

Public Hearings - Town of Betterton Sec 8-1809 1987 MSA-S1830-4

CHESAPEAKE BAY CRITICAL AREAS COMMISSION

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TOWN OF BETTERTON, MARYLAND

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SECTION 8-1809
PUBLIC HEARING

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Tuesday, October 6, 1987

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Pursuant to Notice, the above-entitled public hearing was held before KATHRYN LANGER, PANEL CHAIRMAN, at the Betterton Fire Hall, Betterton, Maryland, commencing at 8:10 p.m., there being present:

PANEL MEMBERS:

ARDATH CADE, Deputy Secretary, Department of Housing & Community Development

SAMUEL TURNER, Talbot County

WILLIAM J. BOSTIONS, Wicomico County

THOMAS OSBORNE, Anne Arundel County

SPECIAL GUESTS:

JUDGE SOLOMON LISS, Chairman, Chesapeake Bay Critical Areas Commission

SARAH TAYLOR, Executive Director, Chesapeake Bay Critical Areas Commission

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SPEAKERS PRESENT:

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ZACHARY KRUBECK, Reidman, Johnson
SUSAN BALLARD, Chesapeake Properties

ALSO PRESENT:

FRANK PULEO, Mayor of Betterton
CARL CANTERA
EUGENE A. SHIRK
CAROLYN SORGE
CLYDE S. MORRIS, JR.
DONALD OWENS
JOE MANGINI
LYDIA PARENT
ROGER CAMPBELL
DEBORAH PLUMMER
ROBERT PLUMMER
E. DAGGETT
TOM MANCUSO
JIM JOHNS
BEDFORD GROVER
A. THOMAS ROBERTS, III

REPORTED BY: GEOFFREY L. HUNT, NOTARY PUBLIC

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P R O C E E D I N G S

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2 CHAIRMAN LANGER: I'd like to call this
3 hearing to order, welcome you all for coming out this
4 evening, and now I'd like to introduce the Panel
5 Members.

6 To my left, Tom Osborne, who is from Anne
7 Arundel County; Deputy Secretary Ardath Cade from the
8 Department of Housing and Community Development; Bill
9 Bostion who is from Wicomico County; Samuel Taylor --

10 MR. TURNER: Turner.

11 CHAIRMAN LANGER: Turner, sorry, from Calvert
12 County; and I'm Kathryn Langer from Cecil County.

13 The purpose of this hearing is to hear public
14 comment on the town of Betterton's program as required
15 under Section 8-1809 of the Critical Area Law. The
16 Commission must make a decision on that local program
17 within 60 days. If you'll notice, there is a court
18 reporter who is keeping a record of this hearing, which
19 will be used to help the Commission to render a
20 decision.

21 The record will be kept open for one week to

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1 receive additional testimony, written, if anyone so
2 desires. The statements can be mailed to Commission
3 Chairman Solomon Liss, Chesapeake Bay Critical Area
4 Commission, 580 Taylor Avenue, D4, Annapolis, Maryland
5 21401. The complete record will be kept at the
6 Commission office for public review. If any of you
7 would like that address later, just see me and I'll be
8 glad to give it to you.

9 I would also like to introduce this evening --
10 we have an honored guest, Judge Liss, Chairman of the
11 Critical Areas Commission, sitting here, and Dr. Sarah
12 Taylor, who is the Executive Director of the Critical
13 Areas Commission.

14 (Applause.)

15 We also have the Mayor of Betterton, Mayor
16 Puleo, and he will introduce the town council members,
17 and chairmen of Zoning and Planning and the Board of
18 Appeals.

19 MAYOR PULEO: -- the Chairman of the Planning
20 and Zoning Board; and Carolyn Sorge is a Councilperson;
21 Gene Shirk, Councilman; Don Owens, Councilman. We have

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1 -- oh, there I see Clyde Morris, another Councilman,
2 just a minute. And I've got Roger Campbell, the Zoning
3 Administrator. Who else do I have here? Did I miss
4 anybody? Oh, Debbie. Debbie Plummer of the Appeals
5 Board. We also have with us Carl Cantera, who is one of
6 the developers up here. We have also a friend of mine
7 from Rock Hall, Joe Mangini, the Town Manager of Rock
8 Hall. I think that's about it. Did I miss anybody?
9 Okay.

