



STAFF REPORT ON PROPOSED LEGISLATION

To: Mayor Gavin Buckley

From: Sally Nash, Director of Planning and Zoning

Date: October 12, 2021

Subject: R-30-21, Chesapeake Region Accessible Boating - Adaptive Boating Center

The purpose of this resolution is to waive the fees for the Chesapeake Region Accessible Boating (CRAB) Center that is being built on City property at 7040 Bembe Beach Road. The City used Program Open Space money and State of Maryland capital grant funding to acquire the property, and is leasing the land to CRAB.

Because this is City-owned property within the Critical Area, the City must submit the project to the Critical Area Commission, a State entity, for review. If the project meets the regulations of our local program, it is considered with a “Consistency Approval.” If the project does not meet the local program regulations, the project requires a “Conditional Approval” from the Critical Area Commission. This process is akin to a variance from the Board of Appeals.

To waive the fee for the planting mitigation, a Conditional Approval must be sought from the Critical Area Commission. This process adds several months to the project review timeline and is not a guaranteed outcome. The City does not have the authority to waive the fees for its own property, as described in the attached letter from the Critical Area Commission.

The fee-in-lieu that this project must pay for mitigation is approximately \$41,750. These fees are used by the City arborists for projects in the Critical Area, especially planting trees.

The project must also contribute money for a sidewalk along its frontage if CRAB does not build the sidewalk as part of the site design plan.

Attachment: State of Maryland Critical Area Commission, Chesapeake and Atlantic Coastal Bays letter of October 12, 2021

Prepared by Sally Nash, Director of Planning and Zoning

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman
Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

October 12, 2021

Dr. Sally Nash, Planning Director
City of Annapolis
Office of Planning and Zoning
145 Gorman Street, 3rd Floor
Annapolis, MD 21401

Re: City Resolution 30-21

Dear Dr. Nash:

I am writing to offer comment on proposed City Resolution 30-21, which was heard last night on First Reader by the Annapolis City Council. The purpose of the resolution is to waive the remaining Critical Area mitigation or fee-in-lieu currently outstanding for the proposed development of the Adaptive Boating Center (ABC) by the non-profit, Chesapeake Regional Accessibility Boating. As currently drafted, this resolution is in conflict with State Critical Area law and regulations.

Before I provide additional detail regarding this conflict, I note that the Critical Area Commission fully supports the proposed development of a premier facility to provide boating experiences to people with disabilities, veterans, and local youth. The proposed site for the ABC is well-located and already designated the best appropriate Critical Area designation, Intensely Developed Area (IDA) and Buffer Management Area (BMA) given the proposed use. We also recognize and commend the investments supporting this proposed development by the State and the City.

Resolution 30-21, however, attempts to waive the outstanding Critical Area mitigation or fee-in-lieu for ABC that is required by the City's Critical Area Program. The Resolution improperly relies on City Code Section 21.54.060.H. This provision in the City's Critical Area program allows citizens to seek relief from Critical Area development standards on the basis of a disability that would otherwise deprive the applicant from being able to develop in accordance with the applicable development standards. By way of example, except for water-dependent activities, development in the Buffer is prohibited without a variance. However, a citizen with a qualifying disability may use Section 21.54.060H to seek to develop in the Buffer to provide appropriate access to their house (like a wheelchair ramp) if the only access is through the Buffer. Here, the Resolution waives mitigation, not a specific development standard that would prevent the ABC site from providing full access for its users. The required Critical Area mitigation is not preventing full development of the site. State Critical Area law and regulations

and the City's Critical Area Program allow for mitigation to be met off-site through fee-in-lieu, thus enabling the site to be developed with the maximum amount of lot coverage otherwise allowed.

In addition to the Resolution's improper reliance on Section 21.54.060.H, the substantive provisions of that Section cannot be met by waiving mitigation for the proposed development at ABC. In other words, by waiving the mitigation requirement, the City would not be implementing its Program consistent with State law or with its own Critical Area program.

- Waiving the required mitigation for the development at ABC does not provide a reasonable accommodation for disabled individuals. (Section 21.54.06.H.1.a.) The Resolution is simply attempting to lessen the mitigation requirements, and not provide a specific benefit to individuals with disabilities.
- Requiring the full amount of mitigation (i.e., literal enforcement) would not result in discrimination or deprive a disabled individual from the use and enjoyment of the site. (Section 21.54.06.H.1.b.) As noted above, the required mitigation is not preventing the full development of the site.
- Waiving the required mitigation would not reduce or eliminate discriminatory effects or restore reasonable use or enjoyment of the property by disabled individuals. (Section 21.54.06.H.1.c.) The site is proposed to be fully developed in compliance with all non-mitigation-related Critical Area standards and requirements.
- Waiving the required mitigation would substantially impair the purpose of the Critical Area program. (Section 21.54.06.H.1.d.) The goals of the Critical Area law (Natural Resources Article 8-1808(c) require local jurisdictions to include elements that minimize adverse impacts on water quality, conserve fish, wildlife and plant habitat and accommodate development while recognizing that even if pollution is controlled, the number, movement, and activities in the Critical Area can have adverse environmental impacts. The mitigation required for Critical Area impacts is intended to address both water quality and habitat impacts. The City's fee-in-lieu program is specifically geared toward providing those same opportunities. Waiving the required mitigation would thwart the goals of the law and impair the purposes of the City program.
- Waiving the required mitigation would not be environmentally neutral. (Section 21.54.06.H.1.e.) Waiving mitigation would cause greater negative impacts on the environment than literal enforcement of the mitigation requirement.
- Waiving the required mitigation is not the minimum necessary, as it does not address needs resulting from particular disabilities. (Section 21.54.06.H.1.e.)
- Alternatives exist. (Section 21.54.06.H.2.) The remaining mitigation may be met off-site or through fee-in-lieu.

Finally, given the site is owned by the City of Annapolis, Commission staff is currently reviewing this development project under COMAR 27.02.02. Specifically, this regulation requires development on City-owned lands to be consistent with the provisions of the City's Critical Area program. If a development project on City-owned lands is not consistent, or would otherwise be prohibited from being undertaken, the City may seek a Conditional Approval for the project from the Critical Area Commission under COMAR 27.02.06.

Dr. Sally Nash
October 12, 2021
Page 3 of 3

If the City approves Resolution 30-21, then the City must apply for Conditional Approval by the Critical Area Commission before any development can proceed.

I ask that you keep me apprised of the City Council's consideration of this Resolution. I am available to meet with you to discuss any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Kate Charbonneau".

Kate Charbonneau
Executive Director

Cc by Email: D. Michael Lyles, City Attorney
Alderman Rob Savage
Emily Vainieri, Assistant Attorney General