

ORDINANCE NO. 21-12

Pertaining to the Amendment of the Calvert County Zoning Ordinance
(Section 8-1.08.D.2.b and Article 12, CATA 11-1; Section 8-1.08.D.3.b,
CATA 11-2; 8-1.08.D.3.m.ii, CATA 11-3)

RE: Critical Area Buffer Regulations

(Critical Area Text Amendments (CATA) Case Nos. 11-1, 11-2 and 11-3)

WHEREAS, Article 66B of the Maryland Annotated Code, as amended, empowers the Board of County Commissioners of Calvert County, Maryland to enact a Zoning Ordinance to promote the health, safety and welfare of the citizens of Calvert County, and to provide for its administration, enforcement and amendment; and

WHEREAS, pursuant to that authority, the Board of County Commissioners of Calvert County, Maryland has heretofore adopted the Calvert County Zoning Ordinance; and

WHEREAS, after study and evaluation, the Department of Planning and Zoning of Calvert County recommended to the Planning Commission and the Board of County Commissioners text amendments to the Calvert County Zoning Ordinance, Section 8-1.08.D.2.b, limiting expansion of the Critical Area Buffer beyond a drainage divide on grandfathered lots; and defining in Article 12 "drainage divide", "watershed" and "grandfathered lot in the Critical Area"; and to Section 8-1.08.D.3.b, allowing the removal of trees within ten (10) feet of a cliff without mitigation or a buffer management plan; and to Section 8-1.08.D.3.m.ii, changing the fees-in-lieu of Buffer planting from \$1.50 per square foot to \$0.50 per square foot; and

WHEREAS, after due notice was published, the Planning Commission of Calvert County conducted a public hearing on September 21, 2011, at which time the proposed amendments were discussed, staff's recommendations were considered, and public comment was solicited; and

WHEREAS, at the conclusion of said public hearing the Planning Commission voted to recommend approval of the amendments as proposed; and

WHEREAS, after due notice was published, the Board of County Commissioners of Calvert County, Maryland conducted a public hearing on September 27, 2011, at which time the proposed amendments were discussed, staff's recommendations were considered, and public comment was solicited; and

WHEREAS, after considering the evidence which had been presented at the public hearing regarding the proposed text amendments and the recommendation of the Planning Commission, the Board of County Commissioners of Calvert County voted to recommend approval of the amendments as proposed and as a refinement of the Calvert County Critical Area Program to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays; and

WHEREAS, the Chairman of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays determined the amendments to be a refinement to the Calvert County Critical Area; and

WHEREAS, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays held a public hearing on October 5, 2011, at which time the proposed amendments were discussed and the Board of County Commissioners of Calvert County recommendations were considered, and after considering the evidence which had been presented at the public hearing regarding the proposed text amendments, the Chairman of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays approved the amendments as proposed, but set conditions on the approval of CATA11-3 requiring enhanced reporting on forest lost and planted in the Critical Area Buffer and on the Critical Area Buffer fees collected and expended and added a condition that the reduced fees would be reviewed again in two years, and

WHEREAS, the Board of County Commissioners having received approval of the amendments with conditions and in furtherance of the public health, safety and welfare, the

Board of County Commissioners of Calvert County, Maryland determined it is in the best interest of the citizens of the County to enact the text amendments to the Calvert County Zoning Ordinance as set forth in Exhibits A and B attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland, that Section 8-1.08.D.2.b, Section 8-1.08.D.3.b, Section 8-1.08.D.3.m.ii, and Article 12 of the Calvert County Zoning Ordinance **BE**, and hereby **IS**, amended by adopting amendments to the Calvert County Zoning Ordinance as set forth in Exhibit "A" hereto and hereby incorporated by reference such that the effect of such revisions is as reflected in Exhibit "B" hereto and hereby incorporated by reference; and

BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that, in the event any portion of this Ordinance or the Calvert County Zoning Ordinance, is found to be unconstitutional, illegal, null or void, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid.

BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that the foregoing recitals are adopted as if fully rewritten herein.

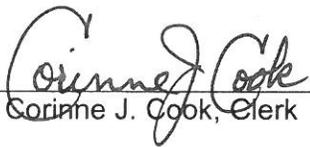
BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that this amendatory Ordinance shall be effective upon recordation.

DONE, this 1 day of May, 2012 by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

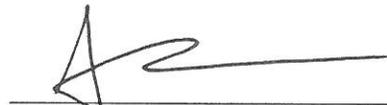
Aye: 4
Nay: 0
Absent/Abstain: COMMISSIONER SLAUGHENHOPT

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF CALVERT COUNTY, MARYLAND


Corinne J. Cook, Clerk

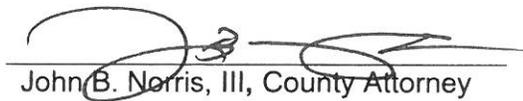

Gerald W. Clark, President

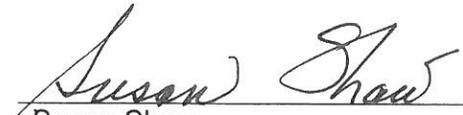

Steven R. Weems, Vice-President

Approved for legal sufficiency on April 9, 2012

by:


Pat Nutter


John B. Norris, III, County Attorney


Susan Shaw


Evan K. Slaughenhaupt Jr.

