

Circuit Court for Anne Arundel County
Case No. C-02-CV-24-000740

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2185

September Term, 2024

IN THE MATTER OF GEORGE GRAEFE, III,
ET AL.

Friedman,
Zic,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: March 10, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case is about a couple who built a home on flat ground near the Chesapeake Bay and the resulting \$41,084 buffer mitigation fee. The appellants, George E. Graefe, III, and Linda K. Graefe, paid the fee to the appellee, Anne Arundel County, then sought a refund through the Maryland Tax Court.¹ The Tax Court denied the refund request after a hearing. The Circuit Court for Anne Arundel County affirmed.

Appellants present two questions² for our review, which we rephrase as follows:

1. Does the Anne Arundel County Code authorize buffer mitigation fees for construction on flat land within the County’s fifty-foot expanded buffer?
2. Is the buffer mitigation fee prohibited because a buffer modification area touches a corner of appellants’ property?

For the reasons to follow, we shall affirm the decision of the circuit court.

BACKGROUND

The Critical Area Regulatory Framework

The Maryland Chesapeake Bay Critical Area Protection Program restricts development on land near the Bay’s shoreline. Md. Code, NAT. RES. § 8-1801(a). The program’s architecture matters here, so we describe it below.

¹ As the Tax Court noted, only the propriety of the fee is in dispute, not its calculation.

² Appellants phrased the questions presented as follows:

1. Does Anne Arundel County Code provide for the imposition of buffer mitigation fees beyond the COMAR 27.01.09.01-2A buffer to tidal waters?
2. Does Anne Arundel County Code prohibit the expansion of the buffer in buffer modification areas thereby prohibiting the imposition of buffer mitigation fees?

The General Assembly codified a cooperative system between local governments and a State body: the Critical Area Commission. Local governments develop their own protection programs and the Critical Area Commission reviews and approves them. NAT. RES. § 8-1801(b)(2). The Commission’s regulations, codified in COMAR Title 27, set “*minimum standards* for a local program sufficient to meet the goals of the Critical Area Program.” COMAR 27.01.01.03(A) (emphasis added). When a regulation conflicts with the local program, the stricter provision applies. COMAR 27.01.01.03(B).

The key protection tool is the “buffer,” which is a strip of restricted land along the water’s edge. At the State level, COMAR defines the buffer to “include[] an area of” “[a]t least 100 feet,” with “[e]xpansion for contiguous areas, including a steep slope[.]” COMAR 27.01.01.01(B)(8)(b). When a property owner obtains a variance to build within the buffer and permanently disturbs it, COMAR requires mitigation at a 3:1 ratio. COMAR 27.01.09.01-2(A), (H). If there is no feasible alternative, a “local jurisdiction may authorize payment of a fee in lieu of buffer mitigation[.]” COMAR 27.01.09.01-2(F).

Anne Arundel County’s Critical Area program is codified in Article 18, Title 13 of the County Code (“County Code”). The County’s program is stricter than the State’s baseline:

There shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters[.]

* * *

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

County Code § 18-13-104(a)-(b)(1) (emphasis added). The State requires expansion of the buffer only to the top of the slopes. The County Code adds another fifty feet beyond that.

A separate County Code provision links the County’s buffer to COMAR’s requirements. County Code § 17-8-301(b) states: “Development on properties containing buffers shall meet the requirements of COMAR, Title 27.”

Finally, the County Code recognizes “buffer modification areas” on lots created before December 1, 1985, where existing development has already compromised the buffer’s function. County Code § 18-13-104(c). In those areas, “the buffer is not expanded[.]” *Id.*

