMILY TRANSFER SUBDIVISION must be seven acres or more but less than SIXTY acres in size and must be A LOT OR PARCEL of record as of March 1, 1986.
- B. A LOT OR parcel IN THE RCA that is seven acres or more but less than TWELVE acres in size may be subdivided into two lots. A LOT OR parcel IN THE RCA that is TWELVE acres or more but less than SIXTY acres in size may be subdivided into three lots. The lots may be created at different times.
- C. A LOT OR PARCEL THAT IS SUBDIVIDED BY MEANS OF A BONA FIDE INTRAFAMILY TRANSFER:
 - (1) MAY BE TRANSFERRED ONLY TO A MEMBER OF THE OWNER'S IMMEDIATE FAMILY FOR THE PURPOSE OF ESTABLISHING A RESIDENCE FOR THAT FAMILY MEMBER. ONLY THE RECIPIENT OF A LOT THROUGH AN INTRAFAMILY

TRANSFER MAY REQUEST A BUILDING PERMIT FOR A STRUCTURE ON A LOT CREATED THROUGH THIS PROCESS. FOR THE PURPOSES OF THIS SECTION, "IMMEDIATE FAMILY" MEANS A FATHER, MOTHER, SON, DAUGHTER, GRANDFATHER, GRANDMOTHER, GRANDSON, OR GRANDDAUGHTER WHO HAS ATTAINED THE AGE OF 21 YEARS AS OF THE DATE OF THE RECORDING OF THE SUBDIVISION PLAT;

- (2) MUST COMPLY WITH CHAPTER 140, SUBDIVISION REGULATIONS, AND CHAPTER 155, ZONING REGULATIONS, OF THE DORCHESTER COUNTY CODE AND COMAR 27.01.01.01, ET. SEQ.;
- (3) MAY NOT BE FURTHER SUBDIVIDED; AND
- (4) MAY NOT BE CONVEYED SUBSEQUENTLY TO ANY PERSON OTHER THAN A MEMBER OF THE OWNER'S IMMEDIATE FAMILY, EXCEPT FOR A CONVEYANCE TO A THIRD PARTY AS SECURITY FOR A MORTGAGE OR DEED OF TRUST AND EXCEPT FOR A CONVEYANCE RESULTING FROM COURT PROCEEDINGS, INCLUDING BANKRUPTCY, DIVORCE, MENTAL COMPETENCY, PROBATE, FORECLOSURE, ETC., OR FROM THE DISPOSITION OF A WILL OR TRUST. AN EXCEPTION FROM THIS LIMITATION MAY BE OBTAINED FROM THE BOARD OF APPEALS IF THE APPLICANT PROVES THAT:
 - (a) THE LOT WAS CREATED AS PART OF A BONA FIDE INTRAFAMILY TRANSFER AND NOT WITH THE INTENT OF SUBDIVIDING THE ORIGINAL PARCEL OF LAND FOR THE PURPOSE OF ULTIMATE COMMERCIAL SALE; AND
 - (b) A CHANGE IN CIRCUMSTANCES HAS OCCURRED SINCE THE ORIGINAL TRANSFER WAS MADE THAT IS NOT INCONSISTENT WITH THIS SECTION AND WARRANTS AN EXCEPTION. CHANGES IN CIRCUMSTANCES INCLUDE SITUATIONS WHERE THE INTRAFAMILY TRANSFER RECIPIENT HAS NOT RESIDED IN THE COUNTY FOR FIVE YEARS PRIOR TO APPLICATION FOR AN EXCEPTION OR SUFFERS SIGNIFICANT FINANCIAL HARDSHIP. THE BOARD MAY DEFINE SUCH HARDSHIP AS BEING UNABLE TO MEET ALL FINANCIAL OBLIGATIONS FOR THE PRECEDING SIX MONTHS.
- (5) ANY DEED FOR A LOT CREATED BY BONA FIDE INTRAFAMILY TRANSFER SHALL CONTAIN A COVENANT STATING THAT THE LOT IS CREATED SUBJECT TO THE PROVISIONS OF THIS SECTION.
- (6) ANY PLAT OR SITE PLAN FOR A LOT CREATED BY A BONA FIDE INTRAFAMILY TRANSFER SHALL CONTAIN NOTES STATING THAT THE LOT IS CREATED SUBJECT TO THE PROVISIONS OF THIS SECTION.

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that this Bill is subject to the approval of the Critical Area Commission.

SECTION THREE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that upon approval of the Critical Area Commission, General Code Publishers is directed to codify amended Section 140-54 of Chapter 140, and Section 155-38, Section 155-13, and Section 155-67 of Chapter 155 as approved by the Critical Area Commission, in the Dorchester County 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. 2012- 1 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage or upon Critical Area Commission approval whichever is later.

SECTION FIVE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that the disapproval or invalidity by the Critical Area Commission or its Chairman of any provisions of this Bill shall not affect the validity or enforceability of any other provisions of this Bill, which shall remain in full force and effect. Only those portions of this Bill approved by the Critical Area Commission shall be codified in the Dorchester County Code.

PASSED this 8th day of May, 2012.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY:

BY: Jane Baynard
Jane Baynard, County Manager

Jay L. Newcomb
Jay L. Newcomb, President

Newcomb- aye
Nichols- aye
Price- aye
Travers- aye
Bradshaw- aye