

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2014 Legislative Session

Bill No. CB-65-2014

Chapter No. 59

Proposed and Presented by The Chairman (by request – Planning Board)

Introduced by Council Member Franklin

Co-Sponsors _____

Date of Introduction September 30, 2014

BILL

1 AN ACT concerning

2 Chesapeake Bay Critical Area

3 For the purpose of adopting an updated Chesapeake Bay Critical Area Overlay Zone, ensuring
4 that approved Conservation Plans, Conservation Agreements, and any associated Conservation
5 Easements located within the adopted boundaries remain in full force and effect, amending
6 certain development standards for properties located within certain portions the Chesapeake Bay
7 Critical Area of the County, and clarifying the authority of the Board of Zoning Appeals to grant
8 variances from the requirements of Subtitle 27 of the County Code for property located within
9 the Chesapeake Bay Critical Area.

10 BY repealing and reenacting with amendments:

11 **SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.**

12 Section 5B-110, 5B-111, 5B-112, and 5B-116,

13 The Prince George's County Code

14 (2011 Edition; 2013 Supplement).

15 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
16 Maryland, that Sections 5B-110, 5B-111, 5B-112 and 5B-116 of the Prince George's County
17 Code be and the same are hereby repealed and reenacted with the following amendments:

18 **SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.**

19 **DIVISION 2. URBAN AND RURAL LAND DEVELOPMENT.**

20 **SUBDIVISION 1. GENERAL PROVISIONS.**

1 **Sec. 5B-110. Applicability and Administration.**

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3 (o) Approval of Variances. Variances from the requirements of this Division of the
4 County Code shall be approved by the Planning Board as part of its review of an associated
5 Conservation Plan.

6 * * * * *

7 **Sec. 5B-111. Enforcement.**

8 (a) **Applicability.** The purpose of this chapter is to establish enforcement procedures to
9 identify violations, assess civil penalties, and require abatement, restoration, and mitigation for
10 violations to the Critical Area Program.

11 (1) The provisions of this Section are in accordance with the Critical Area Act and
12 Criteria, and as set out in any other applicable ordinances and regulations, apply throughout the
13 Critical Area and supersede any inconsistent law, regulation, ordinance or plan. In the case of
14 conflicting provisions, the stricter provisions shall apply.

15 (2) If a lot or parcel has an approved Conservation Plan prior to the effective date of
16 the 2014 Critical Area Boundary Map, the Conservation Plan, Conservation Agreement and any
17 associated Conservation Easements remain in full force and effect until:

18 (i) the plan, agreement and/or easement are revised, approved and re-recorded
19 or

20 (ii) using the Staff Level Review process a determination is made by the
21 Director or the Director’s designee that the property is no longer within the Critical Area and the
22 approved plan is abandoned.

23 * * * * *

24 (p) **Variances pursuant to a violation.** The Planning Board or the Board of Zoning
25 Appeals, as appropriate, may accept an application for a variance regarding a parcel or lot that is
26 subject to a current violation of this subtitle or any provisions of an order, permit, plan, or
27 regulation in accordance with the variance provisions of this subtitle or Subtitle 27. However, a
28 final decision shall not be made by the Planning Board or the Board of Zoning Appeals, as
29 appropriate, until all abatement, restoration, and mitigation measures have been submitted
30 [provided on a conservation plan submitted for review that meets] for review in conformance

1 with all the requirements of this Subtitle and/or as applicable to other subtitles of the County
2 Code; and

3 (1) Mitigation for violations in any Critical Area Buffer shall be shown according to
4 the ratios shown in Section 5B-121, Table (h)(2) of this Subtitle; and

5 (2) Variances may not be granted by the Planning Board or the Board of Zoning
6 Appeals, as appropriate, from the provisions of Subtitles 5B or 27 for property located within the
7 Chesapeake Bay Critical Area Overlay Zones to legalize a violation of this subtitle, including an
8 unpermitted structure or development activity, unless a notice of violation is issued, including
9 assessment of a penalty for the violation. Application for a variance under this paragraph
10 constitutes a waiver of the right to appeal the terms of a notice of violation and its final
11 adjudication, including the payment of any penalties and costs assessed; and