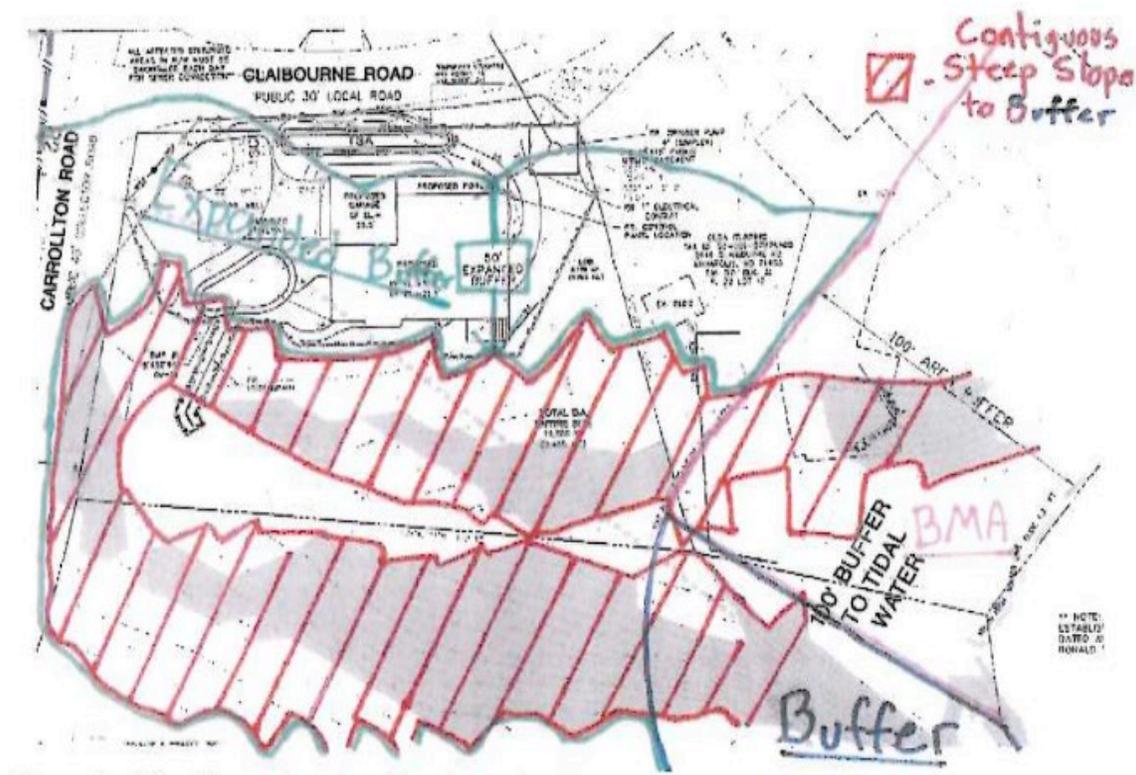
The Property and the Fee

Lot 14 sits at the corner of Carrollton Road and Claibourne Road in Annapolis. The Graefes acquired it in September 1989. It is not a waterfront lot. Between the lot and the tidal waters lies a ravine with steep sides that curve in a horseshoe shape, with the open end of the horseshoe facing the water.

From the water toward the building site, we describe the regulatory layers in the Buffer Map depicted below:

- *First*, the 100-foot buffer from the water’s edge.
- *Second*, the steep slopes of the ravine.
- *Third*, the top of the steep slopes.
- *Fourth*, the County’s expanded buffer: fifty additional feet of flat land beyond the top of the slopes.

The Graefes’ home occupies the fourth layer in the County’s expanded buffer.



The Graefes applied for permits in February 2019. The County notified them that the proposed development was within the expanded Critical Area buffer and required a variance. The County granted the variance in September 2019 and classified all proposed buffer disturbance as permanent, requiring 3:1 mitigation.

On-site planting was not feasible, so the County calculated a fee of \$41,084. The Graefes paid the fee in May 2022, and the grading permit was issued four days later.

Procedural History

The Graefes challenged the fee through multiple channels. They asked the County to reconsider. They appealed to the Board of Appeals, which dismissed for lack of

jurisdiction. They filed a refund request, which the County Office of Finance denied. The Graefes then appealed to the Maryland Tax Court.

The Tax Court heard testimony from Ronald Johnson, a professional engineer retained by the Graefes, and Michael Day, a senior planner for the County. In February 2024, the Tax Court denied the refund request. The circuit court affirmed.

STANDARD OF REVIEW

“The Tax Court is an adjudicatory administrative agency in the executive branch of state government.” *Comptroller v. Wynne*, 431 Md. 147, 160 (2013) (cleaned up), *aff’d*, 575 U.S. 542 (2015); Md. Code, TAX GEN. § 3-102. *See also* TAX GEN. § 13-532(a)(1) (“A final order of the Tax Court is subject to judicial review as provided for contested cases in §§ 10-222 and 10-223 of the State Government Article.”). “When reviewing a decision of an administrative agency, this Court looks through the decisions of the circuit court and intermediate appellate court and evaluates the decision of the agency.” *Comptroller of Maryland v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 359 (2022).

DISCUSSION

The County Code Authorizes Mitigation Fees in the Expanded Buffer.

