

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2013, Legislative Day No. 37

Bill No. 76-13

Introduced by Mr. Walker, Chairman  
(by request of the County Executive)  
and by Mr. Trumbauer and Mr. Ladd

By the County Council, September 16, 2013

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Introduced and first read on September 16, 2013  
Public Hearing set for and held on October 21, 2013  
Bill AMENDED and VOTED ON October 21, 2013  
Bill Expires December 20, 2013

By Order: Elizabeth E. Jones, Administrative Officer

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A BILL ENTITLED

1 AN ORDINANCE concerning: Subdivision and Development – Zoning – Critical Area  
2  
3 FOR the purpose of amending, repealing, and defining certain terms; incorporating changes in  
4 the State critical area law and State Critical Area Commission requirements; amending  
5 grounds for standing to appeal; providing for the grandfathering of certain provisions;  
6 clarifying certain COMAR references; adding certain permitted uses in the RCA;  
7 amending the conditions for granting a variance and reapplication in the Critical Area;  
8 making certain technical changes; and generally relating to Subdivision and Development  
9 and the Critical Area  
10  
11 BY repealing and reenacting, with amendments: §§ 3-1-104(a) and (e); 16-3-201(a); 17-1-  
12 101(8); 17-2-101(b); 17-8-204; 17-8-602(a); 18-2-101(b); 18-13-104(b); 18-13-206(18)  
13 and (29); 18-16-305(d); 18-16-402  
14 Anne Arundel County Code (2005, as amended)  
15  
16 BY repealing: §17-1-101(27)  
17 Anne Arundel County Code (2005, as amended)

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EXPLANATION: CAPITALS indicate new matter added to existing law.  
[Brackets] indicate matter stricken from existing law.  
Underlining indicates amendments to bill.  
~~Strikeover~~ indicates matter stricken from bill by amendment.

1 BY renumbering: §17-1-101(28) through (64) to be (27) through (63), respectively.  
2 Anne Arundel County Code (2005, as amended)

3  
4 BY adding: §17-1-101 (64)  
5 Anne Arundel County Code (2005, as amended)

6  
7 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*  
8 That §17-1-101(27) of the Anne Arundel County Code (2005, as amended) is hereby  
9 repealed.

10  
11 SECTION 2. *And be it further enacted,* That § 17-1-101(28) through (64) of the Anne  
12 Arundel County Code (2005, as amended) is hereby renumbered to be §17-1-101(27) through  
13 (63), respectively.

14  
15 SECTION 3. *And be it further enacted,* That Section(s) of the Anne Arundel County  
16 Code (2005, as amended) read as follows:

17  
18 **ARTICLE 3. BOARDS, COMMISSIONS, AND SIMILAR BODIES**

19  
20 **TITLE 1. BOARD OF APPEALS**

21  
22 **3-1-104. Right of appeal.**

23  
24 (a) **Generally.** A person aggrieved by a decision of the Administrative Hearing Officer  
25 who was a party to the proceedings may appeal the decision to the Board of Appeals, except  
26 that a person who meets the threshold [environmental] standing requirements under federal  
27 law [, including prudential standing limitations,] has standing to appeal a decision of the  
28 Administrative Hearing Officer granting or denying a critical area variance for development in  
29 the buffer to the Board of Appeals.

30  
31 (e) **Appeals to Circuit Court of critical area variance decisions.** A person who meets  
32 the threshold [environmental] standing requirements under federal law [, including prudential  
33 standing limitations,] has standing to file a petition in the Circuit Court for Anne Arundel  
34 County for judicial review of a decision of the Board of Appeals granting or denying a critical  
35 area variance for development in the buffer.

36  
37 **ARTICLE 16. FLOODPLAIN MANAGEMENT, EROSION AND SEDIMENT**  
38 **CONTROL, AND STORMWATER MANAGEMENT**

39  
40 **TITLE 3. EROSION AND SEDIMENT CONTROL**

41  
42 **16-3-201. Approval required; exceptions.**

43  
44 (a) **Approval required.** Except as provided in subsection (b), a person may not:

45  
46 (1) grade without a grading permit issued by the Department;

1 (2) clear or grade in the [critical area,] critical area buffer, expanded buffer, or buffer  
2 modification area described in § 18-13-104 of this Code without a standard grading plan, a  
3 grading permit, or an approved vegetation management plan, buffer management plan or  
4 forest management plan; or

5  
6 (3) do logging without a grading permit issued by the Department.