Received for Record May 4 2012
at 9:30 o'clock A M. Same day
received in 11th KPG No. 40
File 32 COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.



8-1.08.D 2. Critical Area Buffer Description.

- a. The Buffer shall consist at a minimum of the area 100 feet landward from the Mean High Water Line of tidal waters, the edge of the bank of tributary streams, and the upland boundary of tidal wetlands and shall be expanded as set out in paragraph 'b' of this Section.
- b. The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, (see paragraph 'd' of this sub-section), whose development or disturbance may impact streams, wetlands, or other aquatic environments. The minimum 100 foot Buffer shall be expanded to include the following contiguous areas:
 - i. In the case of contiguous slopes of 15 percent or greater, the Buffer shall be expanded four feet for every one percent of slope (100' + (4 percent * slope)), or to the top of the slope, whichever is greater. The percent of slope will be measured as an average for 50 feet beyond the 100-foot Buffer. The expansion of the Buffer shall be drawn perpendicular to the shoreline, tidal wetland or tributary stream to be protected. The buffer shall not be expanded beyond a drainage divide on grandfathered lots. The provisions of Section 8-1.08.D.3 apply to clearing within the expanded Buffer area;
 - ii. A nontidal wetland and its contiguous 50 ft buffer;
 - iii. A "Wetland of Special State Concern" and its contiguous 100-foot buffer;
 - iv. Highly erodible soils on a slope less than 15% and greater than 5% ~~or a hydric soil~~ to the landward edge of the highly erodible soil or 300 feet, whichever is less. The Buffer shall not be expanded beyond a drainage divide on grandfathered lots;
 - v. Hydric soils to the landward edge of the hydric soil or 300 feet, whichever is less;
 - vi. On a lot or parcel that was created before January 1, 2010, a development activity may be allowed that impacts the expanded Buffer for highly erodible soils on slopes less than 15% or hydric soils, if:
 - (a) The development activity is in the expanded portion of the Buffer, but not in the 100-foot Buffer or expanded Buffer for 15% slopes;
 - (b) The entire Buffer occupies at least 75 percent of the lot or parcel; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.

Article 12 – DEFINITIONS

- Drainage Divide An elevation on a topographic map that separates watersheds.
- Grandfathered Lot in the Critical Area A single lot or parcel of land that was legally of record on the date of Critical Area Program approval (December 13, 1988).
- Watershed All land area drained by a particular creek, stream, river or waterway at the smallest scale. Any developed area that drains to a particular watershed is considered in that watershed whether or not it is physically located in that watershed.

Removal of Trees within 10 feet of a Cliff

- 8-1.08.D 3. b. Notwithstanding the prohibitions of paragraph 'a' above, the following activities may be allowed with an approved Buffer Management Plan and either a grading permit, grading exemption, or vegetation removal permit. No permits are required for pruning limited to the lower one-third of the height of the tree. Tree replacement is required at the ratios given below.
- i. Cutting of trees or removal of vegetation may be permitted where necessary for the following purposes:
 - (a) one access to the waterfront for a private pier (mitigation ratio = 2:1) or
 - (b) a boat ramp (mitigation ratio = 2:1), or
 - (c) Other water dependent facility (mitigation ratio = 2:1),
 - (d) Development in a Special Buffer Management Area consistent with Section 8-1.08.D.4, or
 - (e) to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure, or facility has received all necessary State and Federal permits (mitigation ratio = 1:1).

No more than one access through the Buffer is permitted per waterfront lot. A four-foot-wide access is allowed if the access is for steps or a pathway; or a 12-foot-wide access is allowed for vehicular access to a boat ramp.
 - ii. Individual trees, living or dead, may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion (mitigation ratio = 1:1, except that no mitigation or buffer management plan is required for the removal of a tree within 10 feet of a cliff, which is in danger of falling and has a diameter at four feet above the ground of four inches or greater).
 - iii. Appropriate horticultural practices may be used to maintain the health of individual trees, including removal of noxious, invasive, and exotic species which impair the function and growth of a forested Buffer. Inappropriate horticultural practices such as topping, girdling, over pruning or severely damaging existing vegetation, are prohibited.
 - iv. Other cutting techniques may be undertaken within the Buffer and/or under the advice and guidance of the Department of Agriculture and/or Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation, threat from fire, or to remove invasive species (mitigation ratio = 1:1).

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Change to Critical Area Buffer Fees-in-lieu Rate

8-1.08.D 3. m. Fee in Lieu of Buffer Mitigation

- i. The County shall collect a fee in lieu of Buffer mitigation when planting requirements cannot be met onsite.
- ii. The fees in lieu of Buffer planting shall be ~~\$1.50~~ \$0.50 per square foot of mitigation not accommodated onsite and shall be placed in the Critical Area Fees in Lieu Fund.

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