The Graefes’ primary argument is textual. COMAR 27.01.09.01-2(A) requires³ mitigation for development “located inside the buffer” on a parcel that “includes a buffer

³ Effective January 20, 2025, COMAR 27.01.09.01-2(A) lacks a reference to tidal waters. The regulation now states: “The requirements of this regulation are applicable to a development or redevelopment activity that occurs on a lot or parcel that includes a buffer when that development or redevelopment activity is located inside the buffer.” Given the timeline of events in this appeal, the previous regulation applies.

to tidal waters[.]” The Graefes read “buffer to tidal waters” as limited to COMAR’s own definition: 100 feet from the water plus contiguous steep slopes. Because their house sits on flat land beyond the top of the slopes, they argue it is outside the buffer, and thus no mitigation may be charged.

Regardless of whether it is expanded, buffer is buffer. Indeed, County Code § 18-13-104(b)(1) states that the buffer “shall be expanded” to the top of contiguous slopes “and shall include all land within 50 feet of the top of the slopes.” Once expanded, the fifty-foot zone is buffer. As the Tax Court observed, COMAR’s buffer requirements apply to “the Code defined buffers, which include the 50-foot expanded buffer.” Reading “buffers” to mean only the narrower COMAR-defined buffer would eliminate the practical significance of the County’s expansion.

More to the point, the State law is a floor, not a ceiling. COMAR describes its standards as “*minimum* standards” for local programs. COMAR 27.01.01.03(A) (emphasis added). When a county enacts a stricter provision, “the stricter provision applies.” COMAR 27.01.01.03(B). The County’s fifty-foot expansion is stricter than COMAR’s requirement to expand only to the top of the slopes. Thus, the fifty-foot expansion applies.

The cross-reference in County Code § 17-8-301(b) links the County’s expanded buffer to COMAR’s requirements. That section provides: “Development on properties containing buffers shall meet the requirements of COMAR, Title 27.” “We construe the statute ‘as a whole so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.’” *Anne Arundel Cnty. v. 808 Bestgate Realty, LLC*, 479 Md. 404, 420 (2022) (quoting *Koste v. Town of Oxford*, 431 Md. 14, 25-26 (2013)).

Here, “[b]uffers” has the meaning that the County Code assigns, which includes the expanded buffer. When the Graefes obtained a variance and proposed a permanent disturbance within the County-defined buffer, COMAR’s mitigation requirements attached. Reading “buffers” to mean only the narrower COMAR-defined buffer would render meaningless the County’s expansion and COMAR’s “minimum standards” language.

Moreover, COMAR’s use of “includes” does not cap the definition. COMAR 27.01.01.01(B)(8)(b) provides that “[b]uffer’ includes” an area of at least 100 feet and expansion for contiguous areas such as steep slopes. Under Maryland law, “[i]ncludes’ . . . means includes . . . by way of illustration and not by way of limitation.” Md. Code, GEN. PROVISIONS § 1-110. Thus, COMAR contemplates other buffers, such as the County’s expanded buffer.

Finally, the Graefes note that any ambiguity in the statutory language must be resolved in favor of the taxpayer. *FC-GEN*, 482 Md. at 380. That canon, however, applies only when statutory language is ambiguous. Here, the County Code’s definition of buffer, its cross-reference to COMAR in § 17-8-301(b), and COMAR’s “minimum standards” designation settle this issue. There is no ambiguity for the canon to resolve.

The Buffer Modification Area Does Not Bar the Fee.

The Graefes’ second argument targets County Code § 18-13-104(c), which provides: “In buffer modification areas [BMA], the buffer is not expanded[.]” This

argument hinges on the geography of the ravine. The Buffer Map above shows the relevant features.

The ravine’s steep sides curve in a horseshoe shape, with the open end facing the Bay. The 100-foot buffer sits at the base of the horseshoe. The steep slopes run continuously around the ravine from that buffer. Michael Day, the County’s senior planner, testified that the slopes are “contiguous all the way around in this horseshoe pattern.”

The County did not expand the buffer through the BMA. Instead, it traced the contiguous steep slopes around the horseshoe, through territory outside the BMA, and to the flat land where the Graefes’ house sits. The expansion goes around the BMA, not through it.

The Tax Court noted: because “the slope emanating from the buffer is not fully encompassed in the BMA, this argument is not germane.” We agree. County Code § 18-13-104(c) provides that the buffer is not expanded “*in*” buffer modification areas. (Emphasis added.) Indeed, expansion is prohibited within the BMA’s boundaries. The County Code does not prohibit buffer expansion onto lots that partially touch a BMA. The steep slopes that trigger the expansion are contiguous to the 100-foot buffer. They run in a continuous arc from the buffer, around the horseshoe, through territory outside the BMA, to Lot 14. The BMA blocks expansion within its boundaries. It does not block expansion that reaches the property through a different path.

For all these reasons, the Tax Court did not err in denying Appellants' refund request.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**