

Public Hearings - Cecil County - Mapping Amendment 1991 MSA_51830-91

BEFORE THE PANEL OF CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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: IN THE MATTER OF: :
: :
: CECIL COUNTY MAPPING AMENDMENT :
: :

Tuesday, January 29, 1991

Pursuant to Notice, the above-entitled hearing was held before ROBERT PRICE, PANEL CHAIRMAN, at County Court House, Room 3, Elkton, Maryland 21921, commencing at 7:00 p.m., there being present on behalf of the respective parties:

ON BEHALF OF THE APPLICANT, LEWIS FAMILY:

MIKE PUGH, ESQUIRE

ALSO PRESENT:

CRITICAL AREA COMMISSION MEMBERS:

- ANNE HAIRSTON - staff
- VICTOR BUTANIS - Harford County
- KAY LANGNER - Cecil County
- BILL CORKRAN - Talbot County
- ROGER WILLIAMS - Kent County

CHRIS ROGERS - County Planning Commission
DON HALLIGAN

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CRITICAL AREA COMMISSION



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CHAIRMAN PRICE: Ladies and gentlemen, it's seven o'clock and I'd like to call the meeting to order. We represent a panel on the Critical Areas Commission. We've been appointed by the commission to hold this public hearing.

The hearing tonight is on Application C from Reginald T. Lewis to rezone 20 acres located on the south side of Lewis Shore Road. This was approved by the Board of County Commissioners and forwarded to the Critical Areas Commission in November.

I'd like to introduce you to the members of the panel. On my far left, Roger Williams from Kent County. Next to him is Mr. Bill Corkran from Talbot County. Kay Langner from Cecil County. Victor Butanis from Harford County. And I'm Bob Price from Queen Anne's County.

The meeting tonight, the way we will proceed will be -- and Anne Hairston, excuse me, of the staff -- Critical Area staff. Ms. Hairston is going to review the subject matter and concluding that, I think it would



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1 be appropriate for the applicant, represented by Mr.
2 Pugh, to present whatever testimony and evidence you
3 have on behalf of the application. And following that,
4 I'll take any comments from anybody, either for or
5 against the proposal.

6 At the present time, this panel hopes to come
7 to a conclusion and to make a recommendation to the
8 Critical Areas Commission at its meeting on February the
9 6th, next Wednesday. So for that purpose we will keep
10 the record open for any written reports or any
11 supplemental information anybody wishes to let us have
12 by Tuesday, February the 5th. And that would be
13 delivered to the Critical Areas Commission in Annapolis.

14 Anybody have any questions? The stenographer
15 tells me that he can hear or can pick up your statement
16 from wherever you wish to stand or however you wish to
17 address it. So, Anne, if you would, go ahead.

18 MS. HAIRSTON: I just want to briefly review
19 what the amendment, that we are considering tonight, is.
20 The proposed amendment will change the designation of
21 about 20 acres of the property at 370 West Lewis Shore.



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1 Road from its current designation of "Resource
2 Conservation Area" to that of "Limited Development
3 Area." This plat, if you can see it, delineates the
4 area that would be changing from RCA to LDA.

5 There is also an application for this area to
6 receive a buffer exemption. Currently, this area is one
7 parcel with about 25 different dwelling units on it, some
8 seasonal. These drawings predate the county's
9 subdivision ordinance so that it was not subdivided into
10 individual parcels at the time of their building that.

11 Many of the houses and the road are currently
12 located within the 110 foot buffer that Cecil County
13 requires and that condition has triggered the request
14 for "Buffer Exemption Area" because the presence of the
15 houses and the roads in the buffer would prevent the
16 buffer from fulfilling its intended functions in the
17 critical area program.

18 When we are looking to establish areas in the
19 higher densities, such as LDA or "Intensely Developed
20 Area" -- IDA -- we look at it in the context of what is
21 adjacent to it. There is another area of limited



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1 development area, or LDA, nearby that is across the
2 mouth of Perch Creek. However, this is not immediately
3 contiguous to the property because the upper reaches --
4 the titled portions of Perch Creek are labeled RCA. And
5 the property is about a mile south of the town of Elkton
6 and it's sort of by individual systems for water and
7 sewer -- that is wells and septic systems.

8 If the area does get subdivided, it's likely
9 that some sort of community sewage treatment system or
10 other upgraded treatment systems would be required to
11 correct the current systems.

12 The interest that motivated the application
13 for a change in mapping, based on a mistake, is an
14 attempt to subdivide around the existing dwelling units
15 and not to create new lots. Although a change to a
16 "Limited Development Area" would certainly give that
17 opportunity. Under the current RCA regulations, they
18 would not be able to subdivide to that extent in the
19 "Resource Conservation Area."