10 CHAIRMAN LANGER: Thank you very much.

11 Once again, public comment is to focus on
12 the local program. If there are any boundary dispute
13 issues, or if someone doesn't like the way their
14 property has been classified, those problems should be
15 referred to the local planning official, and not to the
16 Commission.

17 We would now like to have the presentation by
18 Zachary Krubeck, who is a planning consultant with
19 Reidman, Johnson.

20 MR. KRUBECK: Good evening. Excuse me, I'm a
21 little out of breath. I just ran from Millington, and I

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1 have to catch my breath here.

2 Can I get an idea of how many were at the
3 first public hearing, the original public hearing held
4 by the town, so I can understand? So there are some
5 that are new to the -- possibly new to the town's
6 program tonight, so I'll have to probably do a little
7 catching up on that, and -- briefly at least.

8 If I can focus this, I'd like to give you
9 maybe a little bit of an idea of where we are. Take a
10 look at this -- I'd like to take a look at the slide,
11 give us an idea of where we are in this project. Okay,
12 the town has completed, obviously, the final draft which
13 some of you may have a copy of. An original -- an
14 initial public hearing was held after 15 days' notice,
15 and the final draft was approved by the Mayor and
16 Council, and submitted to the Critical Area Commission.
17 And we were going -- and in that time, within a 90-day
18 time, within that time, the Panel who was introduced to
19 you tonight as -- is conducting this public hearing. I
20 just wanted to give you an idea in the overall adoption
21 process of where we are. Within this 90-day time clock

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1 that's ticking right now, there will be comments back to
2 the town likely, and any changes that will be needed,
3 there will be like a 40-day cycle to initiate and make
4 those changes, and give them back to the Critical Area
5 Commission.

6 After that time, assuming no glitches, and it
7 moves on through, the Commission will approve the plan,
8 and the town has another 90 days to hold a final public
9 hearing, and adopt the program, and adopting the
10 limitation aspect of the program. This is the goal
11 on here, but I just wanted to give you an overview of
12 where we are in the process first.

13 As background, the -- this process -- this
14 program has been developed for the town. This really
15 can, through a comprehensive plan, or at least a sub-area
16 plan of the town which happens to be a critical area as
17 defined as 1,000 feet inland from mean high water in the
18 town. And to delineate it, give you an idea, to orient
19 yourselves: Main Street, Howell Point Road through here.
20 And this is the 1,000-foot ban we're referring to within
21 the critical areas, the Sassafras River. This

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1 particular -- there was a series of maps that were
2 developed -- five maps in all -- to develop background
3 information when we were developing this program. The
4 intent was to map the resources in the town, wetlands,
5 and the soil conditions, for example, the topography it's
6 on, to determine exactly what's the best management
7 strategy for this sensitive 1,000-foot ban? This
8 particular map is a indication on -- a determination of
9 land use within the town. And the significance of that
10 we'll get into later I think, but the town was divided
11 into three land designations. The vacant -- I mean the
12 white is the intensely developed areas of the town. The
13 white -- or the medium dark pattern are the limited
14 development areas of town. The intensely developed
15 areas are -- have water and sewer, which is, the whole
16 town is served virtually by water and sewer with the
17 exception of the recently annexed area here. Those
18 areas that are served by water and sewer, and have
19 densities greater than three dwelling units per acre,
20 that explains this designation. The lighter tone --
21 this, of course, is served by water and sewer from the

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1 town, but it has a less dense than three units per acre,
2 and that's the determination there. That gives you a
3 general outline of that.

4 You'll notice a key element in this program
5 delineated here is 100-foot buffer, set back from mean
6 high water. And you'll note it's been modified
7 somewhat, in some cases due to the steep slopes
8 primarily, and be aware of this ravine and so on in this
9 area. The buffer has actually been modified there, and
10 in some other locations.

11 The significance of these designations is that
12 through the program itself that was mandated by the
13 state government, there are certain development
14 regulations, or general guidelines that have been
15 initiated in the Critical Area criteria which -- I don't
16 have a copy that we could show what we're talking about
17 here -- I don't have one handy? But it's a large blue
18 tabloid -- black tabloid type of publication. And in
19 that, the development guidelines, at least in general
20 terms, are outlined, and somewhat mandated upon the
21 town. The town has taken the general guidelines, and

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1 specifically determined how those developments, should
2 occur within the established ban, within the IDA, or
3 intensely developed areas, limited development areas,
4 and resource conservation areas which have been
5 designated west of town.

