

First Reading 11.6.17

Second Reading 11.20.17

**ORDINANCE 2017 - 16**

**AN ORDINANCE TO AMEND CHAPTER 1, ENTITLED GENERAL PROVISIONS, CHAPTER 30, ENTITLED ENVIRONMENT, AND CHAPTER 110, ENTITLED ZONING, OF THE CODE OF THE TOWN OF OCEAN CITY, MARYLAND**

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE MAYOR AND CITY COUNCIL OF OCEAN CITY THAT CHAPTER 1, ENTITLED, GENERAL PROVISIONS, OF THE CODE OF THE TOWN OF OCEAN CITY, MARYLAND BE, AND IT IS HEREBY, AMENDED BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 1-8(b) d, e, f and g AND SUBSECTIONS 1-8(c) f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z and a.1; THAT CHAPTER 30 ENTITLED ENVIRONMENT BE, AND IT IS HEREBY AMENDED, BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 30-551 (b) Findings, (b) 4, 8 AND 9, BY ADDING (c)(6); BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTION 30-551 (e)(1); BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTION 30-551 (f)(1), (f)(1)(a) AND (f)(1)(b); AND BY REPEALING AND REENACTING WITH AMENDMENT THE DEFINITION OF BEST MANAGEMENT PRACTICES, BUFFER MANAGEMENT AREA, COMAR, COMMISSION, CONSOLIDATION, DEPARTMENT, BY ADDING A DEFINITION OF FASTLAND; BY REPEALING AND REENACTING WITH AMENDMENT THE DEFINITION OF HABITAT PROTECTION AREA, THE DEFINITION OF LOT COVERAGE, THE DEFINITION OF MITIGATION, THE DEFINITION OF OFFSETS, THE DEFINITION OF PROGRAM AMENDMENT, THE DEFINITION OF RECONFIGURATION, THE DEFINITION OF ROAD, THE DEFINITION OF SHRUBS, THE DEFINITION OF SITE, THE DEFINITION OF SPECIES IN NEED OF CONSIDERATION, BY ADDING A DEFINITION OF TREES, VEHICULAR ENCROACHMENT AND VEHICULAR USE AREA, BY REPEALING AND REENACTING WITH AMENDMENT WOODY VEGETATION IN SECTION 30-552; BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 30-553 (b)(2), (c)(2), (c)(6)a, (c)(6)c, (c)(6)d, (c)(6)e, (c)(6)f, (c)(7)a, (c)(7)biii, (c)(7)cii, (c)(8)d, (c)(8)e, (c)(8)g, (c)(8)j, (c)(12)a, (c)(12)c and d, (c)(15)a, (c)(15)ci, (c)(15)ciii, (c)(15)d; BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 30-554 (d)(1) and (3); BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 30-559 (a), (b), (c), 30-559 (d)(1)j and (2), BY ADDING 30-559 (d)(2)i, j and k; BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTIONS 30-559 (e)(1), (2) and (3), 30-560 (a), (b), (c), (d), (e) and (f), 30-561 (b), (c), 30-561 (g) and (h),

LAW OFFICES

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**30-562 (a), (b)(1), (2), and (5), (c)(1), 30-563 (b) and (d)(3)c; BY REPEALING SECTIONS 98-31 THROUGH 98-47, AND SECTION 98, ARTICLE IV; BY REPEALING AND REENACTING WITH AMENDMENT SECTION 110-865.21 AND SECTION 110-881, AS FOLLOWS:**

**CHAPTER 1. GENERAL PROVISIONS.**

Sec. 1-8. Violations and penalties.

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(b). *Misdemeanors.*

(1)

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- d. Chapter 30, article VIII
- e. Chapter 58, article II.
- f. Chapter 58, article III.
- g. Chapter 82.

...

(c). *Municipal infractions.*

(1)

...

- f. Chapter 30, article III
- g. Chapter 30, article IV.
- h. Chapter 30, article V, division 8.
- i. Chapter 34.
- j. Chapter 58, article I.
- k. Chapter 90, articles I, III, IV, V, VI.
- l. Chapter 66.
- m. Chapter 70, article V.
- n. Chapter 74, articles I and II.
- o. Chapter 74, article V.
- p. Chapter 78: section 78-121.
- q. Chapter 90, articles V and V-A.
- r. Chapter 90, articles VII.
- s. Chapter 94, article II.
- t. Chapter 94, article III.
- u. Chapter 98, article III.
- v. Chapter 102, article II.
- w. Chapter 106, article III, division 2.
- x. Chapter 106, article III, division 5.
- y. Chapter 106, article III, division 6.

- z. Chapter 110, zoning.
- a.1. Chapter 62.

