

Comparison of the 2023 Draft Zoning Ordinance Articles 22 through 24 with the Current Zoning Ordinance (Adopted 2006)

Draft Zoning Ordinance	Current Zoning Ordinance
Article 22 (Critical Area)	Section 8-1; Section 8-2.02
Article 23 (Marine & Water Dependent Facilities)	Article 9
Article 24 (Floodplain)	Section 8-2.03

Article 22 (Critical Area)

- **Section 22-1.C.1.d (Agriculture)**
 - The draft Zoning Ordinance was revised to clarify that each agricultural operation is implementing a current Soil Conservation and Water Quality Plan, approved by the Soil Conservation District
- **Section 22-1.C.1.i.iv (Agriculture)**
 - The draft Zoning Ordinance was revised so that the feeding or watering of livestock is prohibited within 100 feet of the Median High Water (MHW) of tidal water and tributary streams, or from the edge of tidal wetlands, whichever is further inland.
 - This is more strict than the current regulation and the Code of Maryland Regulations (COMAR) which specifies 50 feet.
- **Section 22-1.D (Cove Point LNG)**
 - The text in red was added to the draft Zoning Ordinance, *“If disturbance to the Critical Area or the 100-foot vegetative Critical Area Buffer is required to accomplish the foregoing, the owner of the Cove Point LNG facility shall reestablish the vegetation in this buffer with native plants and provide financial assurance to cover the planting and survivability requirement for at least 2 years.”*
- **Section 22-1.F.4 (Utility Corridors, Public Road Rights-of-Way, and Percolation Tests)**
 - This section was revised in the draft Zoning Ordinance so that this section also applies to cutting or clearing of forests/developed woodland for roads as well as utility corridors and percolation tests

- In the current ordinance this section only applies to utility rights-of-way and percolation tests
 - This section will be further revised in the next draft to address a lack of clarity in a few areas
- **Section 22-1.1.3 (Steep Slopes)**
 - This section was added to the draft Zoning Ordinance which allows for the disturbance of steep slopes for the purposes of slope stabilization with administrative variance approval
 - This is also addressed in Section 22-6.D.3 (Buffer Applicability), but this section is applicable outside the Critical Area buffer as well and specifies that slope stabilization doesn't include the use of accessory structures including but not limited to patios, terraces, or gazebos
- **Section 22-1.N (Lot Consolidation and Reconfiguration in the Critical Area)**
 - The text in red was added to the draft Zoning Ordinance for clarification, *"The provisions of COMAR 27.01.02.08 shall be met for lot consolidation and reconfiguration/re-platting in the Critical Area. The provisions of this regulation do not apply to a conforming parcel or lot."*
- **Section 22-3.D.3 (Designation of LDAs)**
 - The draft Zoning Ordinance was revised so that areas meeting the conditions of the IDA but comprising less than 20 acres may be designated LDA
 - This replaces the text, *"areas meeting the conditions of item 1 above, but not item 2 above"* from the current Zoning Ordinance
- **Section 22-4.I (Intrafamily Transfers)**
 - Revisions were made to the intrafamily transfer regulations to bring them in line with revisions made to family conveyance regulations generally
 - A "family conveyance" subdivision in the Critical Area is called an "intrafamily transfer"
- **Section 22-6.D.2.b.i (Buffer Description and Delineation)**
 - Revisions were made in the draft Zoning Ordinance to how the Critical Area buffer is expanded for contiguous steep slopes
 - Under the current regulations, in the case of contiguous slopes of 15% or greater, the buffer is expanded four feet for every one percent of slope, or to the top of the slope, whichever is greater.

