

HB0297/890613/1

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 297
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Pena-Melnyk” and substitute “Pena-Melnyk, Manno, Bobo, Glenn, and Stein”; in line 3, after the second “the” insert “adoption of certain ordinances or regulations by a local jurisdiction and the”; in lines 3 and 4, strike “a local jurisdiction” and substitute “certain governmental entities”; in line 4, after “use” insert “ordinances and regulations”; in line 5, strike “require” and substitute “clarify”; in the same line, after “plan” insert “is required”; in line 16, after the first semicolon, insert “stating the General Assembly’s intent to overturn the ruling in a certain court case;”; and after line 22, insert:

“BY adding to

Article 66B - Land Use

Section 1.04(a)

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)”.

On page 2, after line 17, insert:

“BY repealing and reenacting, with amendments,

Article - Natural Resources

Section 8-1808.1(c)

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

(As enacted by Chapter 119 of the Acts of the General Assembly of 2008)”.

AMENDMENT NO. 2

On page 2, after line 38, insert:

(Over)

“WHEREAS, It is the intent of the General Assembly to encourage the development of ordinances and regulations that apply to locally designated priority funding areas and allow for mixed uses and bonus densities beyond those specified in the local comprehensive plan by excluding land uses and densities or intensities in the definition of “consistency” for priority funding areas; and”.

AMENDMENT NO. 3

On page 3, in line 19, strike “**1.03**” and substitute “**1.04**”.

On page 4, strike in their entirety lines 12 through 24, inclusive, and substitute:

“(A) IN THIS SECTION, “ACTION” MEANS:

(1) THE ADOPTION OF AN ORDINANCE OR REGULATION UNDER:

(I) § 1.00(K) OF THIS ARTICLE;

(II) § 1.04(F) OF THIS ARTICLE; OR

(III) § 4.09 OF THIS ARTICLE;

(2) A REQUIREMENT UNDER § 9-505(A)(1) OF THE ENVIRONMENT ARTICLE AND § 19(O)(3)(III) OF ARTICLE 23A OF THE CODE; AND

(3) A REQUIRED FINDING UNDER §§ 9-506(A)(1) AND 9-507(B)(2) OF THE ENVIRONMENT ARTICLE.

(B) THIS SECTION APPLIES TO THE FOLLOWING:

(1) §§ 1.00(K), 1.04(F), AND 4.09 OF THIS ARTICLE;

(2) §§ 9-505(A)(1), 9-506(A)(1), AND 9-507(B)(2) OF THE ENVIRONMENT ARTICLE (WATER AND SEWER PLAN REVIEW); AND

(3) § 19(O)(3)(III) OF ARTICLE 23A OF THE CODE (ANNEXATION PLAN).

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, WHEN A PROVISION IN A STATUTE LISTED UNDER SUBSECTION (B) OF THIS SECTION REQUIRES THAT AN ACTION BE “CONSISTENT WITH” OR HAVE “CONSISTENCY WITH” A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

- (1) POLICIES;
- (2) TIMING OF THE IMPLEMENTATION OF THE PLAN;
- (3) TIMING OF DEVELOPMENT;
- (4) TIMING OF REZONING;
- (5) DEVELOPMENT PATTERNS;
- (6) LAND USES; AND
- (7) DENSITIES OR INTENSITIES.

(D) (1) IN THIS SUBSECTION, “PRIORITY FUNDING AREA” HAS THE MEANING STATED IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THIS SUBSECTION APPLIES TO AN ACTION UNDER SUBSECTION (A)(1)(II) AND (III) OF THIS SECTION.

(3) WITHIN A PRIORITY FUNDING AREA, WHEN THE PROVISIONS IN SUBSECTION (A)(1)(II) AND (III) OF THIS SECTION REQUIRE THAT AN ACTION BE “CONSISTENT WITH” OR HAVE “CONSISTENCY WITH” A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

(I) POLICIES;

(II) TIMING OF THE IMPLEMENTATION OF THE PLAN;

(III) TIMING OF DEVELOPMENT;

(IV) TIMING OF REZONING; AND

(V) DEVELOPMENT PATTERNS.”.

On page 5, in line 5, strike “4.07(A)(10)” and substitute “4.07(I)”; after line 17, insert:

“(A) A CHARTER COUNTY SHALL ENACT, ADOPT, AMEND, AND EXECUTE A PLAN AS PROVIDED IN THIS SECTION.

(d) (1) A planning commission shall include in its comprehensive plan:

(i) All elements required in subsection [(a)](B) of this section and the visions set forth in § 1.01 of this article; and

(ii) If the chosen under subsection [(b)](C) of this section, its priority preservation area element.

(2) At least once every 6 years, the planning commission shall review and if necessary, revise or amend a comprehensive plan to include:

(i) All elements required in subsection [(a)](B) of this section and the visions set forth in §1.01 of this article; and

(ii) If chosen under subsection [(b)](C) of this section, its priority preservation area element.