## 7 8 **ARTICLE 17. SUBDIVISION AND DEVELOPMENT**

### 9 10 **TITLE 1. DEFINITIONS**

#### 11 12 **17-1-101. Definitions.**

13  
14 Unless defined in this article, the Natural Resources Article of the State Code, or  
15 COMAR, the definitions of words defined elsewhere in this Code apply in this article. The  
16 following words have the meanings indicated:

17  
18 (8) "Bulk parcel" means a non-buildable lot remaining after subdivision that has a  
19 potential for future development with the density that remains within the subdivision as a  
20 whole, on which all [environmental features] ENVIRONMENTALLY SENSITIVE AREAS existing  
21 at the time of creation of the subdivision have been identified, THAT was not tested for  
22 adequacy of public facilities during subdivision, and that may not be further subdivided or  
23 otherwise developed without first passing the tests for adequacy of public facilities and  
24 complying with all applicable environmental regulations.

25  
26 [(27) "Development potential agreement" means an agreement that memorializes the  
27 approval by the Planning and Zoning Officer to permit relocation of development potential  
28 from inside the critical area or bog protection area, to designated areas outside of the critical  
29 area or bog protection area, and itemizes all fee reductions and bonus lots approved as part of  
30 the relocation process.]

31  
32 (64) "NATURAL RUNOFF CONVEYANCE SYSTEM" MEANS A SYSTEM THAT IS DESIGNED  
33 TO PROVIDE (i) SHALLOW AQUATIC POOLS, RIFFLE GRADE CONTROLS, AND NATIVE  
34 VEGETATION IN ORDER TO RESTORE THE NATURAL STREAM CHARACTERISTICS OF A  
35 CONVEYANCE CHANNEL SUCH AS A REGENERATIVE STEP POOL STORM CONVEYANCE (SPSC)  
36 SYSTEM, AND (ii) THE MINIMIZATION OF IMPACTS TO OR ENHANCEMENTS OF THE  
37 CONVEYANCE CHANNEL BUFFER OR ANY ASSOCIATED WETLANDS TO ENSURE CERTAIN  
38 FLOOD CONVEYANCE AND ATTENUATION.

### 39 40 **TITLE 2. GENERAL PROVISIONS**

#### 41 42 **17-2-101. Scope; applicability.**

43  
44 (b) **Applicability to pending and future proceedings.** [This] SUBJECT TO THE  
45 GRANDFATHERING PROVISIONS OF COMAR TITLE 27, THIS article applies to all pending and  
46 future proceedings and actions of any board, department, or agency empowered to decide  
47 applications under this Code, except that:  
48

1 (1) an application for subdivision filed on or before April 4, 2005 shall be governed  
2 by the law as it existed prior to May 12, 2005 until the recordation of a record plat;

3  
4 (2) a site plan filed on or before April 4, 2005 for development in an open space  
5 district, town center district, industrial park district, maritime district, mixed use district,  
6 commercial revitalization area, Odenton Growth Management Area, Parole Town Center  
7 Growth Management Area, or suburban community center shall be governed by the law  
8 as it existed prior to May 12, 2005 for the development shown on the approved site plan;

9  
10 (3) an application for a building or grading permit filed on or before April 4, 2005  
11 shall be governed by the law as it existed prior to May 12, 2005 for the development  
12 approved by the permit;

13  
14 (4) a building or grading permit issued on or before May 12, 2005 shall be governed  
15 by the law as it existed prior to May 12, 2005 for the development approved by the  
16 permit;

17  
18 (5) a building permit that is related to a grading permit governed by the law as it  
19 existed prior to May 12, 2005 shall be governed by the law as it existed prior to May 12,  
20 2005;

21  
22 (6) an application for subdivision filed before July 6, 2010 shall be governed by the  
23 law as it existed prior to November 22, 2010 until recordation of the record plat if the  
24 County approves an administrative waiver as stipulated in COMAR, Title 26 or the  
25 project is exempt from the administrative waiver process;

26  
27 (7) an application for a building or grading permit filed before July 6, 2010 shall be  
28 governed by the law as it existed prior to November 22, 2010 for the development  
29 approved by the permit if the County approves an administrative waiver as stipulated in  
30 COMAR, Title 26 or the project is exempt from the administrative waiver process;