6 The buffer I mentioned earlier has some more
7 restricted requirements in the sense that the buffer is
8 designated to have the most restricted potential for
9 development. And the rationale for that -- and I'm
10 cramming a lot, believe me, in a short amount of time --
11 the overall rationale is that a protective buffer of
12 vegetation along the tidal waters of the Chesapeake Bay
13 is generally the best, most effective means of
14 protecting the water quality, and in many cases the
15 quality of the wildlife habitat in these areas. That's
16 the rationale. I think it's a solid one. There's not
17 too many arguments I think on that potential of the
18 value of that buffer. We're running into some unique
19 problems in Betterton with this buffer in the sense that
20 we have some existing development we have to deal with,
21 and we consequently have handled that under some of the

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1 program implementation recommendations or proposals,
2 which we will talk about shortly.

3 One other factor that's indicated on the maps,
4 and I don't think we have time tonight to go through all
5 the maps, of course, but Gut Marsh -- everyone living
6 here is very much aware of it. It's a fairly restricted
7 tidal gut, actually, that runs up into this area. It's
8 been identified somewhat on the land cover maps more
9 closely. It's outside the corporate limits, for all
10 practical purposes, but it has a very significant impact
11 on the planning of the town, and the town's management
12 of the critical area. It's restricting -- very
13 restricting to the town, their annexation of course in
14 this particular area, because of that resource in this
15 area, which leaves the town's growth potential in the
16 western portion of the town, the recently annexed
17 portion.

18 The method of implementing this program is the
19 use of the town's zoning ordinance with a modification
20 by applying an overlay zone, which corresponds to the
21 IDA. The intensely developed areas, limited development

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1 areas, and resource conservation areas become into
2 themselves overlay zones over top of the existing zoning
3 of the town, with their own set of regulations. For
4 example, the intensely developed areas in white,
5 are -- have no particular limitations on the density,
6 for example, but there are limitations on development
7 with respect to trying to reduce the pollution loads.
8 Now, the pollution loading, the 9-point loadings we're
9 talking about that occur from creating impervious
10 surfaces, and no created runoff, and controlling that,
11 and -- which is somewhat done -- is somewhat effectively
12 done by Stormwater Management, and those kind of
13 techniques. But there is some other creativity I think
14 that's going to be needed to allow development within
15 the critical area here to actually achieve this 10%
16 reduction in pollution in the receiving waters, the
17 Sassafras River. Again, they're outlined somewhat in
18 the document, and further in a manual -- an
19 administrative manual which will be presented to the
20 town -- I didn't bring it in -- which has specific
21 information on how to measure these impacts, and also

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1 the techniques that a developer can use, because like --
2 the question that I hear at the public hearings more
3 than anything is: "That's fine. I'm going to develop my
4 property. You say I can develop it, but how in the heck
5 can I create these -- put in a parking lot, and reduce
6 my pollution loads?" It's very difficult, but with some
7 creative site design, and some attention to the natural
8 buffer that may be existing, and so on, it can be done,
9 and -- without getting specific.

10 The limited development areas, this medium
11 dark pattern, have restrictions of four units per acre
12 for density, those kinds of restrictions, over and above
13 the restrictions that are already built into your zoning
14 laws, for example.

15 The resource conservation area, which is a
16 newly annexed portion of the critical area here, has
17 limitations of a density of one unit per 20 acres, which
18 sounds kind of out of character with the remainder of
19 the town. And as a result, the town has requested --
20 actually it's in the growth allocation portion of the
21 document -- through that, and through correspondence

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1 with the county commissioners who have -- or at least
2 the county has somewhat of a -- has a stronghold in
3 determining, let's say, where the new growth within the
4 county will go. Without actually getting into that
5 mechanism and how it works, because it's probably more
6 germane to the county, but the -- to let you know that
7 the town has requested, and as I understand, received
8 written confirmation that this area will be -- this
9 resource conservation area -- will be permitted -- will
10 be considered a growth area within the town. And that
11 means it can be converted to intensely developed area --
12 excuse me, a limited development area is what was
13 intended. It accomodated one of the few areas -- since
14 we are so restricted by Gut Marsh on this side, and not
15 that the topography here is excellent, and not that the
16 -- but there are some constraints there, but at least
17 it's a potential for expansion in that direction, and
18 concurred upon by the county, so that's what I think can
19 be resolved somewhat.

