

First Reading 5/21/10
Second Reading 6/4/12

ORDINANCE 2012-20

AN ORDINANCE TO AMEND CHAPTER 30, ENTITLED ENVIRONMENT,
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 30, ENTITLED ENVIRONMENT, OF THE CODE OF THE TOWN OF OCEAN CITY BE, AND IT IS HEREBY, AMENDED BY ADDING A DEFINITION TO SECTION 30-552, BY REPEALING AND REENACTING WITH AMENDMENT SUBSECTION 30-554(d)(1), BY ADDING SUBSECTION 30-561(i), AND BY REPEALING AND REENACTING WITH AMENDMENT SECTION 30-562, AS FOLLOWS:

Sec. 30-552. Definitions.

...

Property Owner. One or more persons holding title to the property under any form of joint ownership.

...

Sec. 30-554. . . .

...

(d) . . .

(1) Waterfront setbacks.

All development and redevelopment activity that disturbs less than 50% of the parcel may maintain the setback as defined by existing structures. Further development and redevelopment activity that increases the cumulative disturbed area to an amount greater than 50% of the parcel shall comply with the following setbacks regardless of pre-existing nonconforming setbacks. Mitigation for setback impact will be 3:1.

- 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 10 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

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Home zoning district the waterfront setback shall be no less than 5 feet. This waterfront setback shall be measured from the landward face of a bulkhead or rip-rap, the mean high water line, or the wetland line, 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 or rip-rap, the mean high water line, or the wetland line, 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 or rip-rap, the mean high water line, or the wetland line, 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 or rip-rap, the mean high water line, or the wetland line, whichever is more restrictive.

Sec. 30-561. . . .

. . .

(i) After the Fact Variances. Any person, partnership, corporation, unincorporated association, or other business entity that shall apply for a variance related to site or use that is the subject of a violation shall be subject to the requirements of Sec. 30-562(c).

. . .

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.

(3) In determining the amount to be assessed under Sec. 30-562 (b)(2), the Town may consider the following: 1) the gravity of the violation; 2) any willfulness or negligence involved in the violation; 3) the environmental impact of the violation and 4) costs of site restoration and local government inspections in determining a penalty sanction and/or remedy. Payment of all penalties, approval of mitigation plans and guarantee of restoration shall be required prior to issuance of any permit, approval, variance, or special exception. A surety bond shall be posted for any replanting that is done in order to correct a violation where mitigation exceeds 1000 sq. ft. or expenses exceed \$1,000. See Sec. 30-562(c)4, which describes the bonding process.

(4) The Town shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provisions of an order, permit, plan, in accordance with the variance provisions of this ordinance, unless the violation has been legalized and no further permitting before or after the fact is requested.

(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 Sec. 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 Sec. 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 Sec. 30-562(c)(1)b(ii).

(2) Satisfaction of all conditions specified under Paragraph (c), above shall be a condition precedent to issuance by any Town Department, Commission, or agency, including the Planning Commission or Board of Appeals, of any review, permit, approval, variance, or special exception for the affected property.

(3) Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

(4) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000.00, the Town shall require appropriate bonding or other financial security to ensure that the restoration or mitigation is properly completed. If the restoration or mitigation involves planting, the security shall be in effect for a minimum of two (2) years after the date the plantings were established to ensure plant survival. At the request of the property owner, the Town will schedule and conduct periodic inspections as necessary to ensure compliance with the required restoration or mitigation and the release of the security upon successful completion of the required restoration or mitigation. For plants that fail to survive and replanting occurs the minimum two-year period may be extended for an additional period.

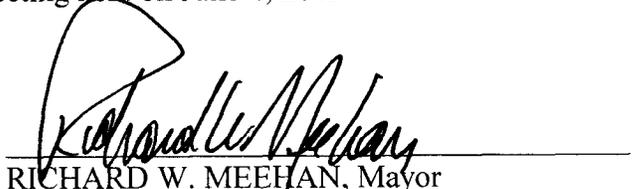
(d) In addition to the fines and penalties herein described, the Mayor and City Council of Ocean City may avail itself of any and all civil and equitable remedies for the purpose of stopping continuing offenses of this article.

INTRODUCED at a meeting of the City Council of Ocean City, Maryland held on May 21, 2012.

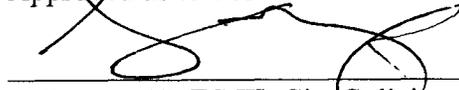
ADOPTED AND PASSED by the required vote of the elected membership of the City Council and approved by the Mayor at its meeting held on June 4, 2012.

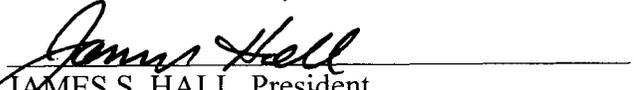
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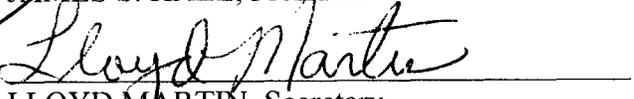

KELLY ALLMOND, Clerk


RICHARD W. MEEHAN, Mayor

Approved as to Form:


GUY R. AYRES III, City Solicitor


JAMES S. HALL, President


LLOYD MARTIN, Secretary