## **CHAPTER 30. ENVIRONMENT.**

Sec. 30-551. – Intent; purpose; findings; severability.

...

(b) *Findings.* The Mayor and City Council find and declare that:

...

- (4) Studies have documented that the quality and productivity of the waters of the Atlantic Coastal Bays and their tributaries had declined due to the cumulative effects of human activity that had caused increased levels of pollutants, nutrients, and toxins in the bay systems and declines in more protective land uses such as forestland and agricultural land in the watershed;

...

- (8) The cumulative impact of previous development practices was inimical to these purposes.

- (9) It is in the Town's interest for the benefit of current and future generations to continue to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Atlantic Coastal Bays so as to minimize damage to water quality and natural habitats.

...

(c) *Purpose.* The purpose of the Ocean City Atlantic Coastal Bays Critical Area Program is to:

...

- (6) Also the purpose or intent of this article is to improve the appearance of the vehicular use areas and property abutting public rights-of-way; to require buffering between noncompatible land uses; to protect, preserve and promote the aesthetic appeal, scenic beauty, character and value of Ocean City; and to promote public health and safety through the reduction of noise pollution, stormwater runoff, air pollution, visual pollution and artificial light glare.

...

(e) *Territory affected.* Within the Town of Ocean City, the Atlantic Coastal Bays Critical Area shall mean:

- (1) All waters of and lands under the Atlantic Coastal Bays and their tributaries to the head of tide as indicated on the state wetlands maps and all state and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland, as from time to time amended, and all land and water areas within the corporate limits of the Town of Ocean City, as from time to time amended. The boundaries of the Atlantic Coastal Bays Critical Area and the limits of each of the land classification designations will be as shown on maps adopted by resolution of the Mayor and City Council after a duly advertised public hearing and approved by the Critical Area Commission.

(f) *Applicability.*

- (1) From the effective date of a program approved or adopted by the commission, a project or development activity approval that involves land in the Atlantic Coastal Bays Critical Area may not be granted unless the project approval is consistent and complies with this program. No new site development building, structure or vehicular use area shall hereafter be created and used unless landscaping is provided as required by the provisions of this article.

- (a) Expansion. If any existing building, structure or vehicular use area is expanded by more than five percent of the total existing gross area, the new area must comply with the minimum requirements of this article; also, the existing area must be landscaped in accordance with the provisions of this article whenever possible. However, in no instance shall this requirement cause the elimination of required parking spaces or alteration or relocation of preexisting buildings or structures.

- (b) Exemptions. In the event that a building or structure exists in an area otherwise required by this article to be landscaped, then no landscaping shall be required in that area. No landscaping requirement shall cause the elimination of existing required parking. The provisions of this article relative to landscaping of vehicular use areas shall only apply to required parking and shall not apply to additional parking provided by the owner which is not required under the provisions of this Code.

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Sec. 30-552. – Definitions.

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*Best Management Practices (BMPs).* Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins and sediment.

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*Buffer management area.* An area within the buffer designated by the Mayor and City Council and approved by the Critical Area Commission which, due to its existing pattern of development, is prevented from fulfilling its intended functions for water quality and habitat protection as set forth in COMAR 27.01.09.

...

*COMAR.* The Code of Maryland Agency Regulations.

*Commission.* The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

...

*Consolidation.* Any term used by the Town for a development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, including lot line abandonment, deed restricted as a unit, deed consolidation, boundary line adjustment, or lot line adjustment.

*Department.* The Department designated or created by the Mayor and City Council as responsible for a task.

...

*Fastland – Upland area of land near the water.*

...

*Habitat protection area.* Those areas, including buffers; nontidal wetlands; habitats of threatened or endangered species or species in need of conservation; colonial water bird nesting sites; historical waterfowl staging and concentration areas; Natural Heritage Areas; other areas, which may, in the future, be identified by federal, state or local agencies as important plant and wildlife areas; and anadromous fish propagation waters that are identified in COMAR 27.01.09 that require protection within the critical area.

...

*Lot coverage.* The percentage of a total lot or parcel that is

(1) Occupied by a structure, accessory structure, parking area, driveway, and or walkway;

(2) Covered with pavers, gravel, stone, shells, decking, permeable pavement, or other such manmade materials used for walkways driveways or non-landscaped areas; or

(3) Covered by elements protruding from a building such as stairways, cantilevered decks, chimneys, or overhanging decks or balconies excluding roof overhangs over 10' in the air as allowed by section 110-905.

...

*Mitigation.* Creation, restoration or enhancement of landscape area or other plant communities that will offset undesirable impacts due to regulated activities or fee-in-lieu.

...

*Offsets.* Landscape, structures, fee-in-lieu or actions that compensate for undesirable impacts.

...

*Program amendment.* Any change or proposed change to an adopted program that is not determined by the chair of the Critical Area Commission to be a program refinement.

*Program refinement.* Any change or proposed change to an adopted program that the chair of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the critical area. Program refinement may include

(1) A change to an adopted program that results from state law;

(2) A change to an adopted program that affect local processes and procedures;

(3) A change to a local ordinance or code that clarifies an existing provision;

(4) A minor change to an element of an adopted program that is clearly consistent with the provisions of state critical area law and all the criteria of the commission.

...

*Reconfiguration.* A change of the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lots. Reconfiguration includes any term used by the Town for a development application that proposes to change the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lot that existed before the application, including a lot line adjustment, boundary line adjustment, deed restricted as a unit, deed consolidation, or a revision of acreage to increase density.

...

*Road.* A public thoroughfare under the jurisdiction of the State, the County, the Town or any other public body. Road does not include a drive aisle or driveway.

...

*Shrubs.* Shrubs required by this article shall be self-supporting woody species, as normally thrive in Ocean City.

...

*Site.* That portion of fastland on a lot or parcel of land or combination of contiguous lots or parcels of land upon which grading or other land-disturbing activity is to be performed as part of a unit, subdivision or project.

*Species in need of conservation.* Those fish and wildlife species whose continued existence as part of the state's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles, §§ 10-2A-903 and 4-2a-03, Annotated Code of Maryland, as from time to time amended.

*Trees.* Self-supporting woody plants of species which normally grow to an overall height of a minimum of 15 feet in Ocean City.

...

*Vehicular encroachment.* Any protrusion of a vehicle outside of parking space, display area or accessway into a landscaped area.

*Vehicular use area.* That part of a lot used for off-street parking, including interior drives providing ingress, egress and interior circulation for vehicles

...

*Woody vegetation.* Vegetation containing wood or wood fibers includes trees and shrubs.

Sec. 30-553. – Intensely developed areas.

...

(b) ...

(2) Accommodate additional development of the type and intensity designated by the Mayor and City Council provided that water quality is not impaired;

...

(c) ...

(2) Environmentally sensitive design (ESD) practices shall be considered and, where appropriate, implemented as part of all plans for development or redevelopment. Development and redevelopment projects are encouraged to make use of bioretention methods and alternatives to impervious surfaces.

...

(6) ...

- a. For all new development or redevelopment which is 50 percent or more of the site, the CAM fee will be based on the total proposed square feet of lot coverage (LC) multiplied by the percentage of lot coverage (CF%) of the entire site plus removal of woody vegetation (VEG) for wooded lots this excludes trees removed within the proposed building footprint and a 5' perimeter of the building foundations. The Rate (R) will be set by resolution of the Mayor and City Council. The (CAM) Fee thus increases exponentially with increased lot coverage  $(LC * CF\% + VEG) * R = CAM$ .

...

- c. For development or redevelopment sites that require stormwater management, the area served by a structural best management practice (BMP) and 50% of alternative pervious surface can be subtracted from the total lot coverage (LC) area and then the percent of lot coverage will be calculated. (ADJ CF%) The CAM fee is then calculated by multiplying this adjusted percentage by the total proposed lot coverage plus the removed woody vegetation (for wooded lots this excludes trees removed within the proposed building footprint and a 5' perimeter of the building foundations.  $(LC * ADJ CF\% + VEG) * R = CAM$ . Or if project is < 50% of the Parcel and provide SWM  $(NC * ADJ CF\% + VEG) * R = CAM$ . The ADJ CF% cannot be below 20%.
- d. The CAM fee can be reduced or offset by on site plantings and structural Best Management Practices (BMP) that meet performance requirements. This reduction cannot exceed 90 percent of the fee. The Town shall retain ten percent of the fee for program administration purposes.
- e. The CAM fee is based on a rate established by the Mayor and City Council as may be revised from time to time. Reducing the rate requires the approval of the Critical Area Commission. The entire CAM fee will be collected prior to the issuance of the building permit and reductions will be refunded after planting or stormwater BMPs have been properly installed. All retained CAM fees will be used by the Town for municipal stormwater management and habitat enhancement projects.
- f. On-site plantings and residential best management practices (BMP) are encouraged. A minimum of 15 percent afforestation (as required in section 30-553(c)(8) below) is required and is deducted from the



CAM calculation. All projects impacting the buffer will be required to provide plantings in the waterfront setback where applicable and space available (section 30-554 (d)(7)).

...  
(7) ...

