

Prince George's County Council Agenda Item Summary

Meeting Date: 10/10/2006
Reference No.: CB-064-2006
Draft No.: 1
Proposer(s): Knotts
Sponsor(s): Knotts
Item Title: An Ordinance to amend the restriction on growth allocation approval in the Resource Conservation Overlay Zone, to conform the County Chesapeake Bay Critical Area Program to requirements of the Chesapeake Bay Critical Area Commission.

Drafter: Steven M. Gilbert, Principal Counsel
Resource Personnel: Betty Horton-Hodge, Legislative Aide

LEGISLATIVE HISTORY:

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|----------------------------|--|--------------------------|
| Date Presented: | | Executive Action: |
| Committee Referral: | 6/20/2006 - PZED | Effective Date: |
| Committee Action: | 7/11/2006 - NR | |
| Date Introduced: | 6/20/2006 | |
| Public Hearing: | 7/18/2006 - 10:00 AM | |
| Council Action (1) | 7/18/2006 - RECOMMIT | |
| Council Votes: | MB:A, WC:-, SHD:A, TD:A, CE:A, DCH:A, TH:A, TK:A, DP:A | |
| Pass/Fail: | P | |
| Remarks: | | |

AFFECTED CODE SECTIONS:

27-213.13

COMMITTEE REPORTS:

PLANNING, ZONING AND ECONOMIC DEVELOPMENT

Date 7/11/2006

No recommendation, 3-1 (In favor: Council Members Dean, Exum, and Peters. Opposed: Council Member Dernoga)

Staff summarized the purpose of the legislation and informed the committee of written referral comments that were received. Staff also indicated that this bill bypassed presentation, was introduced on June 20, 2006, and scheduled for a public hearing on July 18, 2006. Based on introduction having already occurred, the committee is unable to recommend substantive amendments without re-advertising for an additional public hearing.

The legislation amends the Chesapeake Bay Critical Area Overlay provisions, in Part 3 of the Zoning Ordinance. It deletes the 300-foot rezoning prohibition that applies in the Resource Conservation Overlay (R-C-O) Zone, whenever, in the growth allocation process, a property in the R-C-O Zone is reclassified to Limited Development Overlay (L-D-O) or Intense Development Overlay (I-D-O).

By memorandum to the Planning, Zoning, and Economic Development Committee Director dated July 6, 2006, the Principal Counsel to the District Council, indicates that the legislation is intended to respond to a suggestion – or

qualified order, perhaps – the District Council received in May 2006 from the Chesapeake Bay Critical Area Commission, after the Commission reviewed the Council’s action in approving A-9955, the River’s Edge growth allocation. The Commission noted in the River’s Edge case – although it had had an identical case Tepaske, in 1993, and said nothing there – that in Prince George’s County, as required by the Zoning Ordinance, a rezoning from the R-C-O Zone to L-D-O or I-D-O does not include the land area within 300 feet of tidal waters or wetlands. After some debate, the Commission staff and members decided that this Zoning Ordinance provision was not consistent with the State program, as set out in the Critical Area Law, in the Natural Resources Code.

CB-64-2006 will eliminate the offending provision, so that the Commission does not make further adverse comments or findings about the Prince George’s program. The bill also has grandfather language, for both the Tepaske and River’s Edge properties.

Council Member Knotts, the bill’s sponsor, requested the committee’s support indicating that he proposed this legislation to amend the Zoning Ordinance in response to the recommendations from the Chesapeake Bay Critical Area Commission.

The Office of Law reviewed CB-64-2006 and provided a memorandum to the Council Administrator noting a suggested alternative to certain language in the bill. The elimination of the locational criteria will bring County law in line with State law in this area, however, the re-zoning of specific properties previously excluded may be construed as contract zoning because it violates the principal of uniformity in zoning. An alternative would be to substitute general language that addresses the zoning of any property previously excluded as a result of this locational criteria and permits its addition to the zone of the adjacent property from which it was severed as a result of the rezoning in the New I-D-O Zone or New L-D-O Zone.

The Planning Board supports the legislation only with recommendations. The Board recommends that the word “and” be removed from lines 17 and 26 on page 2. It is also recommended that the District Council add additional requirements for the New I-D-O Zone and the New L-D-O Zone to retain the protective provisions of the original legislation. The language would read: “retain a 300 foot-wide setback from the mean high tide line for all structures and accessory structures with the setback being placed in a conservation easement recorded in the land records.” This change would require future applicants to preserve and record the setbacks.

Lastly, this bill changes the Overlay Zone classification for all properties in the R-C-O Zone, which includes Tepaske (A-9849) and River’s Edge (A-9955) by rezoning the properties to the L-D-O or the I-D-O Zones. As this bill affects the rezoning of properties, staff recommends that more public notification be given on these defacto rezonings than what is given on text amendments.

The Office of Audits and Investigations determined that there should be no negative fiscal impact on the County as a result of enacting CB-64-2006.

Thomas Haller, representing the owner of the River’s Edge property, was present to address the committee and to summarize comments provided in his letter to the PZED Committee Chairman dated July 7, 2006. Mr. Haller indicated his client’s opposition to the recommended amendment provided by the Planning Board. He noted that the additional language requiring a 300-foot setback for structures is not necessary because the County, when considering any development proposal, has the ability to establish setbacks it determines are necessary. Mr. Haller also explained that the state law already mandates a 100-foot buffer and setback. The original purpose of retaining 300 feet in the R-C-O Zone was to legislatively mandate the larger setback. The attempt to legislatively require this setback is what has led to the conflict with state law. Further, the Planning Board recommendation of requiring a “conservation easement” to protect the setback area creates the same confusion because it is unclear what the term means. Mr. Haller indicated that his client is merely requesting consistency between County law and State law.

CJ Lammers, Planner Supervisor, M-NCPPC Environmental Planning Section, addressed the committee indicating that there is one additional rezoning case that would be affected by CB-64-2006 which is not referenced in the legislation. Ms. Lammers also informed the committee that based on her conversation with the Chesapeake Bay Critical Area Commission; the Commission is in support of the Planning Board’s suggested amendment to retain a

300-foot setback to be placed in a conservation easement and was not aware that other restrictions in terms of setbacks are being eliminated by the proposed legislation.

The Legislative Officer responded to Council Member Exum's inquiry concerning the Planning Board's recommendation indicating that the suggested amendment is substantive and would warrant an additional public hearing.

Council Chairman Dernoga expressed concern that parties of record for the zoning cases have not been notified of the rezoning proposed in CB-64-2006. Mr. Dernoga suggested that additional time may be necessary to engage the Critical Area Commission in discussion with Council and Planning Board staffs to address the inconsistencies in the County and State laws and to determine the appropriate solution.

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

Section 27-213.13 (b) of the Zoning Ordinance, governing growth allocation approvals in the Resource Conservation Overlay Zone, limits approvals of the I-D-O and L-D-O zones to properties 300 feet from tidal waters or tidal wetlands. The Chesapeake Bay Critical Area Commission has advised that these provisions, in subsections (b)(1)(B)(i)(bb) and (b)(1)(B)(ii)(bb) of Section 27-213.13, are inconsistent with State law. The bill corrects this perceived inconsistency by deleting the 300-foot restriction in Section 27-213.13.

THIS BILL WAS NOT ENACTED

CODE INDEX TOPICS:

INCLUSION FILES:
