



OFFICE OF THE PLANNING AND ZONING COMMISSION

**PLANNING COMMISSION
AGENDA
JULY 26, 2023**

- I. Call to Order & Roll Call**
- II. Approval of the July 26, 2023 Planning Commission Agenda.**
- III. Introduce and welcome new Commission member Rachel Larsen Weaver.**
- IV. Approval of the minutes of the July 5, 2023 Planning Commission Meeting.**
- V. Public Comment on any item on the agenda: NOTE: There will be a 2-minute limit on comments received.**
- VI. Old Business**
 - 1. Critical Area Regulations**
- VII. New Business**
 - 1. Review Draft Ordinance**
 - 2. Tree Ordinance**
 - 3. Letter to Mayor & Town Council – Tennis Courts**
- VIII. Comments by Commissioners- Note: 1-minute limit on comments**
- IX. Adjournment**



PLANNING AND ZONING COMMISSION

MINUTES OF THE PLANNING COMMISSION MEETING JULY 5, 2023

I. Commission Chair Cindy Greengold called the meeting to order at 6:00 pm. In attendance were Kathleen Berault, Laura Blackwelder, Larry Brown, Kelly Huhn, and Jan Ruttkay, Commission members, Christopher Jakubiak, Planning & Zoning Administrator, and Sharon L. Humm, Commission Clerk.

II. Approval of the July 5, 2023 Planning Commission Agenda.

MOTION: Commissioner Berault moved to approve the July 5, 2023 Planning Commission agenda. Seconded by Commissioner Ruttkay, all in favor.

III. Approval of the May 24, 2023 Planning Commission meeting minutes.

MOTION: Commissioner Berault moved to approve the May 24, 2023 Planning Commission meeting minutes. Seconded by Commissioner Huhn, all in favor.

IV. Nominate and elect a Planning Commission Chairman. Chair Greengold moved to nominate Commissioner Berault as Commission Chair. Seconded by Commission Ruttkay, all in favor.

V. Nominate and elect a Planning Commission Vice-Chair. Commissioner Berault moved to nominate Commissioner Greengold as Commission Vice-Chair. Seconded by Commissioner Ruttkay, all in favor.

Commissioner Berault took over as Commission Chair. She thanked everyone for their vote and looks forward to working with the Commission.

VI. Public Comment –

1. Kristen DePhillip, on behalf of Ken Muller, owner of Horizons on the Bay, 8501 Bayside Road, addressed the Commission on item **VII. Zoning Text Amendment.** Ms. DePhillip commented that they are requesting a zoning text amendment that would allow Horizons on the Bay to revert back to its original zoning status as a mixed commercial/residential building with the ground level floor dedicated to commercial uses. She provided some history/background information regarding Horizons and was available to address Commission questions.

VII. Zoning Text Amendments, Permitting with Conditions, Certain Commercial Uses in the RV-1 District.

The Commission was provided with a staff memorandum from Mr. Jakubiak on a zoning text amendment. Mr. Jakubiak stated, as part of the comprehensive rezoning in 2022, the Planning Commission recommended to the Council for adoption, a set of zoning text amendments including changes to the Table of Permitted Uses. Before adopting those amendments, the Council eliminated certain commercial uses in the RV-1 District. One of the unintended effects of the change resulted in prohibiting commercial uses on the ground floor of the Horizons on the Bay, wherein they had always been permitted. Horizons on the Bay was developed as a mixed commercial/residential condominium building that allowed commercial uses on the ground floor.

Recently a local business owner sought a zoning permit to operate a waxing salon in one of these commercial units. Under the current code, the permit cannot be approved unless / until the zoning ordinance is amended. Note that Horizons on the Bay is the only “permitted mixed use commercial and multi-family development” in the RV-1 District. The effect of the text amendment would be to restore these four uses to the Horizons on the Bay. These uses would remain not-permitted everywhere else in the RV-1 District.

This zoning text amendment is divided into four parts. Each part addresses one commercial use. The effect of the amendment would be to allow each of the named commercial uses to be permitted again (but this time with only one condition) in the RV-1 District. For each use, the sole condition proposed is the following:

“the use shall be an integral part of an existing and otherwise permitted mixed use commercial and multi-family development”.

After a lengthy discussion the Commission made the following motions:

MOTION: Commissioner Brown moved to recommend that the Zoning Administrator approve the application for the commercial use of a waxing salon in the Horizon Building. Seconded by Commission Blackwelder, all in favor.

MOTION: Commissioner Greengold moved to amend the wording of the condition as written, to add the following highlighted wording:

“the use shall be an integral part of an existing and otherwise permitted mixed use commercial and multi-family development **that was permitted, platted, and recorded prior to January 20, 2005.**” Seconded by Commissioner Blackwelder, all in favor.

For reference, the complete proposed amendment to the Chesapeake Beach Zoning Ordinance is hereto attached.

VIII. Continue discussion on Critical Area Regulations:

Mr. Jakubiak began by addressing the Commission’s inquiry from last month’s meeting as to the opinion of the Critical Area Commission on the possibility of increasing the buffer in Chesapeake Beach. Mr. Jakubiak reported he spoke with the State Commission and there has only been one jurisdiction in Maryland that they are aware of, that increased the 100-foot buffer and that

was from 100 feet to 110 feet. Though it's generally not done, they questioned the rationale behind it. Mr. Jakubiak explained that a lot of the land is wetland / marsh / open spaces and preserved areas where development is to be discouraged anyway, and the expanded buffer is consistent with that overall policy approach.

The Commission was provided with a wetlands map of the Town. Mr. Jakubiak highlighted a tidal estuarine and marine wetlands area north of town that would be impacted if the buffer were to increase to 200 feet. Over time, this area is likely to be inundated with water because the wetland is expanding. After a lengthy discussion, Mr. Jakubiak suggested keeping the current 200-foot, 100-foot buffer the same.

Mr. Jakubiak suggested he assemble the changes approved thus far and send them to the Commission as a complete document for review. At the next meeting, the Commission will review, discuss, and revise, if any further changes are to be made.

Commissioner Greengold requested Mr. Jakubiak take a look at fee-in-lieu of buffer mitigation. Harsher penalties are needed. Commissioner Blackwelder would like to discuss the removal of trees in the critical area, applicability, procedures, guidelines, impacts. The Commission had a number of questions in regard to trees. Commissioner Berault had concerns regarding steep slopes (B Street hill). It was noted that the current Critical Area regulations do not include a definition of a tree. Mr. Jakubiak will provide a definition of a tree and address damaged trees in his draft as well.

XIV. Adjournment:

There being no further comments, Commissioner Ruttkay moved to adjourn the meeting at 9:10 PM. Seconded by Commissioner Huhn, all in favor.

Submitted by,

Sharon L. Humm
Commission Clerk

Note: This meeting can be viewed in its entirety on the Town website on the Planning Commission page www.chesapeakebeachmd.gov.

ATTACHMENT:

AMENDMENT TO THE TOWN OF CHESAPEAKE BEACH ZONING ORDINANCE, Article III, Zoning Districts, Subsection 290-10, Land Use Table, and Subsection 290-11, Conditions and Standards for Conditional and Special Exception Uses

PURPOSE: To revise the above referenced sections to designate certain commercial uses as “permitted with conditions” within a duly approved and existing non-conforming mixed commercial/high density residential building in the RV-1 District.

New text is shown in: **BOLD CAPS**
Removed text is shown in: Strikethrough

1. RE: Office or clinic for medical or dental examination or treatment of persons as outpatient, including laboratories incidental thereto.

A. Amend Subsection 290-10, Table 1, Land Use Classifications to make the following use a Conditional (C) use in the RV-1 District:

OFFICE OR CLINIC FOR MEDICAL OR DENTAL EXAMINATION OR TREATMENT OF PERSONS AS OUTPATIENT, INCLUDING LABORATORIES INCIDENTAL THERETO.