- a. For single-family projects < 5000 sq ft of disturbance, the CAM will address the required stormwater treatment. The additional landscaping will be the offset. Bioretention is encouraged as an offset to the CAM by allowing for more credit. Credit for residential BMP can be used to offset the CAM at the discretion of the Town. Landscaping as an offset shall follow "The Planting Standards Chart", as approved by the *Mayor and City Council* and on file with the Engineering Department. Single Family projects  $\geq$  5000 sq ft of disturbance will be required to provide the CAM along with either the WQv or to use Environmental site design techniques with alternatives to impervious surfaces.
- b. ...
  - iii. The planting offset reduction cannot exceed 90 percent of the fee.
- c. ...
  - ii. A stormwater management fee shall be paid at a rate set by the Mayor and City Council from time to time.

(8) ...

- d. A developed site containing less than 15 percent plantable area that is redeveloped shall retain at least the preexisting plantable area and provide landscaping when possible.
- e. Trees or shrubs outside the 100-foot buffer that are removed, including dead, diseased or dying plants, shall be replaced at a 1:1 ratio. Tree or shrub removal done at the direction of the Town for purposes of public safety shall be exempt from this section. Trees removed from the 100-foot buffer shall be mitigated at a 2:1 ratio and 1:1 for bulkhead or other shoreline protection system replacements.

...

- g. Fee in lieu of planting. In the B-1 Boardwalk and DMX Downtown Mixed Use zoning districts and the R-3, R-3A, and BC2 in the upper down town overlay district only, and on sites where the applicant has demonstrated site constraints and the Department agrees that the afforestation cannot be performed on site, a fee in lieu of planting may be paid. This fee shall be established by the Mayor and City Council, but shall not be less than \$2.40 per square foot. Funds

collected by the Town in accordance with this section shall be held in a dedicated account as described in section 30-559(e).

...

- j. Single Family, the provision above does not apply to single family detached homes however the following do apply:
  - i. Any person hereafter erecting or causing to be erected any single-family detached home in Ocean City, Maryland, shall provide landscaping of a minimum of 15 percent of the parcel size with a minimum of one tree.
  - ii. The drainage from the property must be directed to the City right of way or bay and protection from drainage on to adjacent properties must be provided.
  - iii. Said landscaping shall utilize plants normally adaptive to this area that are generally considered salt resistant and shall be installed and maintained pursuant to the terms of section (General Landscaping Provisions (15) (c) hereof.

...

(12) ...

a. ...

- i. No trees shall be removed from any undeveloped parcel of land until approval of the site plan and accompanying landscaping plan by the Planning Commission or the department.
- ii. Every person shall submit to the Department, as part of any site plan or subdivision plat and prior to the issuance of any building permit, a landscaping plan that includes:
  - (1) The location of any existing wooded areas or trees three inches or more in diameter measured 12 inches above ground level.
  - (2) The spacing, size, number and kind of landscaping material to be used.
  - (3) A per-item cost (or per-foot or per-yard cost, if applicable) of the proposed plants.
- iii. All trees on the landscaping plan required to be retained shall be preserved, and all trees where required shall be welled and protected against change of grade.
- iv. The Department shall determine the adaptability of the proposed plants to the proposed site and, in said determination, shall, at its discretion, be guided by standards for plants that are from time to time adopted and approved by the Department; and

...

- c. Trees removed from the Buffer will be required to be replaced 2:1 and in the rest of the Critical Area at 1:1. Replacement trees must be a minimum five feet tall and of two-inch caliber tree measured six inches above ground.
- d. On undeveloped residential lots the trees removed within the building footprint and a 5 foot perimeter of the foundation do not need to be mitigated at this stage but will be addressed in the Critical Area Mitigation Calculations.

...

(15) ...

- a. The landscaped area shall be planted with materials which will provide a variety of textures, heights and shapes to create a pleasing appearance, at a spacing and include a ratio of at least one tree for each 35 linear feet and 5 shrubs for every one tree or fraction thereof. The Critical area mitigation fee may be offset by providing landscaping. However there is a minimum quantity of landscaping required which is the most conservative of the 15% afforestation requirement or the prescriptive linear requirement above.

Necessary accessways from the public right-of-way through all such landscaping shall be permitted to service the parking or other vehicular use areas and such accessway may not be subtracted from the linear dimension used to determine the number of trees required.

Two-foot six-inch vehicular overhangs over landscape areas may be part of the vehicular use area, but may not be paved or improved in any manner other than with landscaping. Wheel stops or curbing must be provided to protect the landscaped area from vehicular damage.

When a parallel parking space abuts a public street or alley or adjoining property, the perimeter landscape area must be clear of any obstruction and may not be part of the required vehicular use area.

...

c. ...