31  
32 (8) subject to the election provisions of subsection (10), an application for subdivision  
33 filed before November 19, 2012, and related permit and plan applications and approvals  
34 for the subdivision, shall be governed by the law as it existed prior to April 16, 2013, until  
35 November 19, 2017;

36  
37 (9) subject to the election provisions of subsection (10), an application for a building  
38 or grading permit, including preliminary plan approval and site development plan  
39 approval, filed before November 19, 2012 shall be governed by the law as it existed prior  
40 to April 16, 2013; and

41  
42 (10) for any application described in subsection (8) or (9), the applicant may make an  
43 election, in writing and filed with the Planning and Zoning Officer no later than July 1,  
44 2013, to be governed by the law as it exists after April 16, 2013.

45  
46 **TITLE 8. CRITICAL AREA OVERLAY**

1 **17-8-204. Structural stormwater management practices in the RCA.**

2  
3 A structural stormwater management practice or disturbance related to a structural  
4 stormwater management practice, other than a NATURAL RUNOFF conveyance system, may  
5 not be located in the RCA if the purpose of the practice is to serve development outside the  
6 RCA, except that outfalls are allowed in the RCA.

7  
8 **17-8-602. Clearing mitigation and afforestation.**

9  
10 (a) **Applicability.** This section applies to afforestation and mitigation for clearing of  
11 forest or developed woodland for development on all lots located in the [critical area] LDA  
12 AND RCA.

13  
14 **ARTICLE 18. ZONING**

15  
16 **TITLE 2. GENERAL PROVISIONS**

17  
18  
19 **18-2-101. Scope; applicability.**

20  
21 (b) **Applicability to pending and future proceedings.** [This] SUBJECT TO THE  
22 GRANDFATHERING PROVISIONS OF COMAR TITLE 27, THIS article applies to all pending and  
23 future proceedings and actions of any board, department, or agency empowered to decide  
24 applications under this Code, except that:

25  
26 (1) an application for a special exception or variance filed on or before April 4, 2005  
27 shall be governed by the law as it existed prior to May 12, 2005 for the special exception or  
28 variance as approved;

29  
30 (2) an application for a special exception or variance filed before July 6, 2010 shall be  
31 governed by the law as it existed prior to November 22, 2010 for the special exception or  
32 variance as approved if the County approves an administrative waiver as stipulated in  
33 COMAR, Title 26 or the project is exempt from the administrative waiver process;

34  
35 (3) development that falls within one of the exceptions set forth in § 17-2-101(b)(1)  
36 through (b)(5) of this Code shall be governed by the law relating to parking, lot size, width at  
37 the front building restriction line, coverage, setbacks, height limitations, and density that  
38 existed prior to May 12, 2005;

39  
40 (4) development that falls within one of the exceptions set forth in § 17-2-101(b)(6)  
41 or (b)(7) of this Code shall be governed by the law as it existed prior to July 6, 2010 if the  
42 County approves an administrative waiver as stipulated in COMAR, Title 26 or the project is  
43 exempt from the administrative waiver process;

44  
45 (5) subject to the election provisions of subsection (7), an application for a special  
46 exception or variance filed before November 19, 2012 shall be governed by the law as it  
47 existed prior to April 16, 2013 for the special exception or variance as approved;

1 (6) subject to the election provisions of subsection (7), development that falls within  
2 one of the exceptions set forth in § 17-2-101(b)(8) or (b)(9) of this Code shall be governed by  
3 the law as it existed prior to April 16, 2013; and  
4

5 (7) for any application described in subsection (5) or (6), the applicant may make an  
6 election, in writing and filed with the Planning and Zoning Officer no later than July 1, 2013,  
7 to be governed by the law as it exists after April 16, 2013.  
8

9 **TITLE 13. CRITICAL AREA OVERLAY**

10  
11 **18-13-104. Buffers, expanded buffers, and buffer modification areas.**

12  
13 (b) **Expanded buffer.** Except as provided in subsection (c), the 100-foot buffer shall be  
14 expanded beyond 100 feet to include [contiguous sensitive areas, such as] slopes of 15% or  
15 greater, NONTIDAL WETLANDS, NONTIDAL WETLANDS OF SPECIAL STATE CONCERN, and  
16 hydric soils or highly erodible soils. The buffer shall be expanded as follows:  
17

18 (1) If there are contiguous slopes of 15% or greater, the buffer shall be expanded by  
19 the greater of four feet for every 1% of slope or to the top of the slope and shall include all  
20 land within 50 feet of the top of the slopes.  
21

