

Dear Queen Anne's County Commissioners,

Queen Anne's Conservation Association opposes Reconsideration of Comprehensive Rezoning Request ("CRR") 05 submitted by Chesterhaven Beach Partnership, LLP("CHBP") (the "Reconsideration").

For the record, Queen Anne's Conservation Association opposes the Reconsideration and ask the Commissioners to deny it.

1. On May 10, 2022, the Queen Anne's County Commissioners voted 4-1 to deny the CRR. At that time, the Commissioners made clear the decision resulted from CHBP's failure to provide adequate proof that its claimed 180 +/- lots were "grandfathered" under the Critical Area program rather than extinguished by it. The Commissioners' decision reserved the right, however, to reconsider that denial if CHBP obtained a "declaratory judgment or equivalent court ruling" regarding whether CHBP has "grandfathered" rights to 180 +/- lots on the subject property. CHBP did not appeal or otherwise ask a court to review your decision, and the decision is, therefore, final and binding on CHBP and the County.

2. There is no legal basis upon which you can reconsider your 2022 denial of the CHBP request for rezoning. Because the County Commissioner's May 10, 2022 decision was based on the unique circumstances related to CHBP's property rights, *i.e.*, CHBP's failure to present sufficient evidence of the grandfathering or

vesting, that decision was "quasi-judicial" in nature (even though the Commissioners are a legislative body). Reconsideration of quasi-judicial decisions on a basis other than that which is specifically set forth in the controlling order is precluded by the "mere change of mind" rule, absent "fraud, surprise, mistake, or inadvertence." Reconsideration of your May 10, 2022 denial of CHBP's rezoning application is therefore precluded unless CHBP either meets the specific condition enumerated in your decision -- *i.e.*, a "declaratory judgment or equivalent court ruling" -- or presents evidence of fraud, surprise, mistake, or inadvertence. CHBP has done neither.

3. CHBP's proffered excuses for failing to obtain a declaratory judgment or equivalent court ruling are as unpersuasive as they are irrelevant. CHBP claims that it is precluded from obtaining a declaratory judgment because there is no "controversy" between CHBP and the County regarding the existence of 180 +/- grandfathered lots. The Maryland Declaratory Judgment Act ("DJA") expressly permits a declaratory judgment action to resolve either "uncertainty or [a] controversy" regarding CHBP's alleged right to the grandfathered lots. Even if there was no "controversy" about the grandfathered status of the lots, to say there is no "uncertainty" is impossible in the face of your express conclusion on May 10, 2022 that, because of the inadequacy of CHBP's evidence, you were uncertain about the existence of the claimed lots. Moreover, even if CHBP were precluded from obtaining a declaratory judgment due to the requirements of the DJA, which it clearly is not, it was not barred from obtaining an "equivalent court ruling" simply by seeking court review of the May 10, 2022 denial of its application.

4. Apart from these more recent reasons for denying CHBP's request for reconsideration, the fundamental point is that Maryland courts have rendered final judgments establishing that CHBP does not have any grandfathered lots. As the Critical Area Commission (CAC) has stated, "This issue was fully resolved through litigation concluding in 1995. . . . No changes have occurred in the Critical Area law or regulations, or any subsequent litigation to disturb the 1995 conclusion that the lots are not grandfathered under Critical Area law." (CAC Letter, Aug. 16, 2023)

5. The record before you this evening does not provide a basis upon which you can lawfully take action on the Reconsideration of Comprehensive Rezoning Request, in that (a) multiple relevant documents have been excluded from the record, and (b) this matter has been brought up on such short notice that interested parties have been deprived of an opportunity to submit relevant evidence and correct the record. Under these circumstances, for you to approve the request for Reconsideration would be arbitrary and capricious.

We urge you to decline to entertain this baseless, oft-repeated, and harassing request.