(3) If the comprehensive plan for each geographic section or division is reviewed and, if necessary, revised or amended at least once every 6 years, the planning commission may prepare comprehensive plans for one or more major geographic sections or divisions of the local jurisdiction.

(e) (1) A planning commission shall implement the visions set forth in § 1.01 of this article through the comprehensive plan elements required under subsection [(a)](B) of this section.

(2) A local legislative body that has adopted a comprehensive plan may adopt regulations implementing the visions stated in § 1.01 of this article in a comprehensive plan.”;

in line 18, strike “(e)” and substitute “(f)”; in line 19, strike “(c)” and substitute “(D)”; and in line 21, strike “(a)(1)(iii)” and substitute “(B)(1)(III)”.

On page 6, in line 11, strike “4.07(A)(10)” and substitute “4.07(I)”.

On page 8, in line 8, strike “**PROPER**” and substitute “**IF APPLICABLE, PROPER**”.

AMENDMENT NO. 4

On page 12, after line 7, insert:

“Article – Natural Resources

8–1808.1.

(c) (1) IN PARAGRAPHS (3)(I) AND (4)(I) OF THIS SUBSECTION, “CONSISTENT WITH” OR “CONSISTENCY WITH” A JURISDICTION’S COMPREHENSIVE PLAN MEANS THAT A STANDARD OR FACTOR WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

(I) POLICIES;

(II) TIMING OF THE IMPLEMENTATION OF THE PLAN;

(III) TIMING OF DEVELOPMENT;

(IV) TIMING OF REZONING;

(V) DEVELOPMENT PATTERNS;

(VI) LAND USES; AND

(VII) DENSITIES OR INTENSITIES.

[(1)] (2) When locating new intensely developed or limited development areas, local jurisdictions shall use the following standards:

(i) Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area;

(ii) Locate a new limited development area adjacent to an existing limited development area or an intensely developed area;

(iii) Locate a new limited development area or an intensely developed area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality;

(iv) Locate a new intensely developed area or a limited development area in a resource conservation area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources;

(v) Locate new intensely developed areas and limited development areas in a manner that minimizes their impacts to the defined land uses of the resource conservation area;

(vi) Except as provided in item (viii) of this paragraph, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;

(vii) New intensely developed or limited development areas involving the use of growth allocation shall conform to all criteria of the Commission and shall be designated on the comprehensive zoning map submitted by the local

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jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and

(viii) In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county is unable to utilize a portion of the growth allocated to the county in items (i) and (ii) of this paragraph within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in item (vi) of this paragraph. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

[(2)] (3) A local jurisdiction may use a standard that varies from the standards required under paragraph [(1)(i)] (2)(I) and (ii) of this subsection if:

(i) The alternative standard is consistent with the jurisdiction's adopted comprehensive plan; and

(ii) The Commission has approved the alternative standard as part of the local program.

[(3)] (4) In reviewing map amendments or refinements involving the use of growth allocation, the Commission shall consider the following factors:

(i) Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan;

(ii) 1. For a map amendment or refinement involving a new intensely developed area, whether the development is:

- A. To be served by a public wastewater system;
 - B. To have an allowed average density of at least 3.5 units per acre, as calculated under § 5-7B-03(h) of the State Finance Procurement Article;
 - C. For a new intensely developed area that is greater than 20 acres, to be located in a priority funding area, as described under §§ 5-7B-02(1) and 5-7B-03 of the State Finance and Procurement Article; and
 - D. To have a demonstrable economic benefit to the area;
and
2. For a map amendment or refinement involving a new limited development area, whether the development is:
- A. To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
 - B. A completion of an existing subdivision;
 - C. An expansion of an existing business; or
 - D. To be clustered;
- (iii) The use of existing public infrastructure, where practical;
- (iv) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;

(v) Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;

(vi) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and

(vii) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

[(4)] (5) The Commission shall ensure that the standards and factors in paragraphs [(1), (2), and (3)] (2), (3), AND (4) of this subsection have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of this subtitle, and all criteria of the Commission.”.

AMENDMENT NO. 5

On page 12, after line 32, insert:

“SECTION 6. AND BE IT FURTHER ENACTED, That consistency with a local jurisdiction’s comprehensive plan, as determined in accordance with § 8-1808.1(c)(3)(i) and (4)(i) of the Natural Resources Article of the Code, as enacted by Section 2 of this Act:

(1) Shall be a part of each determination made by the Critical Area Commission at a formal meeting of the Commission occurring on or after July 1, 2009, regarding a text amendment related to an alternative standard for the location of a new intensely developed or limited development area and an award of growth allocation; and

(2) May not be applied to an alternative standard text amendment or growth allocation approved by the Critical Area Commission before July 1, 2009.”;

and in line 33, strike "6." and substitute "7.".