B. Amend Section 290-11, Conditions and Standards for Conditional and Special Exception Uses as follows:

Office or clinic for medical or dental examination or treatment of persons as outpatient, including laboratories incidental thereto: conditional use in the NC, TC, PC, and MC Districts, subject to the requirements of the district where located except as herein provided:

AND WITHIN THE RV-1 DISTRICT IT SHALL BE A CONDITIONAL USE, SUBJECT TO THE REQUIREMENTS OF THE DISTRICT WHERE LOCATED EXCEPT AS HEREIN PROVIDED:

(1) THE USE SHALL BE AN INTEGRAL PART OF AN EXISTING AND OTHERWISE PERMITTED MIXED USE COMMERCIAL AND MULTI-FAMILY DEVELOPMENT THAT WAS PERMITTED, PLATTED, AND RECORDED PRIOR TO JANUARY 20, 2005."

2. RE: Retail establishment carrying one type of interrelated goods, such as a bookstore, gift shop, florist shop.

A. Amend Subsection 290-10, Table 1, Land Use Classifications to make the following use a Conditional (C) use in the RV-1 District:

RETAIL ESTABLISHMENT CARRYING ONE TYPE OF INTERRELATED GOODS, SUCH AS A BOOKSTORE, GIFT SHOP, FLORIST SHOP.

B. Amend Section 290-1, Conditions and Standards for Conditional and Special Exception Uses by adding the following:

RETAIL ESTABLISHMENT CARRYING ONE TYPE OF INTERRELATED GOODS, SUCH AS A BOOKSTORE, GIFT SHOP, FLORIST SHOP: CONDITIONAL USE IN THE RV-1 DISTRICT, SUBJECT TO THE REQUIREMENTS OF THE DISTRICT WHERE LOCATED EXCEPT AS HEREIN PROVIDED:

(1) THE USE SHALL BE AN INTEGRAL PART OF AN EXISTING AND OTHERWISE PERMITTED MIXED USE COMMERCIAL AND MULTI-FAMILY DEVELOPMENT THAT WAS PERMITTED, PLATTED, AND RECORDED PRIOR TO JANUARY 20, 2005."

3. RE: PERSONAL SERVICES, INCLUDING BARBERSHOPS, SALONS, LAUNDRY, DRY CLEANING (RECEIVING STATIONS) TRAVEL AGENCY, INSURANCE, REAL ESTATE, REPAIR SHOPS FOR SHOES, BIKES, WATCHES, LOCKS.

A. Amend Subsection 290-10, Table 1, Land Use Classifications to make the following use a Conditional (C) use in the RV-1 District:

PERSONAL SERVICES, INCLUDING BARBERSHOPS, SALONS, LAUNDRY, DRY CLEANING (RECEIVING STATIONS) TRAVEL AGENCY, INSURANCE, REAL ESTATE, REPAIR SHOPS FOR SHOES, BIKES, WATCHES, LOCKS.

B. Amend Section 290-11, Conditions and Standards for Conditional and Special Exception Uses by adding the following:

PERSONAL SERVICES, INCLUDING BARBERSHOPS, SALONS, LAUNDRY, DRY CLEANING (RECEIVING STATIONS) TRAVEL AGENCY, INSURANCE, REAL ESTATE, REPAIR SHOPS FOR SHOES, BIKES, WATCHES, LOCKS: CONDITIONAL USE IN THE RV-1 DISTRICT, SUBJECT TO THE REQUIREMENTS OF THE DISTRICT WHERE LOCATED EXCEPT AS HEREIN PROVIDED:

(1) THE USE SHALL BE AN INTEGRAL PART OF AN EXISTING AND OTHERWISE PERMITTED MIXED USE COMMERCIAL AND MULTI-FAMILY DEVELOPMENT THAT WAS PERMITTED, PLATTED, AND RECORDED PRIOR TO JANUARY 20, 2005.”