- A variance from the BOA requires 3 to 1 mitigation; these projects would require 2 to 1 mitigation, or in the case of septic systems, 1 to 1 mitigation if clearing is required
 - The next draft will include revisions to this section to address the following:
 - It will be made more clear that the activities described in items a, d, and g would require administrative variance approval
 - Item k will be removed as it overlaps with item f and is redundant
 - Item h will be revised so that it makes clear that the existing structure must be a legally permitted structure
- **Section 22-6.D.6.a.i (Buffer Establishment)**
 - This was revised to clarify that buffer establishment requirements apply to development outside the buffer
- **Section 22-6.D.7.b.iv (Buffer Regulations and Mitigation)**
 - This item was revised, but it should state that the mitigation ratio for the removal of vegetation for permitted development and redevelopment activities is 3:1 outside of Special Buffer Management Areas, with the exception of a few specific activities which have a different mitigation requirement
 - This statement will be revised in the next draft so that it is corrected and reads more clearly/accurately
- **Table 22-3 (Buffer Mitigation Ratios)**
 - The mitigation ratio for shore erosion control is erroneously listed as 1:1 in this table
 - Under the current Zoning Ordinance, the mitigation ratio for shore erosion control is 1 to 1
 - In the draft Zoning Ordinance, the mitigation ratio for shore erosion control is proposed to be 2 to 1 making it consistent with other water dependent facilities and activities, slope stabilization activities, etc.
- **Table 22-5 (Landscaping Stock)**
 - The draft Zoning Ordinance was revised so that Planting Option 1 & 2 is available only for buffer establishment & buffer mitigation of less than 1/2 acre
 - In the current ordinance it is less than one acre

*dominated by pole-sized or larger trees or have a closed canopy;
or*

- *Any forested habitat until documented otherwise as required by “A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area” June 2000.”*

- **Section 22-7 (Shoreline and Cliff Areas on the Chesapeake Bay, Patuxent River, and their Tributaries)**

- This section (Section 8-2.02 in the current Zoning Ordinance) was added to the Critical Area article because shoreline/cliff areas are all located within the Critical Area

- **Section 22-8 (Renewable Energy Generating Systems)**

- This section was added to the Critical Area article based on updates to State Critical Area regulations
 - This section establishes permissions, criteria, and conditions for permitted major, minor, and accessory solar energy generating systems
 - Allows small residential accessory solar energy generating systems in the buffer
 - Department of Planning & Zoning may not authorize a major or minor solar energy generating system in a Habitat Protection Area, on steep slopes, or highly erodible soils
 - With an exception if they are located over existing legally developed lot coverage in a modified buffer area (Special Buffer Management Area)

- **Section 22-10 (Enforcement)**

- Revisions were made to ensure consistency with Article 33 (Enforcement)

Article 23 (Marine & Water Dependent Facilities)

- **Section 23-6.A (Private Piers)**

- The following text in red was added to the draft Zoning Ordinance, *“One private pier is permitted as an accessory structure to a single-family dwelling on a buildable lot or parcel on any waterfront lot or parcel for the use of the lot or parcel owner or his/her tenant only. Exception: If an undeveloped property with a riparian right is in contiguous ownership with a property that has a single-family dwelling but lacks a riparian right, a pier can be built on the lot or parcel with a riparian right, provided it meets applicable setback requirements (lateral line & harbor line).”*

- **Section 23-7.A.4 (Regulation of Water-Dependent Facilities and Activities)**
 - The following text in red was added to the draft Zoning Ordinance for clarification, *“The placement of dredged material in the buffer or a portion of the Critical Area that has been designated as a habitat protection area may not be permitted, except as necessary for a beneficial use approved by the Board of Public Works or the Maryland Department of the Environment, such as:*
 - *Backfill for a shoreline stabilization measure;*
 - *Use in a nonstructural shoreline stabilization measure, including a living shoreline;*
 - *Beach nourishment;*
 - *Restoration of an island;*
 - *The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or*
 - *Any other approved beneficial use; or*
 - *Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988;”*

- **Section 23-7.A.5 (Regulation of Water-Dependent Facilities and Activities)**
 - The following text in red was added to the draft Zoning Ordinance, *“The Department of Planning & Zoning shall ensure the avoidance, or, in the alternative, the minimization of impacts to fish, wildlife, or plant habitat; and mitigation at a ratio of 1:1 based on the square footage of the area of the canopy coverage removed.”*
 - This mitigation requirement is incorrect and should be 2:1; this will be corrected in the next draft

- **Section 23-7.C.1 (Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities)**
 - Clarification was added to the draft Zoning Ordinance that the provisions of this section are in addition to the provisions of Section 23-7.A (Regulation of Water Dependent Facilities and Activities).