20 Water-dependent facilities is a major element
21 in this program -- and restrictions -- feasibility is

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1 somewhat restricted along the river, mainly -- everyone
2 that lives here probably knows better than I do -- it's
3 because of exposure, I guess. There's not much protected
4 harborage -- the expanse of the river, and being at the
5 mouth, the mouth, being the opening to the Bay -- you
6 have -- I guess it's west winds -- northwest winds whip
7 right up along the shore, causing some limited potential
8 there, although I do think -- we do feel that there is some
9 potential. And as a result there's some additional
10 regulations on water-dependent facilities -- primarily
11 directed at marinas, built into the program, which
12 would allow a certain amount of development of water-
13 dependent facilities. And the reason I mention water-
14 dependent facilities, and treat them somewhat
15 different from any other use, because in the criteria
16 they are actually committed to be located within the
17 buffer, whereas most uses, and almost exclusively,
18 obstructions are prohibited within that 100-foot buffer
19 with some exceptions I'd like to hit on briefly.

20 Shore erosion was an element that we had to
21 look at, and primarily just identify the shoreline as

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1 being -- having some significant erosion, and being
2 probably more conducive to structural kinds of
3 protection, rather than the non-structural, or
4 vegetative types of construction -- type of controls
5 that are really being promoted throughout the critical
6 area program, and as being more consistent with the
7 habitat protection, and improving water quality in,
8 let's say, a sensitive way to the ecology. Stone
9 revetments found on these tall bluffs that you have,
10 seem to be about the best approach. So then we'll be
11 encouraged -- that's encouraging --

12 CHAIRMAN LANGER: Could we hear what you said?
13 I'm sorry.

14 MAYOR PULEO: I said that some of the property
15 owners have already started to put the stone in along
16 their beaches, you know, for erosion and all -- near
17 Park Avenue, up in that -- up that side there's about
18 four or five of them already making a beautiful job out
19 of it. Brought stone in -- they're big boulders they're
20 doing out there.

21 CHAIRMAN LANGER: Thank you, Mayor.

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1 MR. KRUBECK: For the record, there is
2 elements that are mandated to be looked at in the town
3 that have been looked at, for example, agriculture,
4 surface mining. They've really been given no service,
5 and not necessarily because of having looked at the land
6 use in the town, agriculture is not dominant, and
7 actually non-existent, and surface mining would not be
8 permitted under the town zoning ordinance anyway, so
9 those elements are not of any concern.

10 I kept talking about the buffer, and making
11 allowances in the buffer, and I think -- we met in
12 Millington. There are some differences. We talked
13 about the buffer modifications in Millington earlier
14 this evening. But in Betterton there are some
15 differences, and I would like to give an overview
16 quickly.

17 As we said, this has been a 100-foot buffer
18 established, and it will become legislatively enforced
19 through the zoning ordinance, but the realities are we
20 do have some structures that are within that buffer.
21 For example, this is a hypothetical situation, but the

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1 language in the provisions that would be adopted in the
2 zoning ordinance would allow a modified buffer along the
3 line of -- well, this says new structure. Maybe this is
4 a better example to look on, an existing situation. If
5 the structure is 20 feet -- if this is the case -- 20
6 feet off from mean high water, the new modified buffer
7 line would be established at this point with continued
8 restrictions toward building anything waterward of that
9 line. However, there are allowances for proposed
10 additions of a building, which could occur with some
11 restrictions on area coverage. You couldn't go totally
12 -- create a total impervious surface within that buffer,
13 but it does make allowances for the existing homeowner
14 to make additions without going through, let's say, a
15 variance process. The feeling was that with these kinds
16 of cases where hardship is generally the case, to run
17 every one of these cases of small additions through the
18 variance procedure would be too cumbersome.

19 Another situation -- and there are a few
20 vacant lots that we have to deal with, and where the --
21 the intent here is where you have a fairly shallow lot,

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1 say less than 200 feet. It's an arbitrary number, but
2 it's -- after looking at actual cases, it seems to be
3 the workable cutoff point. What is done is it would
4 have been established as an average setback line, and
5 the property -- to develop property. And if there are
6 indeed developed properties within 200 feet either side
7 of the lot -- and these are mainly for fill-in lots,
8 this provision. An average setback line would be
9 established, and a new structure would be established
10 there. Again, it wouldn't work on large lots, large
11 parcels that are being subdivided, of course, but for the
12 fill-in lot, which you do have in Betterton, since most
13 of the town's been platted. This is the kind of
14 situation that I think you'd find more often. If there
15 are no -- if you have a platted lot, and there are no
16 existing structures nearby, the rule would be a 40% of
17 total lot depth. In other words, if you don't have
18 houses -- in a residential setting -- houses on each
19 side, but you do have an existing platted lot less than
20 200 feet deep -- not large acreage, small lots -- there
21 is allowance up to 40% to allow positioning of a