20 The basis of the mistake would be that it's
21 been presented as if the property should have been LDA



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1 because of the density of the existing houses with the
2 only difference being that it was not subdivided into
3 individual parcels at the time of mapping. Although
4 that was not a condition of the critical area mapping.

5 Does anybody have anything to add from the
6 panel?

7 MR. PUGH: Well, she did most of my job for
8 me. For the record, my name is Mike Pugh. I represent
9 the Lewis family. With me tonight will be Larry Lewis
10 to answer any questions that this board may have.

11 Just to reiterate maybe some of what has been
12 said, I would like to point out to the commission that
13 the property is located on the Elk River just below
14 Elkton. Actually, I believe, we're about 3,000 feet, as
15 opposed to a mile, from the town limits. We're very
16 close to a half a mile from the town limits of Elkton.

17 And as this demonstrates, the property
18 consists of approximately a hundred acres. And this
19 particular red line is the existing critical area
20 boundary, so that this portion is the non-critical area
21 portion of the property, and everything to this side of



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1 it is within the critical areas.

2 The property is zoned or classified, I should
3 say, "Resource Conservation Area" entirely, at present.
4 We are not seeking a reclassification of the entire
5 property but only this portion of the property that
6 contains the cottages themselves. So we are not
7 attempting to create more classification than we need
8 for the existing condition. Indeed, all we are trying
9 to do through this application is secure the proper
10 classification for the parcel, as it exists. The
11 Lewises have no intention of subdividing the property to
12 any greater extent. They simply want to come into
13 conformance with the existing requirements as it
14 pertains to the density that's on the property.

15 I'd also like to supply you with a copy of the
16 county's critical area map, just so you can get a
17 perspective on the existing map condition within the
18 county. And the top portion of the property is the
19 parcel that's under consideration tonight. I wanted to
20 show you the view below that, to show you that adjoining
21 this property on the north side of Perch Creek there



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1 already exists a buffer exemption. And on the
2 south side, there is a buffer exemption and, indeed, the
3 majority of the parcels below Perch Creek are already
4 classified LDA. Therefore, I wanted to suggest to you
5 that we are not looking at an isolated pocket of
6 "Resource Conservation Area," but, in fact, a contiguous
7 line of "Limited Development Area" which would be
8 consistent with the existing map condition within the
9 county.

10 We are asking, of course, for "Limited
11 Development Area" within this 20 acres of property. The
12 principal reason for this is that the existing condition
13 is that the houses that are indicated, and, once again,
14 I'll refer you to this plat and show you that there are
15 a number of existing structures, about 25 all together
16 are already in existence on the property and are owned
17 in fee simple by the -- the house, itself, that is, is
18 owned by the individual. They pay a ground rent to Mr.
19 Lewis and his family. So what we have is the somewhat
20 unique condition of someone with a fee simple ownership
21 of the structure and a rental situation involved on the



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1 land.

2 As I mentioned earlier, there is no intention
3 to increase the intensity of this development. All the
4 Lewises are trying to attempt to do in this is simply to
5 create the zoning classification or critical areas
6 classification which would enable them to ultimately
7 create parcels around those houses, which are already
8 owned by others, and give them the opportunity to by the
9 land beneath them. That's really what the intent of
10 this entire package is.

11 In fact, before we applied tonight for the
12 "Limited Development Area" classification, we first
13 posed the question of: would it be possible, based on
14 the existing circumstances, to create subdivided lots
15 around these units without going to LDA? And the
16 Critical Areas Commission staff considered this and
17 responded that it would not be. That in order to create
18 the subdivided lot, itself, it would be necessary to
19 receive the LDA classification. That, of course, is why
20 we are here tonight is because that is our interest and
21 in order to subdivide it, we must receive the LDA



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1 category.

2 As to the specifics of the application itself,
3 we would contend that the RCA classification in this
4 area is a mistake. We believe that it was the intent of
5 the framers of the ordinance that where density of this
6 variety existed that LDA should exist. We believe that
7 the mapping error occurred because, if you look at the
8 map on the tax parcel, it doesn't indicate that there
9 are units present. It doesn't indicate that there is
10 any development present. And we believe that it was
11 viewed as an entirety without consideration of the fact
12 that a number of parcels existed.

13 I can think of several other examples in the
14 county where single parcels of record were owned and the
15 lots were not subdivided, and, in those instances, were
16 mapped LDA. I think that Pleasure Shores on the Elk
17 River, as well as Elk View Shores and Crystal Beach, are
18 three examples of LDA classifications where you have a
19 single parcel of ownership with structures owned on top
20 of the ground. So the precedent for the LDA, I believe,
21 is present in the county ordinance and I believe that it



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1 was just simply overlooked in this case.

2 Now, as to the buffer exemption itself, under
3 the Cecil County code, in order for the owners to apply
4 for a buffer exemption, we must provide that we comply
5 with section 9.1 of the Cecil County code, which is a
6 portion, of course, of what the Critical Area Commission
7 has approved. And, in that case, there are four items
8 that we have to demonstrate one of in order to say that
9 we should be able to receive the buffer exemption.

10 The first that we believe we comply with is
11 that the existing development, as of December of 1985,
12 has altered the natural state of the area such that it
13 has more than 50 percent impervious surface and less
14 than 20 percent vegetative cover. We believe if we did
15 this buffer we have in excess of 50 percent impervious
16 surface between the roads, the --, the decks, the
17 bulkheading. And we believe that the cover is less than
18 20 percent. So we feel that we're capable of complying
19 under that particular portion of the buffer exemption.

20 Secondly, and we only have to find one reason
21 to support it -- the second reason that we believe,



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1 nonetheless, that we apply in this case is that the
2 proposed development will not adversely affect water
3 quality or plant and wildlife habitat. While, once
4 again, I would suggest to you that plant and wildlife
5 habitat value of this existing condition is fairly
6 negligible. And what I would also suggest to you is
7 that in terms of the water quality, it's our intention,
8 as a result of this application, if we were able to
9 subdivide these lots, it would be necessary for us to
10 relocate the sewer and water systems which are currently
11 perched very close to the water's edge and, undeniably,
12 create a potential problem with respect to water quality
13 in the Elk River, and move those to an area consistent
14 with current health department requirements that are
15 farther removed from the water's edge, and, in fact, out
16 of the buffer itself in many examples. So, therefore,
17 we believe that we are consistent with the request for a
18 buffer exemption on the strength of that particular
19 argument as well.

20 I think that that, for the most part,
21 concludes my remarks. I'd be happy to answer any



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1 questions anyone has concerning the specifics of the
2 application.

3 MR. WILLIAMS: I just have one. If this is
4 passed tonight, and if the sale of the ground is to the
5 people that are living there now, what would be the size
6 of the parcel at the time of the sale?

7 MR. PUGH: I wish I knew the answer to that.
8 And I don't know the answer to that because, in defining
9 where the on-site septic areas are for each of these
10 areas, it will be necessary for us to perform soil
11 examinations, which we have not been able to perform
12 because the health department wouldn't receive our
13 application since we were unable to subdivide the
14 property and it was hypothetical. So I honestly can't
15 answer your question of the necessary size. I can say
16 to you that we will make it the smallest fee simple
17 parcel that we are required to, by the health
18 department, consistent with meeting the setbacks of
19 zoning as well as to the health department requirements.
20 And that's not as good an answer as I'm sure you would
21 like, but that's the best I can.



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1 MR. WILLIAMS: No, I understand, but how much
2 do you require up in that area?

3 MR. ROGERS: I think that would be considered
4 coastal plain by the health department so it might be a
5 minimum lot size of a half an acre.

6 MR. BUTANIS: If that's the case you're
7 talking about a real narrow but deep lot. And that
8 would probably extend beyond -- if this is the road --
9 on the other side of that road, would it not?

10 VOICE: Yes.

11 MR. PUGH: The other possibility in this that
12 we have not yet worked to any conclusion with the health
13 department is the possibility here of a community
14 system, wherein we would define small lot areas around
15 the existing structures and have a community line which
16 ran to a common area, but we have not yet, as I say,
17 worked out those details with the health department. So
18 I can't say whether the sewage areas will be a common
19 sewage area or individualized lot situation.

20 VOICE: In other words, like Port Herman.

21 MR. PUGH: Like a Port Herman.



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1 MR. BUTANIS: If you were unable to obtain the
2 subdivision, would that still be a possibility to get
3 that community septic system?

4 MR. PUGH: Well, once again, remember that
5 we're approximately a half a mile away from the town of
6 Elkton border and we are within, I guess, striking
7 distance of the town's water and sewer system --
8 probably within a five to ten year period. So if we
9 were unable to work out that arrangement, I suspect that
10 we would try to look at any alternatives that presented
11 itself, including the town's utility system.

12 MR. BUTANIS: I had one other question that
13 came to mind. On this tax map that you've given us -- I
14 guess this is a tax map -- on this property, and I'm not
15 sure what the direction is but on North Long, okay -- I
16 guess southeast of this property along Perch Creek,
17 there's a number of smaller size parcels that appear to
18 have been subdivided. Do you know what their
19 designation is?