- i. All landscaping materials shall be installed in a sound workmanlike manner and according to accepted planting procedures. The Department shall determine the adaptability of the proposed plants to the proposed site in accordance with landscape standards on file with the Department. All landscaping materials shall be installed, or guaranteed with a cash or surety bond, in accordance with the approved landscape plan prior to issuance of a certificate of occupancy.

...

- iii. Landscaping shall be inspected every three years by the Department to ensure proper maintenance. If it is determined that the landscaping is not being properly maintained, the owner shall be so notified by the Department in writing. The owner shall have 30 days from the date of notification to replace unhealthy or dead plant material or restore it to a healthy condition. If this notification occurs during a season not appropriate for planting, the replacement or restoration shall be completed as soon as possible. If replacement or restoration is not completed in the prescribed time period and to the satisfaction of the Department, continuing violations will be subject to municipal infraction.
- d. Landscape plan. A landscape plan shall be submitted to the Department for review and approval at an easily readable scale for all development and redevelopment prior to the issuance of any building permit. The landscape plan shall include the following:
  - Property lines, easements, buildings and other structures, vehicular use areas including parking stalls, curbs wheel stops, driveways, service areas etc., and water supply sources,
  - i. The location of any existing landscape materials.
  - ii. The spacing, installation size (including corresponding point value per resolution 2010-19) number and kind of landscaping material to be used including the botanical name and common name.
  - iii. Size credit according to landscape conversion chart for each species of tree, woody plant material, shrub, ornamental grasses, and herbaceous plant.
  - iv. Location and screening details for garbage enclosures.

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Sec. 30-554. – Buffer and buffer management area.

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(d) ...

(1) ...

- a. Lots smaller than 15,000 square feet in size, as of June 1, 2002: Structures shall be located no closer to tidal waters or wetlands than ten feet. However, in the R-1 Single Family Residential zoning district the waterfront setback shall be no less than 15 feet, and in the MH Mobile Home zoning district the waterfront setback shall be no less than five feet. This waterfront setback shall be measured from the landward face

of a bulkhead, the mean high water line, the wetland line or when none of these exists elevation 1' NAVD88, whichever is more restrictive.

- b. Lots between 15,000 and 25,000 square feet in size as of June 1, 2002: Structures shall be located no closer than 15 feet to tidal waters or wetlands measured from the landward face of a bulkhead, the mean high water line, the wetland line or when none of these exists elevation 1' NAVD88 whichever is more restrictive.
- c. Lots between 25,001 and 40,000 square feet in size as of June 1, 2002: Structures shall be located no closer than 20 feet to tidal waters or wetlands measured from the landward face of a bulkhead, the mean high water line, the wetland line or when none of these exists elevation 1' NAVD88, whichever is more restrictive.
- d. Lots 40,001 square feet or more in size as of June 1 2002: Structures shall be located no closer than 25 feet to tidal waters or wetlands. This waterfront setback shall be measured from the landward face of a bulkhead, the mean high water line, the wetland line or when none of these exists elevation 1' NAVD88 whichever is more restrictive.

...

- (3) No impervious surfaces are permitted in the waterfront setback area except for a 1' roof overhand that is over 10' high. Any impervious surfaces that are permitted in the setback through the variance or conditional approval process shall provide mitigation at 3:1.

...

#### Sec. 30-559. - Implementation of the Atlantic Coastal Bays Critical Area Provisions.

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- (a) *Regulated activities and applicability.* It shall be unlawful to pursue any new, expanded or intensified activities within the Atlantic Coastal Bays Critical Area, such as development or redevelopment, grading, clearing, sediment and erosion control, shoreline erosion control, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), without first obtaining approval by the Department after review under the provisions of this section.
- (b) *Responsible agency.* All applications for such permits and licenses that are issued by the Town shall be made to the pertinent Department. The Department shall make available to all agencies involved in overseeing regulated activities a set of maps showing the location so that these agencies may identify affected properties subject to said referrals.

(c) *Process.* Upon receiving the referred application, the Department shall review the application for compliance of the activity with the requirements of this section, coordinating with other agencies when appropriate. The Atlantic Coastal Bays Critical Area review includes, but is not limited to, evaluating the 100-foot buffer and buffer management area, area of lot coverage, landscaping and afforestation, area of forest cover, area of steep slopes, location of tidal or nontidal wetlands and their buffers, and the mitigation plan if required.

(d) *Application requirements.* In order for the Department to make findings and specific recommendations as to compliance of a project with the goals of the Atlantic Coastal Bays Critical Area Law, information on land and water disturbing activities is required to be submitted by the applicant. Where landscaping is required no building permit shall be issued until the required landscaping/mitigation plan has been submitted and approved and no certificate of occupancy shall be issued until the landscaping is completed or bonded with a cash or surety bond in accordance with the approved landscaping/mitigation plans as certified by an on-site inspection by the Department. This information shall include an Atlantic Coastal Bays Critical Area site plan and may include a written Atlantic Coastal Bays Critical Area report, as described below.