- **Section 23-7.C.2 (Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities)**
 - The draft Zoning Ordinance was revised so that public beaches or other public water-oriented recreation or education areas or activities in the Critical Area Buffer in Intensely Developed Areas have to meet the same conditions as in the Limited Development Area and Resource Conservation Area

- The text in red was added to the following conditions in the draft Zoning Ordinance:
 - *“Sanitary and service facilities are, to the extent possible, located outside the Critical Area Buffer.”*
 - *“A permeable surface is used to the extent practicable, if no degradation of groundwater would likely result.”*
 - *“Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.”*
- **Section 23-7.C.3 (Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities)**
 - The following text in red was added to the draft Zoning Ordinance, *“The Department of Planning & Zoning may approve a public passive outdoor recreation or education area, such as for hiking, hunting, trapping, or nature study, in the Critical Area Buffer of a Limited Development Area or a Resource Conservation Area if sanitary and service facilities to support these uses are located outside the buffer.”*
- **Section 23-7.E (Aquaculture and Fishery Facilities and Activities; Water Quality Restoration)**
 - Added clarification that a facility or activity that supports water quality restoration in the Chesapeake Bay or their watersheds is included in the facilities and activities in the Critical Area Buffer that may be approved subject to the requirements of Section 23-7.A (Regulation of Water Dependent Facilities and Activities).

Article 24 (Floodplain)

- **Section 24-2.D.e and Section 24-3.B.1.d (Application Required; Subdivision Proposals and Development Proposals)**
 - Relevant for required minimum application contents
 - Under the current Zoning Ordinance, in special flood hazard areas where base flood elevations are not shown on the Flood Insurance Rate Map (FIRM), the current Zoning Ordinance requires a determination of the base flood evaluations for development proposals and subdivision proposals with at least 5 lots or at least 5 acres, whichever is lesser
 - The draft Zoning Ordinance requires a determination of the base flood evaluations for all development and subdivision proposals in special flood hazard areas where the base flood evaluations are

not shown on the FIRM, no matter the amount of lots or the acreage

- **Sections 24-3.B.1.e and 2.b (Subdivision Proposals and Development Proposals)**
 - Draft Zoning Ordinance was revised so that the driving surface of subdivision access roads must be at or above the flood protection elevation
 - Under the current ordinance, the driving surface of subdivision access roads must be at or above base flood elevation
 - The following text in red was also added to the draft, *“The access road shall not be approved unless analysis demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent structures.”*
- **Section 24-3.E (Placement of Fill) and Section 24-4.D.2 (Limitations on Use of Fill to Elevate Structures)**
 - The following text in red was added to the draft Zoning Ordinance, *“Wherever fill is used to raise the ground level to support a building or structure, a structural or geotechnical engineer licensed by the State of Maryland shall certify that soil conditions will support the proposed construction.”*
- **Section 24-3.K.3.a (Gas or Liquid Storage Tanks)**
 - Revised so that tank inlets, opening, outlets, and vents have to be at or above the flood protection elevation
 - Under the current ordinance tank inlets, opening, outlets, and vents have to be at or above the base flood elevation
- **Section 24-7 (Enforcement)**
 - Revisions were made to ensure consistency with Article 33 (Enforcement)
- **Definitions**
 - **Flood Protection Elevation**
 - Under the current Zoning Ordinance, the flood protection elevation is two feet above the base flood elevation
 - The base flood elevation is the water surface elevation of a base flood (100-year flood)
 - The draft Zoning Ordinance proposes to raise the flood protection elevation to four feet above base flood elevation
 - The flood protection elevation is the height above the base flood elevation at which a structures lowest floor must be elevated

- Applies to new buildings or structures, substantially improved structures, or repair to substantially damaged structures
 - Also relevant for electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment
 - In the current Zoning Ordinance, this definition includes an exception for Solomons Town Center, which states the flood protection elevation is 10' NAVD 88
 - This exception for Solomons Town Center was left out of the draft Zoning Ordinance definition unintentionally, it will be included in the next draft
- **Substantial Improvement**
 - The red text has been added to this definition in the draft Zoning Ordinance, *“Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure **taking place during a ten year period**, the **cumulative** cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement.”*
 - Also, the following text in red was added to Section 24-2.D.1.k.v for further clarification, *“**The substantial improvement calculations shall be cumulative for a ten year period after the first expenditure.**”*
 - Floodplain regulations, like meeting the flood protection elevation, are required for new buildings and structures, but are also required to be met when an existing structure undergoes a substantial improvement