20 MR. PUGH: RCA.

21 MR. BUTANIS: That's all RCA on that side?



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1 MR. PUGH: Yes. I believe that they should be
2 designated LDA also, but I don't represent those
3 individuals.

4 MR. BUTANIS: What's the town's position on
5 that? Or not the town --

6 MR. PUGH: The county's?

7 MR. BUTANIS: -- the county's.

8 MR. PUGH: It really hasn't come up. Once
9 again, we've concentrated on this area because that's
10 the area of immediate interest. I would suspect that
11 maybe in some revised program context they may want to
12 consider the remainder of those lots to be included.
13 That would be my guess but I don't know that.

14 CHAIRMAN PRICE: Bill, do you have any
15 questions?

16 MR. CORKRAN: I don't have any questions, no.

17 CHAIRMAN PRICE: No? I just have a couple.
18 Would the housing or the improvements as you've
19 described them, would they be the same as they were in
20 December 1st of 1985?

21 MR. PUGH: I'm not sure I understand your



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1 question.

2 CHAIRMAN PRICE: What's there today, is that
3 what would have been there on the day the classification
4 --

5 MR. PUGH: That's what was there on the day
6 the classification, yes. Now, I won't tell you that
7 there hasn't been some minor addition. I don't know.

8 CHAIRMAN PRICE: Basically.

9 MR. PUGH: But, basically, that's the
10 condition in '85, yes.

11 CHAIRMAN PRICE: I guess the other would be a
12 more general question towards the county planning. Have
13 you run into any more problems of this type where
14 apparently tax maps were used and aerials were not in
15 picking up structures?

16 MR. ROGERS: I can't think of any off the top
17 of my head -- where someone has brought it to our
18 attention. There may be some out there that we don't
19 know of. I can't think of any right now.

20 CHAIRMAN PRICE: No questions?

21 MR. WILLIAMS: The planning commission, I



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1 understand, has met on this issue and what is their
2 stance?

3 MR. ROGERS: They recommended approval to the
4 county commissioners in October.

5 CHAIRMAN PRICE: Do you want to sit down? Are
6 you going to make any statement?

7 MR. ROGERS: I'll answer questions if you have
8 any. It's just that the planning commissioner
9 recommended approval of the application to the county
10 commissioners, who also forwarded a favorable
11 recommendation to the Critical Area Commission in
12 November.

13 CHAIRMAN PRICE: But the planning commission
14 felt there had been a basic mistake made in the
15 recognition or the lack of recognition of these
16 dwellings?

17 MR. ROGERS: Yes, sir.

18 CHAIRMAN PRICE: Was it the position of the
19 planning commission that if they looked at a map and
20 seen these dwellings that this would have been LDA?

21 MR. ROGERS: If they looked at an aerial



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1 photo, we believe it would have been LDA, yes.

2 CHAIRMAN PRICE: And that would have been
3 consistent with our other map?

4 MR. ROGERS: Yes.

5 MR. BUTANIS: Have you had occasion to look at
6 these other parcels southeast of the subject parcel that
7 seem to be divided into smaller lots? Do you know
8 whether there are houses or structures on them? Do you
9 know where I'm talking about? Right along Perch Creek.
10 These right here. Apparently they received a buffer
11 exemption.

12 MR. LEWIS: Six lots.

13 MR. BUTANIS: Six lots?

14 MS. HAIRSTON: Do they have houses?

15 MR. LEWIS: They're all year-round homes.

16 MR. HALLIGAN: I think most do live on those.

17 MR. BUTANIS: Has the county given any
18 consideration to coming back for a change in these, as
19 well, from RCA to LDA?

20 MR. ROGERS: No.

21 CHAIRMAN PRICE: Any other questions? Does



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1 anybody else wish to make a statement in behalf of the
2 application? Would anybody like to make a statement,
3 either in opposition or just voice their views? Any
4 members of the commission?

5 MR. BUTANIS: You're going to create a lot for
6 each structure currently there?

7 MR. PUGH: That's our intention.

8 MR. BUTANIS: So you're not going to lose any
9 of the structures at all?

10 MR. PUGH: It's our intention to replace the
11 number that we have.

12 MR. BUTANIS: You're not looking to increase
13 that?

14 MR. PUGH: No.

15 CHAIRMAN PRICE: Anne, do you have anything
16 else?

17 MS. HAIRSTON: No.

18 CHAIRMAN PRICE: Not having any further
19 business, we'll declare the meeting adjourned.

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WITNESS

(None)

EXAMINATION BY

CHAIRMAN PRICE
MS. HAIRSTON
MR. PUGH

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E X H I B I T S

(None)

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