(1) ...

...

j. All lot coverage tabulated (including all structures, sidewalks, sheds, decks, driveways, pools, etc.) labeled as existing or proposed.

...

(2) *Atlantic Coastal Bays Critical Area Report.* In cases where additional information is required by the Department to determine the impact of a development on the Coastal Bays, an Atlantic Coastal Bays Critical Area Report is required, and must include a description of the project and an environmental assessment of the site. This report shall include but not be limited to the following information:

...

i. Critical Area Mitigation worksheet

j. Critical Area 10% Rule worksheet where applicable

k. Landscape guide and list of suggested plants. The Department recommends the following documents for suggested landscape guides:

i. Native Plants for Wildlife Habitat and Conservation Landscaping Chesapeake Bay Watershed, U.S. Fish and Wildlife Service 2005.

ii. Atlantic Coastal Bays Critical Area, Buffer Management Plan, Mitigation Credit for Species Planted in the Critical Area, pp. 25—31, Worcester County Maryland, March 18, 2003 and as may be subsequently amended.

- iii. Document prepared by the Department, and from time to time revised, that suggest landscape guidance which shall provide an illustrative interpretation of the above standards and suggested plants for landscaping in accordance with the above standards.

(e) *Use of Mitigation funds.*

- (1) The CAM fee can be reduced by on-site plantings and BMPs to a maximum of 90 percent of the CAM fee. Any amount of the CAM fee not offset by on-site plantings will be retained by the Town and used for program administration, municipal stormwater management and habitat enhancement projects.
- (2) Funds collected by the Town in accordance with this section shall be held in a dedicated account until future use for the purpose of improving water quality, improving habitat, and meeting the Town's responsibilities under the Maryland Coastal Bays Conservation and Management Plan. Funds will be used for projects such as stormwater retrofits; maintenance costs; public outreach and education; mini-grant program; and other projects that will improve the quality of runoff entering the Coastal Bays from the Town. Monies collected through the fees-in-lieu program shall not revert to the general fund of the Town government. Use of funds will be coordinated with the Critical Area Commission staff via semi-annual reporting of monies collected and monies expended. The report shall be based on an itemized list of water quality and habitat projects and their cost and an itemized list of development projects that generated the CAM fee, including total CAM fee calculated, CAM fee met on site and CAM fee collected by the Town.
- (3) The total CAM Mitigation fees will be collected at the time a building permit is issued for permits that do not require a certificate of occupancy (CO). Refunds due upon completion of planting and/or installation of BMPs will be made after inspection and approval by the Town. For permits that require certificate of occupancy, ten percent of the CAM fee shall be paid upfront and the balance collected at issuance of CO after inspection and approval by the Town. If the Town issues a CO without the full landscaping provided, the total CAM will be paid and held in the dedicated account until the work has been completed in accordance to the landscaping/mitigation plan. A minimum of the 15% afforestation must be planted and the remaining mitigation fee will be forfeited after one year. All mitigation fees and fees in lieu will be retained by the Town and used as described in this chapter.

Sec. 30-560. - Amendments and refinements.

- (a) *Program changes.* The Mayor and City Council may from time to time amend the Town critical area program. Critical area program changes include, but are not limited to, amendments, revisions, and modifications to zoning regulations, subdivision regulations, critical area maps, implementation procedures, and

local policies that affect the Town's program. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and section 8-1809(d), respectively.

- (b) *Comprehensive reviews.* The Town will review its entire program and propose any necessary amendments to its entire program, including critical area maps, at least every six years. The anniversary of the date that the program became effective shall be used to determine when the review shall be completed. Within 60 days after the completion of the review, the Town will send the following information in writing to the commission:
  - (1) A statement certifying that the required review has been accomplished;
  - (2) A necessary requests for program amendments, program refinements, or other matters that the Town wishes the commission to consider;
  - (3) An updated resource inventory;
  - (4) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.
- (c) *Process.* When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing findings of fact, these documents shall be forwarded to the Town Council. The Town Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. After the Town Council approves an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval.
- (d) *Critical Area Commission review.* When the Town submits a request for review and approval of changes to any element of the Town's Critical Area Program, including, but not limited to, the zoning ordinance, subdivision regulations, or Critical Area Maps, the request will include all relevant information necessary for the Chairman of the Commission, and as appropriate, the commission, to evaluate the changes. The Chairman, and as appropriate, the Commission, shall determine if the requests for program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Commission.
- (e) *Critical Area Commission decision.* In accordance with the determination of consistency outline above, the Chairman, or as appropriate, the Commission will:
  - (1) Approve the proposed program refinement or amendment and notify the Town;



- (2) Deny the proposed program refinement or amendment;
  - (3) Approve the proposed program refinement or amendment subject to one or more conditions; or
  - (4) Return the proposed program refinement or amendment to the Town with a list of changes to be made.
- (f) *Zoning map amendments.* Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by the Mayor and Council upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:
- (1) Are wholly consistent with the land classifications in the adopted program; or
  - (2) Propose the use of growth allocation in accordance with the growth allocation provisions of this ordinance.