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1 structure on that lot. This -- again, these provisions
2 are built in to try to add some flexibility, but these
3 provisions also, the intent -- when you do build within
4 that 100-foot buffer, there are requirements for -- and
5 if you destroy vegetation, keep in mind, there are also
6 another edge to the sword that you have to plant in
7 other areas, or other areas on the site to revegetate
8 that buffer, so it's not just a total allowance.
9 There's still some attention to that.

10 I think that's it.

11 (Applause.)

12 CHAIRMAN LANGER: We do not have anyone who
13 has signed up to testify. Is there anyone here who
14 would like to speak this evening, or ask questions, or
15 -- yes?

16 MS. BALLARD: I would.

17 CHAIRMAN LANGER: What is your name, please?

18 MS. BALLARD: Susan Ballard representing
19 Chesapeake Properties. I have some confusion on what I
20 had planned to say tonight, and what your comment
21 earlier in the evening was. We feel that Chesapeake

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1 Properties -- the area which has recently been annexed,
2 as Zach referred to -- has been erroneously mapped
3 because of the availability of sewer and water. I was
4 going to present that within five minutes tonight.
5 However, your comment earlier indicated that this is not
6 an appropriate time, so I'm asking your permission to do
7 that if you think it is an appropriate time.

8 CHAIRMAN LANGER: If you would like to, we'd
9 be happy to listen. If it's important to you.

10 MS. BALLARD: It would make the --

11 (Laughter.)

12 CHAIRMAN LANGER: Yes, very fine.

13 MS. BALLARD: For the record, I'll state who I
14 am. I'm Susan Ballard. I'm with McCrone as an
15 Environmental Land Planner. I'm here tonight
16 representing Mr. Carl Cantera, who is a trustee of
17 Chesapeake Properties. Chesapeake Properties has 190
18 acres located along Howell Point Road, just left of
19 Ericsson Avenue on the fringes of the town of Betterton.

20 As of 1974 it was annexed to the town of
21 Betterton. It was planned for residential development.

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1 Out of the 190 acres, approximately 60 acres appears in
2 the critical area, which is this area from the red line
3 to the Sassafras River. We've identified on a site
4 assessment -- which is what you're seeing tonight --
5 areas of sensitive environmental concern, which include
6 non-tidal wetlands, steep slopes, and erodable soils.
7 You can see that these brown areas duplicate the buffer
8 areas which Zach pointed out on the resource
9 conservation map. So once again we've identified these.
10 The developable areas are the ones that are pictured in
11 green, which are also forested covered. There is
12 currently existing, and was existing as of December
13 1985, sewer and water service along Ericcson Road, at
14 which point you can see the Belvue Properties has
15 obtained the former Smith Property in order to -- at the
16 time of annexation, with the idea of having sewer and
17 water on site, so once again sewer and water is in place
18 now, and was in place as of December 1985. There are
19 also current sewer and water lines which come up to the
20 southeastern boundary of the property, and so therefore
21 because of the proximity, and the adjacent location of

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1 sewer and water lines, we feel by right that this area
2 should be designated as a limited developed area.

3 We also realize that any development that
4 would occur on this -- in most likelihood, as a land
5 planner, would be less than four dwelling units per acre
6 in the critical area -- would have to be a cluster
7 development, and abide by all the other programs as
8 dictated by the Critical Area Law for a limited
9 development area, including: amount of clearing,
10 reforestation, impervious surface, 100-foot buffer, and
11 others of that nature.

12 Thank you.

13 CHAIRMAN LANGER: Thank you. Does anyone else
14 have any testimony this evening?

15 THE AUDIENCE: (No response.)

16 CHAIRMAN LANGER: Well, if -- we are complete,
17 and -- unless there is anyone else who wants to -- has
18 anything they want to say, I -- our hearing will be
19 concluded. Thank you all very much for coming.

20 (Whereupon, at 9:40 p.m., the above-
21 entitled public hearing was concluded.)

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