

COUNCIL OF THE TOWN OF INDIAN HEAD

Ordinance No. 07-01-22

Introduced By: Mayor and Council
Date Introduced: July 27, 2022
Town Council Hearing: July 27, 2022
Amendments Adopted: None
Date Adopted: August 1, 2022
Date Effective: August 21, 2022

AN ORDINANCE concerning

Amendment of Critical Area Regulations

FOR the purpose of amending certain provisions of the Town of Indian Head Zoning Ordinance Critical Area Regulations as recommended by the Maryland Critical Area Commission; and matters generally related to amendment of the Town's Zoning Ordinance.

BY repealing and reenacting, with amendments
Zoning Ordinance of the Town of Indian Head (as dated April 2021)
Article IX, Zoning Districts and Zoning Map
Part III. Special Overlay District – Chesapeake Bay Critical Area
Sections 950(d), 955(a) and (d), 956(a), 957(e) and 961

SECTION 1. BE IT ENACTED BY THE COUNCIL OF THE TOWN OF INDIAN HEAD, that Sections 950(d), 955(a) and (d), 956(a), 957(e) and 961 of Article IX, Zoning Districts and Zoning Map, Part III. Special Overlay District – Chesapeake Bay Critical Area, of the Zoning Ordinance of the Town of Indian Head (as dated April 2021), be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article IX, Zoning Districts and Zoning Map

Part III. Special Overlay District— Chesapeake Bay Critical Area

Section 950. Implementation of the Critical Area Program Purpose and Goals

(d) Critical Area Overlay District Map.

(i) The Official Critical Area Overlay District Map is maintained as part of the Official Zoning Map for the Town. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:

(1) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide ((as indicated on the State wetland maps)), and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and

(2) All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.

- (ii) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:
 - (1) Intensely Developed Area (IDA).
 - (2) Limited Development Area (LDA).
 - (3) Resource Conservation Area (RCA).
- (iii) The Critical Area Overlay District Map may be amended by the Town Council in compliance with amendment provisions in this chapter (ordinance), the Maryland Critical Area Law, and COMAR Title 27.

Section 955. Growth Allocation.

- (a) Growth allocation acreage and deduction.
 - (i) Growth allocation available to the Town includes:
 - (a) An area equal to five (5) percent of the RCA acreage located within the Town and;
 - (b) Growth allocation available to the Town as provided for by Charles County.
 - (ii) THE TOWN OF INDIAN HEAD'S ORIGINAL GROWTH ALLOCATION ACREAGE ALLOCATED BY THE COUNTY WAS 39.55 ACRES. THE TOWN HAS USE 22 ACRES AS OF APRIL 6, 2022. The Town shall request from the County any growth allocation it may need when necessary.
 - (iii) A local jurisdiction shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.
- (d) Requirements.

When locating new Intensely Developed or Limited Development Areas, the following requirements apply:

- (i) A new Intensely Developed Area shall be at least 20 acres.
- (ii) NO MORE THAN HALF OF THE TOWN'S GROWTH ALLOCATION MAY BE LOCATED IN RESOURCE CONSERVATION AREAS EXCEPT AS PROVIDED IN PARAGRAPH (III) BELOW.
- (III) ((Consistency)) IF THE TOWN IS UNABLE TO USE A PORTION OF ITS GROWTH ALLOCATION AS SET OUT IN PARAGRAPH (II) ABOVE, THEN THAT PORTION OF THE GROWTH ALLOCATION WHICH CANNOT BE SO LOCATED MAY BE LOCATED IN THE RESOURCE CONSERVATION AREA IF GROWTH ALLOCATION IS CONSISTENT with the Town's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan. "Consistency with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:
 - (1) Policies;
 - (2) Timing of the implementation of the plan, of development, and of rezoning;
 - (3) Development patterns;
 - (4) Land uses; and
 - (5) Densities or intensities.

Section 956. Grandfathering.

- (a) Continuation of existing uses.
 - (i) The continuation, but not necessarily the intensification or expansion, of any use in existence on April 3, 1989, may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing Town ordinances.
 - (ii) If any existing use does not conform to the provisions of this Ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures in ((Article V)) SECTION 957.

Section 957. Variances.

- (e) After-the-Fact Requests
 - (i) The Town may not accept an application for a variance to legalize a violation of this Part III, including an unpermitted structure or other development activity until the Town:
 - (1) Issues a notice of violation; and
 - (2) Assesses an administrative or civil penalty for the violation.
 - (ii) The Board may not ((approve an after-the-fact variance)) ISSUE A PERMIT APPROVAL, VARIANCE OR SPECIAL EXCEPTION TO LEGALIZE A VIOLATION OF THIS SUBTITLE unless an applicant has:
 - (1) Fully paid all penalties imposed under Natural Resources Article, §8-1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;
 - (2) Prepared a restoration or mitigation plan, approved by the Town, to abate impacts to water quality or natural resources as a result of the violation; and
 - (3) Performed the abatement measures in the approved plan in accordance with the Town's Critical Area program.
 - (iii) If the Board of Zoning Appeals denies the requested after-the-fact variance, then the Town shall:
 - (1) Order removal or relocation of any illegal structure; and
 - (2) Order restoration of the affected resources.