Sec. 30-561. - Variances.

...

- (b) *Standards.* The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
- (1) Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the Town's Critical Area Program would result in unwarranted hardship. Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.
  - (2) A literal interpretation of the provisions of the Town's Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Ocean City;
  - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town's Critical Area Program to other lands or structures within the Critical Area of Ocean City;
  - (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;
  - (5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the Town's Critical Area Program;

(c) *Process and findings.* Applications for a variance shall be made in writing to the board of zoning appeals on forms prescribed by the Department.

- (1) In considering the application for a variance, the Town shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the Town's Critical Area Program.
- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Town may consider that fact.
- (3) An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (1) above.
- (4) Based on competent and substantial evidence, the Town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- (5) With regard to the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by: a) the applicant; b) the Town or any other government agency; c) any other person deemed appropriate by the Town.

...

(g) *Commission notification.* Within ten working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. The Town may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed beginning from the date the Critical Area Commission receives notice of the decision of the board of appeals.

(h) *Reasonable accommodations for the needs of disabled citizens.* The Department may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.

- (1) An applicant shall have the burden of demonstrating the following:
  - a. The existence of a physical disability; A medical doctor's authorization that the property owner or occupant has a disability;
  - b. Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;

- c. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
  - d. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;
  - e. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.
- (2) The Department shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Department may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- i. The coverage will not be more than 30% of the setback, and
  - ii. The coverage will provide 3:1 mitigation for coverage at a rate set by resolution

If this cannot be met on site the applicant must apply for a Variance with the BZA

- (3) The Department may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.

...

#### Sec. 30-562. - Administration and enforcement.

- (a) *Responsible agencies.* The responsibility for the administration and enforcement of this section shall be vested in such Department (hereinafter called the "department") as designated or created for such purpose by the Mayor and City Council. The Department may be provided with such personnel and resources as the Mayor and City Council may direct. The Department may delegate to its own personnel and to other persons such duties and responsibilities in connection with the administration and enforcement of this ordinance. The Department is required to take action when a violation is identified and after notification, has the right to enter a property if a violation is reasonably suspected, and if entry is refused, may seek an administrative search warrant or court injunction.
- (b) *Enforcement provisions.*
- (1) Violation of any provision hereof or any program adopted hereunder shall be a misdemeanor, punishable as stated in section 1-8 of the Code of Ocean City herein. Violators of the provisions of programs approved or adopted by

the Mayor and City Council shall also be subject to prosecution or suit by the Mayor and City Council, who may invoke the sanctions and remedies afforded by State or local law. The Mayor and City Council and the Chair of the Critical Area Commission may invoke any sanction or remedy available, in any court of competent jurisdiction in which it would be authorized to prosecute or sue the violator. In addition to any other sanction or remedy available, the Mayor and City Council shall bring an action in equity to compel compliance or restrain noncompliance with the requirements of approved project plans, and to compel restoration of lands or structures to their condition prior to any modification which was done in violation of approved project plans.

- (2) In addition to any other penalty applicable under State or local law, a person who violates a Provision of Natural Resources Title 8 Subtitle 18, or the Town's Critical Area Program, ordinance or regulation is subject to a fine not exceeding \$10,000.00 for each calendar day and for each violation and shall be required to replant native woody vegetation to replace vegetation that has been removed. Replanting to correct a violation shall be calculated at the rate of four square feet to one square foot (4:1) of the area cleared, graded, or cut in violation of the provisions of this article. A mitigation plan shall be approved by the Department. A contractor, property owner and/or any other person who committed, assisted, authorized or participated in a violation may be held liable and is guilty of a misdemeanor.

...