22 (2) If there are NONTIDAL WETLANDS, NONTIDAL WETLANDS OF SPECIAL STATE  
23 CONCERN, hydric SOILS or highly erodible soils, the buffer shall be expanded in accordance  
24 with COMAR, Title 27.  
25

26 **18-13-206. RCA uses.**

27  
28 The following uses are the only uses allowed in the RCA and, to be allowed, the use must  
29 be allowed in and meet all requirements of the underlying zoning district and, for a residential  
30 use, the density allowed is one dwelling unit per 20 acres:  
31

32 (18) golf courses, excluding clubhouses, sales and maintenance buildings, and parking  
33 areas, if both nutrient management and integrated pest management are practiced onsite AND  
34 THE GOLF COURSE OTHERWISE COMPLIES WITH THE CRITICAL AREA COMMISSION'S  
35 PUBLICATION "GOLF COURSES IN THE RCA, AUGUST 3, 2005";  
36

37 (29) public utility uses and public utility essential services [, including wind and solar  
38 fields];  
39

40 **TITLE 16. ADMINISTRATIVE HEARINGS**

41  
42 **18-16-305. Variances**

43  
44 (d) **Conditions for granting a variance in the critical area.**

45  
46 (1) [The] FOR A PROPERTY WITH AN OUTSTANDING VIOLATION THE granting of a

1 variance under this subsection shall be conditioned on the applicant completing the following  
2 within 90 days of the date of decision, as applicable:

3  
4 (i) obtaining an approved mitigation or restoration plan;

5  
6 (ii) completing the abatement measures in accordance with the County critical  
7 area program; and

8  
9 (iii) paying any civil fines assessed and finally adjudicated.

10  
11 **18-16-402. Appeal to the Board of Appeals.**

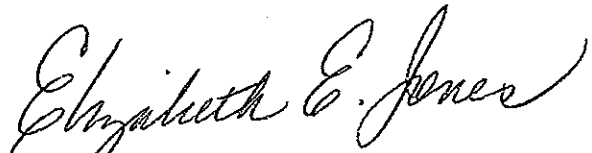
12  
13 A person aggrieved by a decision of the Administrative Hearing Officer who was a party  
14 to the proceedings may appeal to the Board of Appeals within 30 days after the date upon  
15 which the memorandum was filed, except that a person who meets the threshold  
16 [environmental] standing requirements under federal law [, including prudential standing  
17 requirements,] has standing to appeal a decision of the Administrative Hearing Officer  
18 granting or denying a critical area variance for development in the buffer to the Board of  
19 Appeals. On the filing of an appeal, the Administrative Hearing Officer shall promptly transmit  
20 the application, sign-in sheet, exhibits, and the memorandum to the office of the Board of  
21 Appeals and notify those persons who were provided with copies of the memorandum of the  
22 date of transmittal.

23  
24 SECTION 4. *And be it further enacted,* That this Ordinance shall take effect 45 days  
25 from the date it becomes law.

AMENDMENT ADOPTED: October 21, 2013

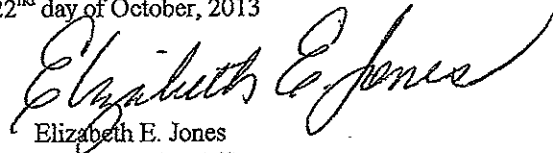
READ AND PASSED this 21<sup>st</sup> day of October, 2013

By Order:



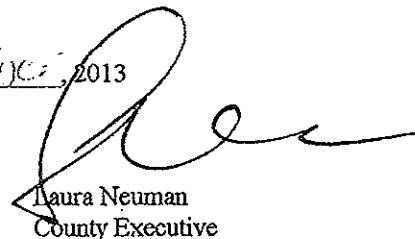
Elizabeth E. Jones  
Administrative Officer

PRESENTED to the County Executive for her approval this 22<sup>nd</sup> day of October, 2013



Elizabeth E. Jones  
Administrative Officer

APPROVED AND ENACTED this 28<sup>th</sup> day of October, 2013



Laura Neuman  
County Executive

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EFFECTIVE DATE: December 12, 2013

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF BILL NO.  
76-13 THE ORIGINAL OF WHICH IS RETAINED IN THE FILES  
OF THE COUNTY COUNCIL.

Elizabeth E. Jones  
Administrative Officer