Section ((9.61)) 961 Critical Area Supplemental Use Standards

The following supplemental use standards apply to the permitted uses listed in the table above and shall apply when the permitted use is allowed in the underlying zoning district.

* * *

New institutional uses (2.20)

- (a) New institutional facilities and uses, except those specifically listed shall not be permitted in Resource Conservation Areas.

- (b) Certain institutional uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in this Chapter. These institutional uses are limited to:
 - (i) A cemetery (2.30) that is an accessory use to an existing church; provided manmade lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;
 - (ii) A group home (2.40) or assisted living facility with no more than eight (8) residents; AND
 - (iii) A day care facility (2.50) in a dwelling where the operators live on the premises and there are no more than eight (8) children ((; and
 - (iv) Other similar uses determined by the Town Council and approved by the Critical Area Commission to be similar to those listed above)).

* * *

New commercial uses (3.20)

- (a) New commercial uses, except those specifically listed, shall not be permitted in Resource Conservation Areas.
- (b) Certain commercial uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in this Chapter. These commercial uses are limited to:
 - (i) A home occupation (3.30) as an accessory use on a residential property and as provided for in this Chapter;
 - (ii) A bed and breakfast (3.40) facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; AND
 - (iii) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc. ((; and
 - (iv) Other uses determined by the Zoning Administrator and approved by the Critical Area Commission to be similar to those listed above)).

* * *

Non-Water Dependent Structures on Piers (4.70)

- (a) Except as provided in paragraphs (2) and (3) below and notwithstanding any other provisions of the law, the Town may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area.
- ((b) The Town may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:
 - (i) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (ii) Is not located on a pier that is attached to residentially, institutionally, or individually used property;

- (iii) Is located in:
 - (1) An Intensely Developed Area (IDA) and the project is authorized under a program amendment to Town of Indian Head's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Town's zoning, subdivision and other ordinances so as to be consistent with, or more restrictive than, the requirements required under this paragraph; or
 - (2) An area that has been excluded from the Town's Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
- (iv) Is approved by the Planning Commission and the Town Council after the Town's program amendment under item (c)(i) above, if applicable, has been approved;
- (v) Allows or enhances public access to State wetlands;
- (vi) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
- (vii) Has a height of up to 18 feet unless the project is located at a marina; and
- (viii) Is up to 1,000 square feet in total area; or
 - (1) Is located on a pier that was in existence on or before December 31, 2012;
 - (2) Satisfies all of the requirements under items (2)(a)-(g) of this paragraph; and
 - (3) If applicable, has a temporary or permanent roof structure or covering that is not more than 1,000 square feet in total area.

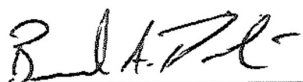
(c))) (B) The Town may issue a building permit or other approval to authorize a non- water dependent project for a small scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:

- (i) Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;
- (ii) Is located in:
 - (1) The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under a program amendment to the Town's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Town's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this item (i); or
 - (2) An area that has been excluded from the Town of Indian Head's Critical Area Program that has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
- (iii) Is approved by the Town's Planning Commission and Town Council after the Town's amendment in accordance with item (3)(b)(i) above, if applicable, has been approved;

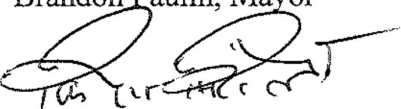
- (iv) A building permit or other approval issued under the requirements in paragraph (3) above may include the installation or placement of:
- (1) A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than:
 - (a) four (4) feet above or 18 inches below the deck of the pier;
or
 - (b) one (1) foot beyond the length or width of the pier;
 - (2) A solar energy system attached to a piling if there is only one solar panel per boat slip;
 - (3) A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;
 - (4) A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:
 - (a) Extend beyond the length, width, or channelward encroachment of the pier;
 - (b) Deleteriously alter longshore drift; or
 - (c) Cause significant individual or cumulative thermal impacts to aquatic resources; or
 - (5) A wind energy system attached to a pier if there is only one wind energy system per pier for which:
 - (a) The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;
 - (b) The rotor diameter of the wind turbine is up to four (4) feet;
and
 - (c) The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

SECTION 2. AND BE IT FURTHER ENACTED, that this Ordinance shall become effective twenty (20) days following its adoption by the Council.

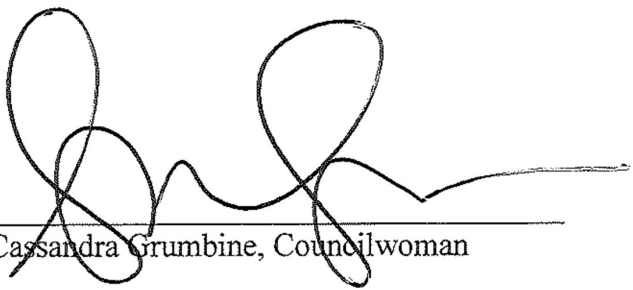
INDIAN HEAD TOWN COUNCIL



Brandon Paulin, Mayor



Ron Sitoula, Vice Mayor


Cassandra Grumbine, Councilwoman

ATTEST:


Town Clerk

8/1/22
Date

Key:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

((Double Parenthesis)) indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike Out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

* * * indicates matter in the current law unchanged by this Ordinance and intentionally omitted.