- (5) There is a three-year statute of limitations to take enforcement action for any violation that the Critical Area Commission or Town in fact knew or reasonably should have known of the violation.
- (c) After the fact review, permit, approval, special exception, or variances.
- (1) No Town Department, commission, or agency, including the Planning Commission or Board of Appeals, may:
    - a. Accept an application for any review, approval, permit, special exception, or variance until a notice of violation has been issued and a separate civil penalty has been assessed for each violation of the Critical Area Program on the affected property;
    - b. Issue any review, permit, approval, special exception, or variance for property on which a violation of the Critical Area Program exists, until and unless:
      - (i) All civil monetary penalties imposed under section 30-562(b)(2) have been paid in full;
      - (ii) A restoration or mitigation plan to abate impacts to water quality and natural resources caused by or related to the violation has been prepared and approved by the Town;

- (iii) All restoration and mitigation has been performed, or bonded per section 30-562(c)(4), as set forth in the approved plan; and
- (iv) All abatement measures have been performed as set forth in the approved plan described above in section 30-562(c)(1)b.(ii).

...

Sec. 30-563. – Lot consolidation and reconfiguration.

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- (b) *Goals.* Any consolidation or reconfiguration of any legal parcel of land or recorded legally buildable will meet the goals of the Town Critical Area Program set forth in sections 30-553, 30-554, 30-555 of this article to the extent possible.

...

- (d) *Standards.* A proposed lot consolidation or reconfiguration shall be reviewed by the planning commission or its designee and will make written findings that the following standards have been met:

...

- (3) The proposed consolidation or reconfiguration identifies each habitat protection area;

...

- c. Minimizes adverse impacts to a habitat protection area;

...

Secs. 98–31 through 98-47. Repealed.

...

Article IV. Secs. 98-101 through 98-120. Repealed.

...

Sec. 110-865.21. - Parking design standards.

Basic design standards for parking lots and spaces are found in section 110-935 of the Ocean City Code. Landscaping requirements are found in chapter 30, Article VIII of the Code. In addition, the following design considerations apply to parking in the downtown.

- (1) Required.

- a. Parking shall be screened from the public right-of-way by landscaping, fencing or architectural detailing. Parking shall be located in the rear of buildings or within the building footprint, so as to appear to be part of the main building. Interior lots shall be provided special consideration for parking layout.

- b. Adequate lighting shall be provided for off-street parking spaces in accordance with section 110-876 of the Ocean City Code. The scale and style of lighting fixtures shall be compatible with the overall architectural character of downtown, and should not be taller than 12 feet.
- c. Parking areas abutting public rights-of-way shall be screened by attractive landscaping, fencing, and/or architectural detailing.

(2) Encouraged.

- a. Where feasible, access to parking lots should be off secondary streets and alleys to minimize vehicular penetration through the commercial street frontage.
- b. Parking areas should be designed to minimize curb cuts.
- c. Permeable alternatives to asphalt and concrete paving are encouraged.
- d. Parking structures should incorporate retail and/or residential uses along the first floor street frontage.
- e. Parking structures should be designed with similar massing and articulation principles as other buildings, including architectural detailing, material change, and stepped back upper floors.
- f. Parking lots and structures should provide pedestrian-scale enhancements, with clearly marked entries and exits and protection from traffic.

(3) Other parking designs subject to approval.

Sec. 110-881. – Landscaping.

- (a) Except as specifically provided in this chapter, the general landscaping requirements and regulations, including definitions, landscape area and types, content, location and all other particulars regarding landscaping, shall be as required or regulated by the Critical Area Ordinance Chapter 30, article VII of the Ocean City Code.
- (b) Whenever there is a conflict between this chapter and Chapter 30, article VII, the Critical Area Ordinance, Chapter 30, article VII shall control.

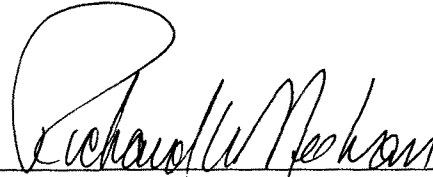
INTRODUCED at a meeting of the City Council of Ocean City, Maryland held on November 6, 2017.

ADOPTED AND PASSED, as amended, by the required vote of the elected membership of the City Council and approved by the Mayor at its meeting held on November 20, 2017.

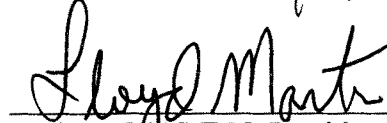
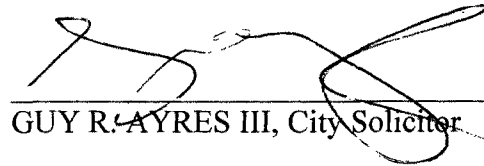
ATTEST:



DIANA L. CHAVIS, Clerk

  
RICHARD W. MEEHAN, Mayor

Approved as to form:

  
LLOYD MARTIN, President  
GUY R. AYRES III, City Solicitor  
MARY P. KNIGHT, Secretary