12 (3) If there are provisions of the violation that require stabilization, the installation of
13 erosion and sediment control devices, or the payment of a fine, a final decision shall not be made
14 by the Planning Board or the Board of Zoning Appeals, as appropriate, on the variance request
15 until all such corrective work has been completed and the fine paid. The applicant is responsible
16 for providing information verifying the status of the violation prior to the decision regarding the
17 variance request. The Director, or the Director’s authorized representative, and the Planning
18 Director, or the Planning Director’s designee, shall inspect the site prior to the decision regarding
19 the variance request.

20 * * * * *

21 **Sec. 5B-112. Development in the Critical Area.**

22 (a) **Description.** In Prince George’s County, the Critical Area extends along the
23 Patuxent, Potomac, and Anacostia rivers encompassing approximately [15,728] 12,258 acres, of
24 which, approximately [9,994] 9,637 acres are in uplands. This area includes the tidal waters,
25 tidal wetlands and, in general, all land within one thousand (1,000) feet of the Mean High Tide
26 Line (MHTL). The precise delineation of the Critical Area in the county was established by the
27 creation of the Critical Area Overlay Zones, as initially adopted and approved by the District
28 [County] Council on September 27, 1988, and as amended by the District Council as of
29 December 31, 2014. The official map is referred to as the “2014 Critical Area Overlay Zone.”

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2 **Sec. 5B-116. Submittal Requirements and Permit Issuance.**

3 (a) **Conservation Plan Required.** A Conservation Plan is a site plan that must be
4 approved in addition to all other applicable standard requirements of the County Code for
5 development or redevelopment if the land falls within the Critical Area. The Conservation Plan
6 must include a buffer management plan for properties that contain a Critical Area buffer. Prior
7 to the approval of any subdivision, site plan, the issuance of any grading permit or the issuance
8 of building permits for any property within the Critical Area, a Conservation Plan must be
9 approved unless:

10 (1) the proposed project qualifies for a Staff Level Review per paragraph (b) below[.] ;

11 or

12 (2) the permit application consists of renovations and/or additions to existing
13 improvements on residentially zoned lots, located outside of primary and secondary buffers,
14 measuring 20,000 square feet or smaller in the Intense Development Overlay Zone in the
15 Anacostia River basin. [A Conservation Plan is a site plan and is necessary in addition to
16 standard requirements of the Prince George's County Code for development or redevelopment if
17 the land falls within the Critical Area. The Conservation Plan must include a buffer management
18 plan for properties that contain a Critical Area buffer.]

19 (b) **Staff Level Review.** The Director or the Director's designee may conduct a review
20 and approve grading or building permit applications without a Conservation Plan if:

21 (1) the property was within the Critical Area boundary and had obtained an approved
22 Conservation Plan prior to the approval of the 2014 Critical Area Overlay Zone but is no longer
23 within the overlay zone due to a map amendment; or

24 (2) the area of disturbance is less than five-hundred (500) square feet, provided the
25 criteria of items [1] (i) through [7](viii) below can be met.

26 [1] (i) Disturbance will not occur in the Buffer; and

27 [2] (ii) Vegetation will not be removed as a result of the proposed activity; and

28 [3] (iii) Steep or severe slopes will not be disturbed; and

29 [4] (iv) Habitat Protection Areas will not be affected; and

30 [5] (v) Tidal or non-tidal wetlands will not be affected; and

1 [6] (vi) Existing property is in conformance with the requirements of the Zoning
2 Ordinance and the proposed changes will retain this conformance; and

3 [7] (vii) A preliminary plan of subdivision is not required; and

4 [8] (viii) A Conservation Plan has not been approved for the subject property.

5 * * * * *

6 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
7 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
8 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
9 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
10 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
11 Act, since the same would have been enacted without the incorporation in this Act of any such
12 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.
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SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on January 1,
2015..

Adopted this 28th day of October , 2014.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Mel Franklin
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.