4. RE: ARTISTS, PHOTOGRAPHER’S GALLERY, STUDIO

A. Amend Subsection 290-10, Table 1, Land Use Classifications to make the following use a Conditional (C) use in the RV-1 District:

ARTISTS, PHOTOGRAPHER’S GALLERY, STUDIO

B. Amend Section 290-11, Conditions and Standards for Conditional and Special Exception Uses by adding the following:

ARTISTS, PHOTOGRAPHER’S GALLERY, STUDIO: CONDITIONAL USE IN THE RV-1 DISTRICT, SUBJECT TO THE REQUIREMENTS OF THE DISTRICT WHERE LOCATED EXCEPT AS HEREIN PROVIDED:

(1) THE USE SHALL BE AN INTEGRAL PART OF AN EXISTING AND OTHERWISE PERMITTED MIXED USE COMMERCIAL AND MULTI-FAMILY DEVELOPMENT THAT WAS PERMITTED, PLATTED, AND RECORDED PRIOR TO JANUARY 20, 2005.”

§ Removal of Individual Trees in the Critical Area

A. Purpose

The purpose of this section is to preserve and protect overall coverage of the ground by canopy trees and other lesser native species trees within the limits of the Critical Area and encourage no net loss of trees and tree canopy within the Critical Area.

B. Applicability

(1) This section applies to lands within the IDA, exclusive of the Buffer or Modified Buffer Area (MBA).

(2) This section applies in instances where the intended activity is only the removal of one or more trees and does not apply where tree removal is required pursuant to a zoning permit for a development activity.

(3) Pursuant to this section, removal of an individual tree or trees in the IDA is allowed in the Critical Area on lands located outside of the Buffer or MBA, provided mitigation is provided as set forth herein.

(4) Limitations on and allowances for the removal or trees and vegetation in the LDA and RCA , and in the Buffer and MBA are set forth elsewhere in this subtitle.

(5) This section shall also apply to the proposed removal and replacement of trees on a lot in the IDA, which was the subject of any approved site plan, except that the Applicant shall first obtain Town approval of a Zoning Permit, the application for which may be referred to the Planning Commission for approval if such proposal is found by the Zoning Administrator to be constitute a material change to the approved site plan.

C. Procedures and Standards

(1) Except as provided in this section, no tree in the IDA Critical Area, outside of the Buffer or MBA, shall be removed without first notifying the Town, on a form provided by the

Town, of the owner's plan to remove each such tree and certifying the owner's agreement to mitigate for the loss of each such removed tree as set forth in this section.

- (2) Hazardous trees as defined by this Chapter may be removed and required mitigation for such removal shall include only stabilization of the ground in vegetation if tree replacement at the site is not possible due to space constraints.
- (3) A tree determined by a property owner to pose an immediate threat to human safety or damage to real property due to threat of falling may be removed prior to notifying the Town provided notification per C(1) above is made within 30 days after the removal.
- (4) Each canopy tree, as defined in this Chapter, removed shall be mitigated and such mitigation shall include:
 - (a) the stabilization of the affected area of the tree removal and
 - (b) the replanting on the same lot of at least one canopy tree or two understory trees chosen from the list of native species trees maintained by the Town.
- (5) Provided the applicant affirms through affidavit, any prior planting of a native species tree or trees on the same lot, up to one year prior to date of planned removal, shall be credited towards meeting the mitigation requirements of this section.
- (6) Mitigation for each non-canopy tree shall be the replanting of at least one native species understory tree or one canopy tree.
- (7) If space does not permit the planting of a replacement tree or trees, the applicant shall pay a fee into the Town's Critical Area fee-in-lieu program equivalent to \$250 per replacement canopy tree and \$150 per replacement understory tree.
- (8) Replacement trees shall be chosen from a list of native species trees meeting the size and planting criteria made available upon request of the Zoning Administrator.
- (9) Such replanting shall take place within one year of the removal or as determined by the Zoning Administrator to take best advantage of the nearest planting season.